



EMPLOYMENT TRIBUNALS

Claimant: Miss E Whitehead

Respondents: (1) City of Bradford Metropolitan District Council
(2) The Governors of Sandal Primary School & Nursery

Heard at: Leeds

On: 20-24 November 2017 and (deliberations only) 3 January 2018

Before: Employment Judge Maidment

Members: Miss Y Fisher
Mr WG Appleyard

Representation

Claimant: Ms L Gould, Counsel

Respondents: Ms C Widdett, Counsel

RESERVED JUDGMENT

The Claimant's complaints of unfair dismissal and disability discrimination fail and are dismissed.

REASONS

The issues

1. At an earlier Preliminary Hearing the issues in these claims had been identified as follows (it being accepted that at all material times the Claimant was a disabled person by reason of stress/depression):

"Unfair dismissal claim

1. *What was the reason for the dismissal? The Respondent asserts that it was a reason related to capability which is a potentially fair reason for section 98(2) Employment Rights Act 1996.*
2. *Did the Respondent act reasonably in terminating the Claimant's employment on the grounds of her long term ill health absence?*

The burden of proof is neutral here but it helps to know the Claimant's challenges to the fairness of the dismissal in advance and they are identified within the Claimant's grounds of complaint and listed as follows:

- i. The Claimant's absence was caused by the Respondent's bullying of her*
 - ii. There was no or no adequate investigation into the bullying of the Claimant*
 - iii. The Claimant's solicitor's letter was not provided to the dismissal panel*
 - iv. There was no preliminary hearing held in accordance with the Respondent's sickness absence procedure*
 - v. There were no reasonable adjustments made*
 - vi. The Respondent did not take steps to support the Claimant's return to work when Occupational Health said on 6 July that the Claimant was fit to work*
 - vii. The Respondent took no action against Ms Dale for her bullying of the Claimant*
 - viii. The Respondent allowed Ms Dale to stay in contact with the Claimant during her sickness*
 - ix. The Respondent allowed Ms Dale to present the management case at the dismissal and appeal hearings*
 - x. The Respondent delayed in exploring redeployment opportunities for the Claimant and in putting her on the redeployment register*
 - xi. The Respondent failed to seek to redeploy the Claimant to another school.*
 - xii. The Respondent dismissed the Claimant despite her being fit to work.*
- 3. Does the Respondent prove that if it had adopted a fair procedure the Claimant would have been fairly dismissed in any event? And/or to what extent and when?*

Section 15: Discrimination arising from disability

- 4. The allegation of unfavourable treatment as "something arising in consequence of the Claimant's disability" falling within section 39 Equality Act is the Claimant's dismissal. No comparator is needed.*
- 5. The Respondent accepts that the Claimant was dismissed because of her long term ill health absence and that this absence arose in consequence of her disability.*

6. *Does the Respondent show that the treatment was a proportionate means of achieving a legitimate aim? The Respondent's position is set out at paragraph 23 of its grounds of resistance.*

Reasonable adjustments: section 20 and section 21

7. *Did the Respondent apply the following provision, criteria and/or practice ('the provision') generally, namely*
- i. the requirement that the Claimant communicate with Ms Dale*
 - ii. the requirement that the Claimant be managed by Ms Dale*
 - iii. the Respondent's application of its absence management procedure*
 - iv. Ms Dale presenting the management case at the dismissal and appeal hearings*
 - v. the dismissal of employees before their being placed on the redeployment register*
 - vi. the Claimant not being placed at any other school*
8. *Did the application of any such provision put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled in that due to her stress she had difficulty in having to be in contact with Ms Dale, in that because of her disabling condition she was more likely to be absent and be managed in accordance with the Respondent's absence management procedure and as a consequence more likely to be at risk of dismissal and subject to redeployment. The Respondent accepts that the Claimant was put at a substantial disadvantage in respect of subparagraphs iv, v & vi above but not in respect of subparagraphs i, ii & iii.*
9. *Did the Respondent take such steps as were reasonable to avoid the disadvantage? The burden of proof does not lie on the Claimant, however it is helpful to know the adjustments asserted as reasonably required and they are identified as follows:*
- i. providing the Claimant with a different point of contact*
 - ii. providing the Claimant with an alternative manager*
 - iii. discounting the Claimant's disability absences and absences caused by Ms Dale*
 - iv. someone else other than Ms Dale presenting the management case*
 - v. putting the Claimant on the redeployment register from 5 July 2016 when she was declared to be fit to work*
 - vi. moving the Claimant to another school"*

The evidence

2. On the first morning of the hearing, the Tribunal spent some time clarifying the issues as set out above with the parties. There was some discussion as to the order of witnesses, including in circumstances where Mrs Empson's availability was limited. The Tribunal then spent time privately reading the witness statements (and various supplemental statements) exchanged between the parties and relevant documentation.
3. The Tribunal had before it an agreed bundle of documents numbering in excess of 872 pages. Some brief additional documents or better copies of existing ones were added without any objection.
4. The Tribunal heard firstly from the Claimant but interposing 2 witnesses called on her behalf, Gail Eames, former Assistant Head for Teaching and Learning and Karen Green, a former Clerical Assistant. For the Respondent the Tribunal heard then from Nicola Empson, parent governor and a practising barrister, Mrs Louise Dale, Head Teacher, Mr Richard Moore, Chair of Governors, Victoria Merriman Deputy Head and Les Hall, HR business partner employed by the first Respondent.

The facts

5. The Claimant was employed by the second Respondent at the Sandal Primary School and Nursery as its Business Manager from 25 June 2007. At all times, she reported to the school's Head Teacher.
6. There is no dispute that the school had been through a challenging period which culminated in a rating of "*inadequate*" following an Ofsted inspection which took place on 15 and 16 January 2013. As a result of this the Head Teacher retired and an interim executive Head Teacher, Coleen Jackson was appointed to manage the school until the governing body could make a permanent appointment. The situation also called for the increased involvement of its human resources business partner, Mr Les Hall, employed by the first Respondent. A recruitment process was conducted which resulted in the appointment of Louise Dale in March 2013 as the new Head Teacher, but starting only from the commencement of the next academic year, September 2013. The delay was a result of Mrs Dale having to give notice to her existing employer, East Morton Primary School.
7. Mrs Dale attended the school a number of times, however, during the summer term prior to her commencement, in order to familiarise herself with the school and meet the staff with whom she would be working. Mrs Dale was an experienced Head Teacher and the expectations were that

she would be able to improve the teaching and learning for the pupils in a situation of significant pressure and stress amongst existing staff given the OFSTED report and the uncertainty produced by it and improvements required. Nevertheless, it was recognised, not least by Mrs Dale herself, that she had somewhat of a learning curve to negotiate moving from a stable single class for each year group school to a larger double class primary school in a situation of some discord. She arranged for the services of a counsellor to be able for the confidential use of any staff who felt they would benefit from such help in combatting inevitable levels of stress they would feel in a school placed in special measures.

8. From becoming aware of Mrs Dale's appointment, the Claimant exhibited to Mr Hall concern about her own position which arose predominantly from a belief that Mrs Dale had a close relationship with the school business manager at East Morton Primary School, Tracey Lister, and that she might wish to bring Mrs Lister with her to the school. Mr Hall spoke to the Claimant a number of times regarding this specific concern and, in such conversations, he tried to assure her that there was no such plan. He said that she also raised issues of workload but said to the Tribunal that she had complained about workload most of the time he had known her.
9. His evidence was that he knew that moving with Mrs Lister was certainly not Mrs Dale's intention as she saw the work she needed to do at the school as a completely new challenge, in an environment very different from that at the East Morton School. Mrs Dale's own evidence before the Tribunal was that she had never seen Tracey Lister as a potential candidate for a position at the school as the issues at the school were not such as to suit Mrs Lister's talents and way of working. She was described to the Tribunal as not having the necessary subtlety in people skills and required empathy to thrive in an environment where, on the evidence, there can be seen to have been significant divisions and relationship breakdowns within the existing workforce. Nevertheless, it was evident from the comments made to Mr Hall by the Claimant that she did not accept the reassurances given and continued to feel that there was a close personal relationship between Mrs Dale and Mrs Lister which was in contrast to Mrs Dale's lack of interest in forming a stronger relationship with the Claimant herself outside the workplace. Mrs Green referred to it being thought that Mrs Dale had a plan to bring Mrs Lister to the school, but she accepted that Mrs Dale had not said this. Mrs Dale was aware how the Claimant felt. She said that at one point the Claimant had said that she would scream if Mrs Dale mentioned Mrs Lister again and thereafter she made a conscious effort not to refer to her by name.
10. It is clear that Mrs Dale's remit necessitated her making changes within the school's teaching and more general operations which would be unwelcome by some. OFSTED had effectively required that the school improve the quality of teaching but also the quality of leadership, management and governance. The Claimant held the most senior non-

teaching position within the school and had always reported directly to the Head Teacher.

11. The Tribunal has heard a significant amount of evidence suggesting that Mrs Dale's management style was inappropriate, that she had her favourites and that she was ruthless in getting her own way in terms of those staff who continued and those who were appointed to new positions. Mrs Eames and Mrs Green in their evidence supported that portrayal. It was noted, however, that when the Claimant was asked for examples of Mrs Dale not being polite to her she could recall none. The Tribunal was told about a newly qualified teacher, Faye, who was given a crucial year 6 class to manage – a decision which was not viewed as a wise one by some other teachers, not least given the level of support required. Mrs Dale did not agree and said she was unaware that Faye had any complaints of her own. She said that Faye was in agreement with the classroom walls being stripped of material which Mrs Dale viewed as clutter and not displaying teaching aids useful to the pupils there. The Claimant and Ms Eames portrayed this more as an act of desecration upsetting to Faye. Mrs Dale denied referring to a year 5 teacher as “*useless*” although she accepted that she might have described her (accurately) as struggling.
12. The Tribunal, however, was significantly impressed by the evidence of Victoria Merriman, one of the school's deputy Head Teachers. Whilst it might be expected that she would support Mrs Dale in circumstances of a continuing working relationship with her, her evidence did not feel rehearsed or self-serving and she was capable of recognising the point of view of those who were critical of Mrs Dale. She had not been present during the evidence of the other witnesses and gave a very straightforward and convincing account of the atmosphere within the school at the relevant times.
13. When asked how she might explain the view the Claimant took of the situation she referred to the school having had a very difficult journey from the point of the adverse OFSTED report. The interim head teacher, Colleen Jackson, had seen the need for improvement but the situation was very stressful, including for Mrs Merriman herself. The reality was that there was teaching and learning within the school that was unsatisfactory but the Head Teacher faced a very vocal staff team and came into an atmosphere where it was hard to make change happen. Mrs Jackson had started to make some changes in the office and when Mrs Dale took up her substantive role she picked this up and carried it forward.
14. Mrs Merriman said that the situation had always been difficult within the school office due to a lack of clarity with roles and in communication. She said that Mrs Dale rightly recognised that she needed to tackle deficiencies in the office structure. She said that the Claimant, she felt, found the changes to be difficult and she empathised with her concerns.

Nevertheless, the Claimant could be quite confrontational and, in her view, did not in truth like how Mrs Dale wished to shape the structure. Mrs Dale had not intended to diminish the Claimant's position within the school but simply to make sure that the school run properly. Mrs Dale could have left the office alone but the reality was that it was not running well at all.

15. As regards Mrs Eames and her view of Mrs Dale, Mrs Merriman said that Mrs Eames was very passionate about the school and, whilst she had resigned from her employment after two months of working with Mrs Dale, that had to be seen in the context of her working with two other Head Teachers beforehand in quick succession. She said that it could not be said that Mrs Eames was very happy at the school and the situation changed simply with Mrs Dale's appointment – the situation had been difficult for some time. She described Mrs Eames as being very vocal and as finding it difficult when some of her friends within the school had been placed under scrutiny.
16. Mrs Dale, before her formal commencement as Head Teacher, had spoken to the Claimant about her job role and to other members of the office team. She formed a view that there were systemic operational failings impacted by a lack of leadership within the office team, with no one taking ultimate responsibility for the quality of work. Whilst Mrs Dale's most urgent focus was on addressing shortcomings in teaching practice, she noted that there had been some criticism of the Claimant's management style.
17. There was an allegation of Mrs Dale saying that she had a hit list of teachers she wanted to remove. Mr Hall has no recollection of Mrs Dale saying this. There was a list of concerns relating to teaching practice which was likely to have referred to teachers by name, but not of people to be removed from the school. The teaching practice of some teachers did require improvement to satisfy OFSTED.
18. The Claimant's responsibilities as business manager were wide reaching and she herself had raised with Mr Hall, as described, that she was concerned about her heavy workload. She was responsible for the school's buildings and asset management, the line management of the administration team, payroll, human resources issues and financial management (including budget monitoring and planning). Her financial management was assisted by the support of a peripatetic bursar who came into the school half a day each week.
19. The Claimant was set various (uncontroversial) objectives in an appraisal from September 2013 until March 2014 which included the improvement in the efficiency of office systems and more specifically ensuring that staff were implementing health and safety procedures and that best value could

be achieved in the engagement of the school's cleaning staff. Those same performance objectives were continued in the subsequent appraisal cycle from spring 2014 to spring 2015. However, by September 2014 Mrs Dale believed that progress had been made in the primary area of teaching and learning such that it was now time to turn her attention to the non-teaching operations within the school.

20. Indeed, she considered that efficiency would be improved by a restructure in office functions, affecting not least the Claimant's own role. Mrs Dale had come to the view that the Claimant was not so strong when dealing with financial matters and was over reliant on the aforementioned bursar who in turn had commented to Mrs Dale that she had had to become involved in the Claimant's own financial management work. In any event, Mrs Dale found it difficult to manage the situation of a bursar attending the school only once a week and felt she needed more consistent support in aspects of the financial management of the school. A proposed restructure was then presented to the Claimant which involved two distinct and defined positions replacing her single position of business manager. Both positions were of a similar level and grade to the Claimant's existing role and both reported directly to Mrs Dale. The role which Mrs Dale saw as suiting the Claimant best was titled "*Operations Manager*" and involved management of the premises, health and safety, personnel, payroll and line management of site supervisors and site personnel. The alternative role effectively involved a splitting away of the financial functions previously undertaken within the business manager position and placing them in a new position of "*Finance and Office Manager*". Responsibilities falling within that position included those for financial procedures, bank reconciliation, financial monitoring and for the line management of the office staff. This proposal was explained personally by Mrs Dale to the Claimant who had an opportunity to comment on it, although undoubtedly, she had been presented with Mrs Dale's already thought out proposal rather than a blank sheet of paper allowing her earlier stage involvement in defining her new role.

21. Following such discussions, a formal letter of invitation was sent out to the Claimant dated 14 October 2014 asking her to attend a "*restructure consultation meeting*" originally arranged for 23 October, but brought forward slightly at the Claimant's request. This was to be an open meeting of the non-teaching staff with the reassurance given in the letter of invitation that no redundancies were proposed. Prior to the meeting the Claimant raised some concerns with Mr Hall. By then, however, it was clear and expressed by the Claimant that her preference was to take the role of operations manager (which Mrs Dale had always thought played to the Claimant's strengths) but wanted the title of the role to remain as business manager with which Mr Hall and Mrs Dale agreed.

22. When the staff did meet with Mrs Dale and Mr Hall, a full explanation was given of the proposed new structure and it appeared to them that the staff

were comfortable with that and understood what it was proposed would happen.

23. The Claimant then became involved in the process of rolling out the new structure becoming involved in the appointment process for two new roles, the Finance and Office Manager and a Clerical Assistant. At an early stage the Claimant had expressed some concern to Mr Hall when it appeared that Tracey Lister had expressed an interest in the former role, albeit she never progressed with any application for that position. More specifically, the Claimant raised a concern about the grading applied to the Finance and Office Manager role given that the successful candidate had limited experience in a school environment. Mr Hall brought these concerns to Mrs Dale who recognised that the Claimant was correct in raising concerns regarding the successful candidate's lack of experience. Mrs Dale had sat on the panel which selected Toni Wilson as the candidate to be offered the position. Whilst it was recognised that she needed more development to fulfil the role, it was felt that ultimately she would be the better person because of her personality and motivation. The Claimant had raised that Toni ought to be paid at a lower level than PO1/PO2. Mrs Dale discussed that with Mr Hall who said that the pay grading should be retained as originally envisaged. Toni Wilson started indeed at PO1, a level below the Claimant in terms of pay grade.

24. The Claimant also felt that the person appointed to the Clerical Assistant role, Heather Clark-Coates, was a personal friend of Mrs Dale and had been brought in to effectively act as a "spy" for her. Mrs Dale had first come to know Heather in a social setting outside of the workplace. In 2014, she had approached Mrs Dale about the possibility of gaining experience in a school environment and the possibility of volunteering – she started to work at the school. When the role of Clerical Assistant became available and was advertised, she applied for the position and was interviewed along with another candidate by the Claimant and a then deputy Head Teacher, Joanne Day. Mrs Dale did decide that Heather would not have two undertake any practical exercises part as part of the interview process as the Respondent already had experience of her work within the school. The feedback, including from the Claimant after the interviews, was that both of the candidates were appointable, but Heather had the least experience. Mrs Dale expressed her view that Heather would be the better candidate because she was already doing the job and fitted in. The decision was taken to offer her the position. The Tribunal accepts that the interview process was not a sham and that had the feedback to Mrs Dale been that Heather was not appointable, further and alternative thoughts would have emerged regarding the appointment. As Mrs Dale noted, if she had wanted to appoint Heather regardless, there would have been scope for her to have more straightforwardly made her a permanent employee.

25. The Claimant subsequently assisted in a form of induction of the new Finance and Office Manager and helped Toni Wilson to get up to speed with the role. Following however a routine appraisal meeting in March/April 2015, the Claimant brought up continuing concerns with Mrs Dale regarding Mrs Dale's relationship with Tracey Lister. Mrs Lister had indeed provided some mentoring support to Toni Wilson and was now a school Governor. Further, the Claimant complained that some of the duties which had been moved over to the new Finance and Office Manager position were integral to the role of Business Manager, an assertion with which Mrs Dale disagreed stating that the new structure was already paying dividends with the governors expressing praise regarding the Claimant's input at a recent Finance and General Purposes meeting. Nevertheless, on the balance of evidence, at some point at or shortly following the appraisal discussions the Claimant produced a new business support structure which put her as business manager at a level inbetween Mrs Dale as Head Teacher and the other office and administration staff, including Toni Wilson who would now report to the Claimant rather than to Mrs Dale directly. Mrs Dale saw such proposal as rather 'after the event' given that they had recruited to and were operating already with the new structure. She also did not consider it efficient for Toni Wilson to report to her only indirectly through the Claimant. As Head Teacher, she needed to work closely with the person with primary responsibility for financial matters. She had determined that she rather than the Claimant would appraise Toni Wilson, consistent with the structure she had put in place.
26. The Claimant then sought that her role be regraded and paid at a higher level, as justified, she thought, by the demands of her job. Mrs Dale personally did not feel this to be justified given that there had been a restructure which had removed some of her responsibilities allowing her to more effectively carry out the more limited responsibilities which remained, that she had received a regrading as recently as 2013 and that she was already the highest-paid member of the office staff. Secondly, the Claimant maintained that she ought to be moved onto a full-time rather than a term time only contract of employment given the demands of the role. It was explained to the Claimant that any changes would have to be approved by the governing body following advice received from Mr Hall. The Tribunal accepts that Mrs Dale mentioned to the Claimant that she would have to put forward a form of business case or proposal for the regrading/change in hours and that the Claimant expressed a lack of understanding as to why this was needed. It was not, however, sprung on her, as she claims. The Claimant subsequently put forward her request to the governors who delegated the issue to a group of 3 governors including Mrs Dale and Mrs Nicola Empson.
27. On Mrs Empson's evidence, the governors were made aware of the Claimant's request at a finance and general purposes meeting on 22 June 2015 by the Claimant herself in a brief presentation. She noted that at the time that the Claimant's hours were term time only with an additional 10

working days paid at normal salary. She understood that the Claimant was seeking a full year contract. One of the reasons for forming a separate subcommittee to consider the request was inevitable delay if they waited until 12 October 2015 for the next finance and general purposes meeting. The subcommittee meeting (which the Claimant was not intended to attend) was arranged for the evening of 6 July. At 4:30 p.m. Mrs Empson and Mr Hall indeed received a document from the Claimant headed "*increase of responsibilities since current job description*". This was considered at the meeting. As regards regrading, Mr Hall advised that the first Respondent operated a formal job evaluation process and that the governing body did not have the authority to amend the grade – it could merely support an application for regrading which may or may not be approved by the first Respondent's regrading panel. He also pointed out that this request came relatively recently following an amendment to a job description and the Claimant was on a high grade for the position already. Indeed, evidence is that ordinarily the Claimant would be expected to be in a business manager post at a secondary school to be deemed working at a higher grade than her existing PO2.

28. However, it was within the governing body's power to increase working hours and indeed move her to full-time working if thought appropriate. At that moment, the Claimant was working 40 weeks in the year. Given the increase in cost which would flow from an increase in the number of weeks worked each year it was decided by the subcommittee that there had to be shown to be a case for justifying this increased cost and they did not feel that the information they had was sufficiently detailed to allow them to make a positive decision. Therefore, they decided to ask the Claimant to complete a workload schedule covering the next three months recognising that six weeks of the period fell within the school summer holidays. This way, the subcommittee thought, it would be able to evaluate a typical working day and how much time particular tasks were taking. This idea came from Mrs Empson.
29. On 7 July 2015 Mrs Empson wrote to the Claimant notifying her of the decisions on the regrading and as regards the need to maintain the daily log using pro forma sheets which were provided for the Claimant's assistance.
30. The Claimant responded on 12 July saying, amongst other things, that she felt she had not been supported and that it had never been made clear what was required of her to pursue the application. She referred to additional work already being planned for with reference to a meeting with a contractor due to take place during the summer holidays on 17 August 2015. Mrs Empson responded by email of 14 July 2015 confirming that the governors intended to proceed with the process already outlined and that the matter would be considered when they met further in October. The Claimant was asked to keep the appointment on 17 August and told that she could claim payment for the additional hours spent on it.

31. The Claimant never submitted a regrading application. Mr Hall said that his standard advice to employees was that in any application they could go down as well as up a grade and he said that tended to put people off applying. The Claimant never submitted any schedule of her hours worked.
32. The Claimant has referred to further changes in her working arrangements. This included Mrs Dale arranging for the kettle to be removed from the office in which the Claimant sat and instead be placed in a common shared kitchen area where, in fact, a sink was located. Mrs Dale did so, the Tribunal accepts, as that was the logical area for the kettle to be placed to assist staff in making their drinks and also to reduce the number of people coming in and out of the Claimant's office which she felt would cause interruptions in the Claimant's work. Mrs Dale did perceive that the Claimant spent too much time chatting with colleagues.
33. Further, the Claimant's office had had 2 windows, one facing an external area and another which faced into the general office area which had at some time in the past been used as the main reception area. Mrs Dale arranged for the window facing into the general office to be closed off to allow for there to be more space for shelving and cupboards in the office area. The Tribunal does not see this change as isolating the Claimant to any extent, in that the long horizontal window was quite high up the wall of the Claimant's office so that she would only be able to see through it when in a standing position, albeit the Tribunal does consider that part of Mrs Dale's reasoning for the benefit of the change was to create more privacy in terms of the Claimant's working environment and again less risk of her being interrupted.
34. The Claimant referred to having been removed as a point of contact for the first Respondent's fraud team in respect of a matter which predated Mrs Dale's appointment. Mrs Dale's view was that the investigation undertaken was no longer ongoing. The Tribunal can not understand any particular prestige or satisfaction to have emanated from this insubstantial liaison role.
35. The Claimant complains that she was tasked by Mrs Dale with instructing a Ms Piesleck, a senior lunchtime supervisor, to become a designated first aider. The Claimant was not asked to exert any undue pressure on Ms Piesleck, who was apparently reluctant to take on this responsibility. The Claimant was at the time Ms Piesleck's line manager and Ms Piesleck was paid at the top of her grade scale.
36. The Claimant complains that changes were made to her email password at the beginning of September 2015. How this change came about has not been explained, but the Tribunal accepts that Mrs Dale did not have any

involvement in it. The Claimant in fact was not in school on the 1 September 2017. Mrs Dale emailed her saying that she couldn't find any of the new staff on the system and that they needed to be added as a priority. The Claimant responded in a friendly manner the following morning stating that all the new teachers were put on the system in May and wondering if Mrs Dale had been looking in the wrong area. She said that she had telephoned the IT support function in Bradford and they were going to give access to ensure that the lists were up-to-date.

37. Mrs Dale met with the Claimant on 3 September 2015 together with Mrs Merriman to speak to the Claimant informally about the Claimant having been overheard by Mrs Dale making a comment to a parent where it was taken that the Claimant was complaining about the removal of her office window and having been "*boarded out*". The Claimant was told Mrs Dale was concerned at the impression this gave. No form of disciplinary warning was given. A note taken of the conversation records the Claimant accepting the inappropriateness of the comment although her position before the Tribunal certainly was that she had done nothing wrong and had been simply exchanging a joke with a visiting parent.

38. In any event the discussion did result in the Claimant saying that she herself did feel pushed out and "*boarded out*" and not part of the office. Mrs Dale referred to the consultation that there had been about the office restructure but the Claimant said that she found her to be unapproachable. Mrs Dale expressed the view that the office area was now organised and more professional with less chatter. The school was a busy place and she said that the Claimant shouldn't read anything into Mrs Dale not always speaking to her.

39. The Claimant did not attend work after 6 September 2015 and a statement of fitness for work was produced giving the reason for her absence as "*work-related stress*". Mrs Dale responded by letter of 11 September stating that she was sorry to hear that the Claimant was unwell and would be happy to meet with her to discuss any concerns in relation to her illness. A referral was then made of the Claimant to occupational health who reported, following a meeting with the Claimant on 24 September 2015. The occupational health advisor referred to the Claimant having produced "*a list of concerns which although I am happy to acknowledge, but not in a position to endorse. I would advise that management meet with Emma to discuss any concerns.*" It was said that it was likely that the Claimant's medical condition might fall within the criteria of the Equality Act 2010. The Claimant's evidence was that she had not handed any physical list of concerns to the occupational health advisor, but had simply gone through a number of items with her which were on her mind.

40. An appointment was made for the Claimant to meet with a resolution worker of the first Respondent on 9 October to progress a stress action plan but the Claimant did not attend. The Claimant was nevertheless sent,

by letter of 12 October, a plan for her to start completing. The occupational health advisor subsequently contacted Mrs Dale to say that her understanding was that the Claimant had been unaware of the previously arranged appointment and that there may have been a confusion with a counselling appointment which was arranged and which the Claimant attended on the same day. Mrs Dale wrote to the Claimant to say that a further appointment was to be made with her to meet with Jenny St Romaine, resolution worker - a meeting intended for the Claimant with Mrs Dale and Mr Hall to discuss the stress action plan was no longer required. In the meantime, a further occupational health telephone review took place with the Claimant on 19 October.

41. The Claimant met with Jenny St Romaine on 23 October 2015. She emailed Mr Hall on 30 October saying that the Claimant had informed her that she had recently been diagnosed with depression and prescribed medication. She said that the Claimant was distressed when talking about her work situation and that she felt it would be beneficial for the Claimant to have some more counselling sessions before they met to develop a stress plan. She anticipated the need to see the Claimant again for some further preparatory work on the stress plan prior to a joint 'resolution' meeting to be attended with the Claimant and Mrs Dale present. Mr Hall responded on 2 November saying that Mrs Dale had agreed that it would make sense for the Claimant to receive more counselling if she was finding this beneficial prior to the stress action plan meeting. Jenny St Romaine was then able to confirm that she could meet the Claimant for a preparatory session on 24 November and that there be a meeting to develop the stress action plan on 4 December. The Claimant contends that when she first met Ms St Romaine she had a file full of documentary evidence of Mrs Dale's inappropriate treatment of her but when she mentioned this, was told strongly not to raise this as it would not be conducive to an amicable resolution. Ms St Romaine was said to have described the information as "*toxic*". The Tribunal has not heard from Ms St Romaine. Mr Hall found such comment, if made, to be surprising from a resolution counsellor. The Tribunal on balance accepts that something was said by Ms St Romaine regarding the most conducive approach if a resolution was sought but, given that the Claimant did raise with Mrs Dale that she felt excluded and that her communication was inadequate with her, it can not be accepted that the Claimant was told not to bring up her concerns and acted accordingly, nor that there was a threat of disciplinary action if the Claimant was viewed as not co-operating with the resolution process as she maintained.

42. At the meeting attended by the Claimant, her trade union representative, Mrs Dale, Mr Hall and Jenny St Romaine as facilitator, the nature of the stresses on the Claimant were discussed and noted. In particular, it was noted that the Claimant perceived her stresses to be her not being included at work, being excluded from monitoring meetings and generally not feeling part of the team. She felt that Mrs Dale was not meeting her expectations regarding communication, the Claimant referring to an

occasion when Mrs Dale had talked to the team of lunchtime supervisors about what she wanted them to do but hadn't spoken to the Claimant first. In terms of supportive action, the Claimant asked to attend the monthly monitoring meetings and for there to be improved communication although no specific practical measure was requested by the Claimant.

43. Mrs Dale explained that her perception of the meeting with the lunchtime supervisors was that the Claimant had become involved in day-to-day management issues of the supervisors since the retirement of the senior lunchtime supervisor, but there was now a play leader in post who organised the rotas and would undertake this responsibility liaising with the Claimant for advice on staff management issues. Mrs Dale again outlined the split in the Claimant's duties and said that it had been planned to have a monthly monitoring meeting but, in reality, issues related to finance couldn't wait necessarily for such meetings and they were no longer happening. It was said that the Claimant and Toni Wilson were invited to senior leadership team meetings as and when required and the Claimant was expected to attend the governors finance and general purposes committee. The meeting closed on the basis that the Claimant would consider if there were any specific actions she would like to have in place to support her well-being and that Mrs Dale would provide the Claimant with updates on school matters while she was absent sending this via Mr Hall. When the Claimant had a return to work date Mrs Dale would invite her to a meeting to discuss the practical details of that return.
44. Mrs Dale wrote to the Claimant on 8 December providing her with the first of such updates regarding events at the school. Within the communication she expressed a hope that the Claimant had recovered a little from the previous meeting which was clearly *"very difficult for you"*. She wished the Claimant *"a lovely time over Christmas"*.
45. On 12 January 2016, the Claimant was invited to a sickness review meeting on 15 January. At that meeting the Claimant was significantly and visibly struggling in terms of her health. She went through some pre-prepared notes. She referred to herself feeling better and the doctor considering she was more stable. She felt stressed at the rather short notice for this review meeting and having to cancel another appointment with a counsellor. Mr Hall recorded the Claimant's current situation and that she was told that the meetings were about helping her, not part of any disciplinary process. There was then some discussion regarding the Claimant's perception of being excluded from meetings and regarding her responsibility for lunchtime supervisors. In the previous meeting facilitated by Jenny St Romaine the Claimant had asked that Mrs Dale could leave at one point during which the Claimant referred to some issues regarding a former partner which were causing her concern. At this meeting in January the Claimant briefly referred to those domestic issues and wished Mrs Dale to appreciate that there was nothing personal in her being asked to leave the meeting or in the information she disclosed when Mrs Dale was

not there. Mrs Dale then provided an update regarding changes at the school and it was arranged that there be a further meeting on 10 February 2016.

46. At that next meeting, the Claimant described herself as being more positive and there was discussion about what she had been able to do in her general home life and as regards her own son's activities. Mrs Dale again provided an update of events at the school. The next meeting was then anticipated to take place on 2 March. The meeting appears to have taken place albeit no notes survive from it. There was, however, certainly a further absence review meeting on 13 April. During this meeting the Claimant expressed herself as still feeling anxious prior to the meetings and described the medication she was taking to help her sleep. She felt more confident in her outside activities. Mrs Dale gave her the usual news about the events at the school.

47. At the next absence review meeting on 25 May, the Claimant described how she had been further distressed as a result of her son being assaulted at school which had necessitated the exclusion of two other pupils and the involvement of the police. The Claimant was reminded that she would exhaust her sick pay entitlement by September. Reference was made to there having now been a lengthy period of absence and that it was time to refer her further to occupational health and for the school to try to determine when and if it was likely that the Claimant would be fit to return to work. Decisions could then be made regarding how she might be supported to return to work but again depending on the evidence it was made clear to the Claimant that action might need to be taken under the managing attendance procedures. Mrs Dale raised that redeployment (into another school or within the first respondent) was one of the possible issues of further discussion dependent upon the medical advice. The redeployment process was explained to the Claimant by Mr Hall in the presence, as always in terms of these attendance management meetings, of her union representative.

48. The further referral to occupational health was made on 25 May. They spoke to the Claimant on 15 June and again on 5 July and a report was produced on 5 July 2016. The report, following the telephone consultation with the Claimant, recorded the situation being one of long-term sickness absence due to anxiety and stress. In terms of recommendations, it was stated: *"As you are aware Emma has been absent from work for the past 12 months due to perceived work-related stress which has impacted on her health and well-being. Emma advised me that she has suffered relentless intimidation over a two-year period at work and although she is feeling more positive generally, Emma's level of anxiety continues to increase dramatically when attending meetings with management.... The outcome of Emma's latest review by her GP confirmed that she is now deemed fit to return to work (in some capacity), however, in the opinion of both the GP and her counsellor, it would be detrimental to Emma's health*

and well-being for her to return to her current work environment and therefore Emma has requested redeployment. She is aware of the redeployment process and we have discussed this briefly today, she understands an alternate position is not always guaranteed in a redeployment process. This has not been an easy decision for Emma to make and ultimately her wish is to resume employment as soon as she is able to.”

49. Following receipt of this report Mrs Dale agreed with human resources to move the case to a formal capability hearing which was then arranged in conjunction with the Claimant and her union representative. Mrs Dale considered it was appropriate for her to continue to take the lead within this process given her knowledge of the background to the Claimant's sickness and her involvement in meetings during that sickness. The Claimant was aware of that intention from a letter of invitation sent together with supporting documentation on 22 July which noted that the Head Teacher would be presenting relevant evidence to the hearing and notified the Claimant of the right to provide her own medical evidence if she wished. It was said within this invitation that the governors had the power to dismiss if they considered the Claimant to be medically incapable of fulfilling her contract of employment. The Claimant was again given the right of accompaniment by a colleague or union representative. The pack of documentation put together for use at the hearing included the Claimant's job description, employment record, absence record and various correspondence including occupational health report but not, it is noted, the notes of the sickness review meetings. Ultimately the capability hearing was rescheduled at the Claimant's request for 23 September. Prior to that date the latest statement of fitness for work had been provided by the Claimant from her doctor which gave the reason for absence as work-related stress/depression and advised that the Claimant was not fit for work, the doctor not taking any of the available options to certify her as being fit if any particular measures were put in place.

50. The first Respondent's redeployment policy requires a case conference prior to any decision to place an employee in the redeployment pool for an initial 12 week period. Ordinarily, at the end of that period, if no alternative position has been found, a capability meeting is arranged to consider dismissal on notice, during which period the employee may still be redeployed. However, the first Respondent's practice was not to allow the participation of employees not employed directly by it until they had been issued with notice of dismissal by their own employer, for example school governing bodies. The Claimant had always understood that for redeployment to be considered there needed to be a dismissal first and that redeployment attempt through the first respondent then ran concurrently with notice. The first Respondent has no power to compel any self-governing school to engage a person in the redeployment pool. Any appointment would be down to the individual school.

51. However, solicitors instructed by the Claimant wrote to Mrs Dale by letter of 19 September. This referred to Mrs Dale as being the person who had instigated "*the bullying campaign*" against the Claimant and expressing surprise therefore that she would be presenting evidence to the board of governors. They said that having reviewed the Respondent's attendance management policy it was considered that the proposed meeting was outside the school's procedure which provided that, prior to a medical capability hearing, a preliminary hearing should be arranged to consider the history of the employee's absence, any reasonable adjustments made or considered, if and when the employee may be able to return to work, any redeployment options that have been considered and the up-to-date medical advice. It was noted that this did not appear to have taken place and no explanation been provided. It went on to note that the medical advice was that the Claimant was fit to return to work but would not be safe to return under the same conditions and under Mrs Dale's control such that redeployment was recommended. It was suggested that the meeting should not go ahead.
52. Mrs Dale responded by her own letter of 21 September directly to the Claimant but referring to the solicitors' letter. She said that the hearing would go ahead as proposed and that the letter from the solicitors would be made available to the panel. She also went on to note that the letter indicated that she may possibly be considering making a formal grievance against the Head Teacher and if this was the case she was asked to do so in writing to the Chair of Governors stating that the grievance would then be dealt with in line with the school's grievance procedure, a copy of which was enclosed.
53. The capability meeting was chaired by Mr Richard Moore, Chair of Governors at the school. He made the decision regarding the Claimant's future employment together with his governor colleague, Mr James Howgego. They did not in advance address the question of whether a preliminary hearing ought to have been held, as was anticipated in the school's attendance management policy. They took HR's lead. Nothing was mentioned about the Claimant's potential status as a disabled person.
54. Mrs Dale, as anticipated, was present to present the management case as was the Claimant. The panel was given the aforementioned letter from the Claimant's solicitors. The decision of the Claimant to take external legal advice had resulted in the withdrawal of support from her trade union such that she was accompanied instead by a friend, Tracey Hodgson. Consideration was given to whether Mrs Hodgson could remain at the hearing with the governors at first seeming to be inclined to allow her to remain on the basis that she did not contribute to the meeting but, after Mrs Dale had made representations regarding this being still outside process, the decision was taken for Mrs Hodgson to be excluded. It was clarified with the Claimant that she did not require any further time to

consider the management case. Mr Moore noted that the Claimant did not object to Mrs Dale's presence and therefore the meeting commenced with the presentation by her of the management's case.

55. Mrs Dale referred to occupational health advice and the recommendation that redeployment be pursued. She explained that it was not felt necessary to hold a preliminary hearing in the managing attendance procedure as the questions for consideration at that stage had already been discussed with the Claimant and her union representative and it was felt that such a further formal meeting might have added to the Claimant's stress. The panel did not think to view notes of the earlier sickness meetings to see for themselves what had been discussed. The governors noted the 5 July occupational health report which referred to the "*relentless intimidation*" but that the Claimant felt redeployment was the best option and had asked for this to be considered. Mrs Dale's position was that she did not consider the evidence to support any ability on the Claimant's part to return to her substantive duties at the school. Nor was there any available role within the school for redeployment. To access, therefore, the wider redeployment opportunities within the first Respondent, it was necessary to go through the process and declare that the Claimant was not medically capable of undertaking her substantive role at the school.
56. The panel put greatest emphasis of the latest GP fit note which simply recorded the Claimant as unfit to work. There was no consideration given to the possibility of seeking a clarification or any further medical evidence. The Claimant's expressed view that she was now fit could not be accepted given the fit note. The panel did not understand at the time that the relationship with Mrs Dale was all that was preventing a return to work. An attempt to rebuild the relationship was not considered.
57. The Claimant then had her chance to make whatever representations she wished to. She said that she felt fit to work and that she was ready to return but could not work with Mrs Dale. The panel did not consider that the concerns expressed in the solicitors' letter ought to trigger a grievance process – the advice of HR was not to do that. The Claimant complained that she felt that she be misled by her trade union over the preliminary hearing and that nothing had been said to her about this. She confirmed, however, that she had asked for redeployment. She was asked whether she understood the process in that this formal hearing resulting in dismissal was necessary to determine whether or not to redeploy her. She confirmed that she was and that she understood that redeployment was not guaranteed.
58. Following an adjournment, the governors reconvened the hearing and informed the Claimant that their decision was that her employment be terminated on the grounds of medical incapability. They based this on the Claimant having been continually absent for 212 working days and the

medical evidence did not support the likelihood of an early return to her work with the school. On the one hand, they had the GP's confirmation that the Claimant was unfit for work and, on the other, the occupational health report making reference to her being fit to work but not if there was a return to the environment at the school. They felt that the situation could not be left to continue indefinitely and that Mrs Dale had been clear about the impact it was having on the running of the school to not have the business manager in place. They did not consider that any prejudice had been caused to the Claimant by the lack of a preliminary hearing. They did not analyse whether each of the required issues had been discussed, but HR advice was that there was no need to go back to that stage. Mr Moore gave the Tribunal the impression that his panel was very much led by HR advice. They were left therefore with concluding that the Claimant could not perform her role with the school, was unlikely to be able to do so in the foreseeable future and that there was no alternative role at the school in circumstances where, in any event, there would have been an issue as to whether or not the Claimant could have performed such a role dealing with Mrs Dale to a greater or lesser extent. It was recognised that the Claimant had been through a difficult period and had a responsible role but noted that she had clearly expressed the view that redeployment was an option she wanted to explore. It appeared to the governors that with a fresh start in another school she could find a suitable opportunity or an alternative role within the first Respondent. This was the best compromise and the Claimant had sufficient transferable skills to have a chance of securing such employment. It was therefore determined that the Claimant's contract of employment would be terminated on notice and that she would then be placed in the first Respondent's redeployment procedure. The detailed letter confirming the outcome was sent to the Claimant dated 3 October 2016. She was notified of the right to appeal. Indeed, the Claimant had already received notification of such right in an earlier letter from Mr Moore of 29 September which included relevant documentation for her to consider and complete to support her within the redeployment process.

59. The first Respondent wrote to the Claimant by letter of 4 October formally dismissing the Claimant from her employment at the school on the grounds of medical capability and serving upon her 12 weeks' notice running concurrently with her efforts to seek redeployment with the support of the first Respondent's redeployment unit. She was told that if she was unsuccessful in securing redeployment, her employment would end with effect from 18 December 2016.

60. The Claimant expressed a desire to appeal against the decision to terminate her employment by letter of 13 October and provided full grounds of appeal by subsequent letter of 29 October. Firstly, she complained that the decision had been reached without following proper procedure in that a capability hearing had not been held. She said that a departure from the procedure had never been agreed with her union representative. Secondly, she complained about the contents of the

outcome letter and the reason for her dismissal. She complained of the conclusion that she was not capable of performing her substantive role at the school and said that medical evidence confirmed she was capable of doing so. She similarly considered the decision that she was not capable of performing any alternative role at the school to be unjustified. She said that no consideration had been given to what adjustments could have been made such as disciplinary proceedings against Mrs Dale, clear guidelines as to what she could do with staff under her control and/or the provision of a responsible person from the first Respondent to enable the Claimant to report further incidents of bullying. She also complained that redeployment appeared to have been the only consideration. By letter of 3 November the Claimant was invited to attend an appeal meeting on 18 November.

61. The appeal was heard by Nicola Empson as chair of the panel accompanied by a governor colleague, Mr Brendan Grant. Mrs Empson did not recall that she had considered the Claimant then to be a disabled person, but was aware of the reasons for the Claimant's lengthy absence and that her circumstances could amount to a disability. A human resources adviser from the first Respondent was present together with a note taker. The Claimant appeared without any representative. The Claimant alleged early in the hearing that her period of sickness absence had been caused by "*relentless intimidation and bullying by the head teacher*". She said this behaviour could be traced back to Spring 2014 and suggested that others had been unfairly treated and pushed out of the school. She felt that she was excluded more and more and that Mrs Dale had wished to appoint Tracey Lister in her place. The Claimant referred to her coming to the school to mentor Toni Wilson. She said that she felt badly treated regarding her application for a regrading and increased hours. She said that matters had come to a head following a series of incidents on her return to work from the Summer holidays in September 2015 as a result of which she had experienced panic attacks and been unfit to attend work. She said that it was not her health that was the issue, but the working environment created by Mrs Dale under whom she said she could no longer work. She accepted that she had not raised these matters at the previous capability hearing. Her position was that she was fit for work "*with adequate protection*" and that this was supported by her most recent GP certificate which post-dated the dismissal hearing and was provided to the panel during the appeal.

62. Mrs Empson asked for further information about the behaviour she was alleging in respect of Mrs Dale. Mrs Empson picked up on the reference in the occupational health report of September 2015 that the Claimant had a "*list of concerns*" and asked to see this. The Claimant responded that no list had been produced. Mrs Empson then took her to the stress action plan of 3 December 2015 noting that it did not refer to the type of matters the Claimant had just described. The Claimant said that she was scared by the process and had been told by her union representative to concentrate on getting better - they could return to the complaints about

the Head Teacher in due course. Mrs Empson pointed out that none of the allegations the Claimant was pursuing had ever been investigated and asked why she had not raised a grievance, including when invited to by the school following the receipt of her solicitors' letter shortly prior to the capability hearing. Mrs Empson said she was unclear as to the Claimant's stated reason for not raising a grievance. In any event Mrs Empson explained that they could now continue with a grievance process running in parallel to the current appeal process. The Claimant was asked if she wished to lodge a grievance by both panel members. They made it clear that if she did wish to complain about Mrs Dale's treatment of her the appeal process would be adjourned, they would commission an investigation into her grievances and take account of the outcome of that process in determining the appeal against dismissal. Mrs Empson offered the Claimant the chance to take advice as she felt the Claimant to be uncertain about what she wished to do. There was then an adjournment in the hearing to allow the Claimant to go to another room to make a telephone call.

63. The hearing reconvened after around 30 minutes, but the Claimant was unable to give the Respondent an answer, saying that she had been unable to get hold of her solicitor. Mrs Empson advised that they could adjourn the appeal hearing at this point in any event if she wished to take advice and she could let them know her position in respect of pursuing a grievance subsequently. Mrs Empson pointed out that it would be difficult for the appeal panel to take into account an unsubstantiated set of allegations which was why the grievance investigation had been put forward as an option the panel was willing to allow. The Claimant was asked more than once whether she understood her options and wanted to take more detailed advice. The Claimant responded that she did understand but that she wanted to proceed with the appeal. She repeated her position that she was fit to work with protective measures in place. Mr Grant clarified again with the Claimant that she understood that in proceeding with the appeal in this way the panel would not take into account her grievance concerns. Mrs Empson said that the Claimant did not appear flustered and appeared to be able to make a decision. She was clear that in no sense had she misled the Claimant. She said she felt that the Claimant had just expected them to go through the motions and uphold the dismissal. The Claimant said to the Tribunal: *"I just wanted to get it over with."*

64. The Claimant said that she had been advised by Jenny St Romaine not to disclose a file of supporting documents of her concerns about Mrs Dale's behaviour as that would not be conducive to a resolution. Mrs Empson said that that was one of the reasons they gave the Claimant an opportunity to raise a grievance and have it looked into. When suggested in cross examination that surely the panel would not want to reach an outcome before considering the Claimant's allegations, Mrs Empson said that the opportunity was offered, but that it was the Claimant's appeal and,

if she did not wish the panel to consider those matters, that was her choice.

65. The appeal then proceeded. The Claimant accepted that there was no other role within the school which she could perform as she was not qualified as a teacher. She did however say that changes could be made to her supervision and that she could be supervised by a deputy head. Mr Grant pointed out that Mrs Dale remained responsible for the running of the school and would inevitably need to still interact with the Claimant.
66. Mrs Dale was present at the appeal and put forward again the school's case in support of the Claimant's dismissal. Mrs Dale also asked questions including regarding her fitness for work. The Claimant said that she could not remember any discussion about reasonable adjustments. She accepted that she had made no proposal or suggestion of her own. She also confirmed that at the sickness review meeting in May 2016 she had expressed an interest in redeployment. Richard Moore and Les Hall were then made available to answer any questions from the panel and the Claimant.
67. The hearing was then adjourned for the panel to reach a decision. They did not consider the failure to hold a preliminary hearing had been prejudicial to the Claimant and felt that all the matters which would have been discussed at such a meeting had been covered already in and up to the sickness review meeting in May 2016. They did not believe that any new matters would have come to light through holding a preliminary hearing. There was no basis for concluding that allegations would then have been made against Mrs Dale at that earlier stage or the same issues as raised in the solicitors' letter shortly before the capability hearing. They felt that the allegations about Mrs Dale were new and had not been amplified upon. They noted that the Claimant had opportunities to raise these issues previously but, given the Claimant's own attitude at their hearing, it had not been possible to attach any weight to these issues and how they may have caused her absence. They noted that, in any event, it did not necessarily follow that the cause of ill health would make any dismissal unfair. On the question of redeployment or other reasonable adjustment, they considered that no evidence had been produced to suggest that the Claimant could fulfil an alternative role within the school with or without any particular adjustments. The common ground between the Claimant and the school had been the exploration of redeployment elsewhere, which is what was happening. They did not consider there to be any solution in terms of alternative line management for the Claimant. Given her role and the management structures within the school, this was not seen as either practicable or workable. The Claimant was clear that she couldn't work for Mrs Dale. The primary role of a Business manager was to work with the Head Teacher. Nor was any form of pastoral support in addition to a changed line management considered to be practical – the solutions put forward in cross examination were considered to be

“artificial”. The Claimant at this point had been absent for a period of 247 days and the evidence pointed to her absence from the school continuing. On this basis, they decided to uphold the decision to terminate employment. The meeting was reconvened and the decision given to the Claimant. This was confirmed then in writing by letter of 25 November which provided a detailed explanation of the panel’s findings at this stage.

68. As has already been indicated by the time of the appeal (and continuing thereafter) the Claimant was being managed by the first Respondent’s redeployment team in terms of looking for possible alternative positions. There had been a problem initially as one of the managers within the redeployment team had considered that the Claimant ought not to be within it and allowed preferential employment opportunities as she was not medically unfit. However, that conclusion was reviewed and reversed once there was a full awareness of the Claimant’s circumstances.

69. After the Claimant’s appeal hearing Mr Moore wrote to her on 30 November to explain that an external investigation was being commissioned into the Claimant’s allegations, albeit they were not part of any grievance raised by her. The governors now felt there to be a benefit in obtaining clarity. Ms Liz Vere of Silver Consulting was commissioned to carry out what was a detailed investigation albeit one where the Claimant maintains witnesses were selected who would be supportive of Mrs Dale. Efforts were made to either meet with the Claimant or obtain of written account but without success. A lengthy report was produced which concluded that there was nothing to support the Claimant’s contentions that she had been bullied by Mrs Dale. Mr Moore wrote to the Claimant on 24 April 2017 notifying her of the conclusions and that no further action was to be take.

70. During the Claimant’s absence her duties were absorbed by existing staff including Toni Wilson. A temporary business manager was later appointed to cover for the absence of Ms Wilson on maternity leave and the Claimant.

Applicable Law

71. In a claim of unfair dismissal, it is for the employer to show the reason for dismissal and that it was a potentially fair reason. One such potentially fair reason for dismissal is a reason related to capability under Section 98(2)(a) of the Employment Rights Act 1996 (“ERA”).

72. If the Respondent shows a potentially fair reason for dismissal, the Tribunal shall determine whether dismissal was fair or unfair in accordance with Section 98(4) of the ERA, which provides:-

- i. “*[Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
- (a) depends upon whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
 - (b) shall be determined in accordance with equity and the substantial merits of the case”.*

73. The Tribunal must not substitute its own view as to what decision it would have reached in particular circumstances. The Tribunal has to determine whether the employer’s decision to dismiss the employee fell within a band of reasonable responses that a reasonable employer in these circumstances might have adopted. It is recognised that this test applies both to the decision to dismiss and to the procedure by which that decision is reached. If the employer was in any way responsible for the employee’s illness, this may be a factor to be taken into account when deciding on the fairness of a dismissal – see **Royal Bank of Scotland v McAdie 2008 ICR 1087**. Fault on the part of the employer does not, however, necessarily mean that a resulting dismissal will be unfair – there may still be nothing more an employer, having caused the illness, could and should have done to try to preserve employment.

74. A dismissal may be unfair if there has been a breach of procedure which the Tribunal considers is sufficient to render the decision to dismiss unreasonable. The Tribunal must have regard to the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015.

75. Defects in an original dismissal hearing and pre-dismissal procedures can be remedied on appeal. According to the Court of Appeal in **Taylor v OCS Group Ltd 2006 ICR 1602**, the Tribunal’s task is to assess the fairness of the process as a whole.

76. If there is such a defect sufficient to render dismissal unfair, the Tribunal must then, pursuant to the case of **Polkey v A E Dayton Services Ltd [1998] ICR 142** determine whether and, if so, to what degree of likelihood the employee would still have been dismissed in any event had a proper procedure been followed. If there was a 100% chance that the employee would have been dismissed fairly in any event had a fair procedure been followed then such reduction may be made to any compensatory award.

The principle established in the case of **Polkey** applies widely and beyond purely procedural defects.

77. In addition, the Tribunal shall reduce any compensation to the extent it is just and equitable to do so with reference to any blameworthy conduct of the Claimant and its contribution to her dismissal – ERA Section 123(6).

78. Under Section 122(2) of the ERA any basic award may also be reduced when it is just and equitable to do so on the ground of any conduct on the employee's part that occurred prior to the dismissal.

79. The duty to make reasonable adjustments in this case arises under Section 20(3) of the 2010 Act which provides as follows (with a "relevant matter" including a disabled person's employment and A being the party subject to the duty):-

"(3) The first requirement is a requirement where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage

80. The Tribunal must identify the provision, criterion or practice applied, the non disabled comparators and the nature and extent of the substantial disadvantage suffered by the Claimant. A substantial disadvantage is one that is more than minor or trivial and it must arise from her disability.

81. The case of **Wilcox –v- Birmingham Cab Services Ltd EAT/0293/10/DM** clarifies that for an employer to be under a duty to make reasonable adjustments he must know or reasonably ought to have known both firstly that the employee is disabled and secondly that she is disadvantaged by the disability in the way anticipated by the statutory provisions.

82. Otherwise in terms of reasonable adjustments there are a significant number of factors to which regard must be had which, as well as the employer's size and resources, will include the extent to which the taking the step would prevent the effect in relation to which the duty is imposed. It is unlikely to be reasonable for an employer to have to make an adjustment involving little benefit to a disabled person.

83. In the case of **The Royal Bank of Scotland –v- Ashton UKEAT/0542/09** Langstaff J made it clear that the forerunner legislation, the Disability Discrimination Act, when it deals with reasonable adjustments is concerned with outcomes not with assessing whether those outcomes have been reached by a particular process, or whether that process is reasonable or unreasonable. The focus is to be upon the practical result

of the measures which can be taken. Reference was made to Elias J in the case of **Spence –v- Intype Libra Ltd UKEAT/0617/06** where he said: *“The duty is not an end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate, prevent or shield the employee from anything. It will make the employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing.”*

- 84.If the duty arises it is to take such steps as is reasonable in all the circumstances of the case for the Respondent to have to take in order to prevent the PCP creating the substantial disadvantage for the Claimant. This is an objective test where the Tribunal can indeed substitute its own view of reasonableness for that of the employer. It is also possible for an employer to fulfil its duty without even realising that it is subject to it or that the steps it is taking are the application of a reasonable adjustment at all.
- 85.Having applied the applicable law to its findings of fact the Tribunal reaches the conclusions as follows.

Conclusions

- 86.The Tribunal considers firstly the Claimant’s freestanding complaints that the Respondents failed to comply with a duty to make reasonable adjustments. The first two reasonable adjustment complaints are similar in that the PCP relied upon is the requirement that the Claimant communicate with Mrs Dale and the second that she be managed by her. The Tribunal accepts, indeed, that there was a requirement that anyone holding the position of business manager would both communicate with and be managed by the Head Teacher, Mrs Dale. The Tribunal further accepts that the Claimant was put at a substantial disadvantage as a disabled person by that requirement in that her stress was exacerbated by contact with Mrs Dale in circumstances where the Claimant perceived Mrs Dale to be ill-treating her.
- 87.As reasonable adjustments, the Claimant puts forward that she ought to have been provided with a different point of contact and an alternative manager. In the circumstances of the school, the Tribunal does not consider such measures to have been reasonable. The Claimant identified Mrs Merriman as deputy head as potentially the other person to whom she could have reported and communicated on a day to day basis. That would, however, have been problematical as Mrs Merriman also had a significant teaching load and therefore would not be readily available to the Claimant during each working day. Her or anyone else’s role as an alternative point of contact for the Claimant would have been problematical in that such individual could have acted as little more than a messenger and a filter of

information flowing both ways between Mrs Dale and the Claimant. Any arrangement would not have been feasible and would have been entirely artificial. This was in circumstances where Mrs Dale had ultimate responsibility for all aspects of the running of the school, including its non-teaching activities. Key decision-making rested with the Head Teacher and no one else had the authority to make the kind of decisions Mrs Dale would have to from time to time as regards the school's non-teaching operations. Many of the school's operations were delegated to be undertaken by the Claimant as business manager, but Mrs Dale needed to be able to speak to the Claimant as and when required so that she was fully aware of what was going on within the school and to be able to direct the Claimant in her duties. That need is indeed illustrated by the rejection by Mrs Dale of the Claimant's new proposal regarding the structure of non-teaching operations, whereby she envisaged that Toni Wilson as finance manager would report through the Claimant herself to Mrs Dale. Mrs Dale rejected that suggestion because she needed to be able to have a direct and immediate involvement in issues relating to the school's finances in an unfiltered manner. Exactly the same considerations applied to the responsibilities the Claimant had in her role as business manager for the school's operations. For the Claimant to operate on the basis that she reported through someone else or communicated with someone else rather than with his Mrs Dale directly, would have required the Claimant to accept a demotion and undertake a lower level of role reporting, for instance, through Mrs Wilson or a replacement of the Claimant in the position of business manager. There was no suitable position available for the Claimant and it is absolutely clear that the Claimant would not have regarded a clearly more junior role as acceptable.

88. During the course of evidence there has been some suggestion that a form of mentor or pastoral supervision could have been provided to the Claimant as a reasonable adjustment which might have assisted her in continuing in her business manager position. The Tribunal does not consider that any such step would have alleviated the disadvantage experienced by the Claimant in that it would not have removed the necessity for communication with or line management by Mrs Dale. The Tribunal notes, in this context, that there was within the school already the provision of an independent counselling service, the Claimant had more specifically been given access to the services of a resolution worker, as a result of this she had been referred to and had taken the benefit of mental health counselling. In addition she had access to the services of occupational health and to Mr Hall in his capacity as an employee of the first Respondent and the school's HR business partner. The Tribunal does not consider it maintainable that any other form of pastoral supervision would have made a material difference to the Claimant.

89. The third reasonable adjustment complaint of the Claimant relates to the second Respondent's application of its absence management procedure

in respect of which it is said that as a reasonable adjustment there ought to have been a discounting of the Claimant's disability absences and absences caused by Mrs Dale. The Claimant might have been disadvantaged as a disabled person in the sense that she was more likely due to her impairment to be absent from work such that scrutiny and action under the school's managing attendance policy might be taken which might have led to indeed potentially a termination of her employment on the basis of an unsatisfactory attendance record. However, that is not the situation which in fact faced the Claimant and the situation indeed was one of long term absence and the issue of whether there was any possibility of a future return to her employment at the school rather than the Claimant being assessed as someone whose employment could not be supported as she had had substantial absence or a substantial number of intermittent absences and the school needed the stability of an employee whose attendance would be more consistent. In this latter circumstance, it is possible in theory that a reasonable adjustment ought to have been made in terms of trigger points, but such adjustment was of no relevance whatsoever in circumstances where the question was whether the Claimant could return to work. The reasonable adjustment in effect sought by the Claimant is the maintenance of her employment on an indefinite basis ignoring essentially the absence because of the reason for it. Whatever the reason for the absence, the second Respondent reasonably needed to evaluate the possibility of the Claimant's return to work and to determine whether or not employment could be maintained based on the Claimant's state of health and its future prognosis.

90. The fourth reasonable adjustment complaint relies on the second Respondent's practice of Mrs Dale herself presenting the school's management case at the dismissal and appeal hearings. The second Respondent accepts that the Claimant was put at a substantial disadvantage by this requirement albeit the Tribunal notes that the Claimant was fully able to function at the hearings before the respective panels of governors. Mrs Dale had attended the sickness review meetings with the Claimant which led to the point of the dismissal/capability hearing. She had done so without any objection taken by the Claimant or her union representative. Only on one occasion was Mrs Dale asked to remove herself from the meeting when the Claimant wished to discuss a matter of a more personal domestic nature and indeed at the subsequent meeting attended by both the Claimant and Mrs Dale, the Claimant was at pains to wish to apologise to Mrs Dale for her request that she be excluded and wished Mrs Dale to know that it was nothing personal. Mrs Dale having carried out this function needed to explain at the dismissal hearing to the governors what had been discussed. Whilst Mr Hall had been in attendance at the meetings he was not employed by the second Respondent. If, for instance, the absence management procedure had been run by Mrs Merriman, it would have been appropriate for her to present the management case at the dismissal hearing. However, there was no one else who could appropriately present the management case

given the way in which the absence management procedure had been conducted. At the appeal stage the Tribunal sees no reason why the dismissal case could not have been presented by the decision-maker at that stage, Mr Moore, but that would not have made a material difference to the Claimant particularly in the sense that Mrs Dale was required to give evidence at the appeal and reasonably so in the context of the appeal being very much a re-hearing, to the Claimant's potential benefit, rather than a more cursory review of Mr Moore's decision-making. There was no failure on the part of the Respondent to comply with its duty to make reasonable adjustments as regards Mrs Dale's role in the dismissal and appeal hearings.

91. The Claimant's final two complaints regarding a failure to make reasonable adjustments are correctly understood by Miss Gould on behalf the Claimant to be related in that they firstly involve the redeployment process whereby there is a requirement for employees of the school to be given notice of dismissal before being placed on the redeployment register and the sixth PCP relied upon of the Claimant not being placed at any other school is in reality no such thing but rather the reasonable adjustment in itself being sought, i.e. the Claimant being redeployed to a different school. The Respondents accept that the Claimant was placed at a disadvantage in terms of the operation of redeployment in that she was more likely to be at risk of needing to be redeployed because of her disabling condition.

92. The policy of the first Respondent was that for a third party school employee to access its redeployment register, it was necessary that there was a determination that the individual was unfit to carry on in employment and to have been issued with notice of dismissal for that reason. Any employee fit to work with his or her employer could not be given access to the redeployment register of the entirely separate first Respondent which of course was not the Claimant's employer. The Claimant did not ask for earlier access to the redeployment pool (and of course at the later stage of the capability process asserted that she was fit to work), but fundamentally there is no evidence before the Tribunal that her earlier placement within the redeployment process of the first Respondent would have assisted her and alleviated any disadvantage. There is no evidence of any potential job opportunities in which the Claimant would have been interested or for which she might have been suitable had she been allowed earlier access. Of course, redeployment was not something within the school's gift or indeed the first Respondent's. Whilst the first Respondent might have had within the redeployment register positions directly with itself, if the Claimant was to perform a similar alternative role, that would be within a school where the governing body of that school would be the decision maker in terms of whether or not the Claimant was regarded as an appropriate candidate. Finally, there is no evidence that there was any alternative position in any school into which the Claimant might have been

redeployed as a reasonable adjustment or otherwise. These final reasonable adjustment claims must also fail.

93. The Tribunal then turns to the Claimant's complaint of unfair dismissal. The Respondent asserts that the Claimant's employment was terminated for a reason related to capability and there is no suggestion on behalf of the Claimant that there was any other reason for dismissal. Helpfully in this case, the Claimant has within the case management process identified a number of particular challenges she makes to the fairness of the dismissal. The Tribunal has not limited itself to consideration of those specific challenges but addresses them now in turn.

94. The Claimant firstly maintains that dismissal was unfair in circumstances where her absence was caused by the Respondent's bullying of her. The Tribunal's findings of fact do not support a conclusion that the Claimant was subjected to treatment by the second Respondent, particularly Mrs Dale, which could be categorised as bullying. The evidence is of firm and focused management by Mrs Dale of all the school's employees in line with and as a consequence of the OFSTED review. Following the adverse assessment of the school by Ofsted, changes were needed across teaching and non-teaching operations which put all staff under an element of pressure and strain in a situation of crisis and uncertainty. The Claimant's genuine perception was of her being the victim of improper adverse treatment but this is not objectively justified on the Tribunal's findings. Changes within the school did impact on the Claimant's feelings of anxiety but these were changes which were discussed with the Claimant and where the Respondent had a justifiable reason for them. The Claimant maintained her job title and status within the school. She had complained of an excessive workload and she was now able to concentrate on particular duties. The Claimant's loss of a liaison role in respect of a fraud investigation nearing its end was not material to the Claimant's status. Nor was the loss of a temporary responsibility for the direct line management of lunchtime supervisors. The Claimant was not the appropriate person to appraise Mrs Wilson given the level at which she sat and the Claimant was not undermined in the appointment of a new clerical assistant. Due process was followed in respect of the application for a regrading and additional hours. Mrs Dale had referred in complimentary terms to Mrs Lister as an example of how she wanted the school to operate. She did refer to the failings of some staff members, but not of the Claimant and in circumstances where OFSTED had identified failings. Mrs Dale had justification for seeking to avoid distractions in the Claimant's work in terms of the location of the kettle. The boarding up of a window did not isolate her. Mrs Dale may not have wanted a relationship outside of work with the Claimant, but that arose out of her focussed management style and not any lack of politeness. Mrs Dale's query regarding entering new teacher details on the system was genuine. The criticism of the Claimant regarding how she spoke to a parent might be

viewed as a little over the top but does not approach an example of bullying or intimidation, particularly since there was no reference to this being a formal disciplinary matter. On the Tribunal's assessment, the Claimant was not an easy individual to manage, was particularly conscious of her personal status, liked to talk/chat with others and was generally resistant to change. In all of the circumstances of this case, the fact that the Claimant was dismissed for ill-health, when that ill-health arose out of events in the workplace, did not require any reasonable employer to have held back from a decision to terminate employment or render dismissal unfair in circumstances where the Claimant was not fit to return to her substantive position.

95. The Claimant then maintains that there was no or no adequate investigation into the bullying of her. Obviously, the Tribunal has not made a finding that there was bullying, but fundamental to this point, the Claimant did not raise a grievance about her treatment. She did raise issues in her occupational health and work resolution meetings and in fact at the reconciliation meeting with Mrs Dale did raise that she felt herself to have been excluded and that there were deficiencies in Mrs Dale's communication with her, giving some examples. Those matters were indeed fully discussed. However, the accusations which subsequently appeared of bullying and intimidation ("*relentless intimidation*") had not been trailed at an earlier stage such that there arose any duty on the second Respondent as a reasonable employer to initiate an investigation. Further, immediately before the capability hearing, the Claimant had been told that if she wished to raise a grievance in respect of the matters alluded to in her solicitors' letter she ought to do so. Certainly, the Tribunal can see in Mr Moore's panel, a lack of proactive consideration as to the options and he did not think to promote the Claimant pursuing her grievances. However, when Mrs Empson took such steps, the Claimant decided not to take any grievance matters forward. At the appeal stage, she was specifically re-offered the opportunity with Mrs Empson going to significant lengths to allow the Claimant time and an opportunity to consider her position. It was the Claimant's decision that there be no investigation into her complaints. In fact, at the capability hearing, everyone was on the same page in that the aim had been to get the Claimant onto the redeployment register of the first Respondent achieved through the service upon her of notice of termination.

96. The Claimant complains that her solicitors' letter was not provided to the dismissal panel. That is not in fact an accurate statement. The letter was before the dismissal panel when it met and, whilst it was not provided at an early stage, it was considered by the panel with human resources advice taken upon the appropriate reaction to it.

97. The Claimant next complains, as she raised as an appeal point, that no preliminary hearing had been held in accordance with the Respondent's sickness absence procedure. The second Respondent did indeed depart from its procedure in not arranging such a meeting as an additional specific stage before progression to a final capability hearing. However, the Claimant and her union representative knew that this was the Respondent's intention – there was no expectation on their part that there would be a further preliminary hearing and no request or desire for one. All of the matters which would have been aired at a preliminary hearing had been aired already during the sickness absence meetings, there being no suggestion that there had been any impediment on the Claimant or her union representative from raising any proposed reasonable adjustments. The reasonable adjustment envisaged in fact was the Claimant's redeployment, albeit not a redeployment within the school where the Claimant inevitably would still come under the management of Mrs Dale but at an alternative school within the local authority region or indeed elsewhere within the local authority. The Claimant wanted redeployment and it is accurate to characterise the arrangement of a further preliminary hearing as a lengthening of the process which would not assist in reducing the Claimant's stress and anxiety. She indeed wanted to get on with things.
98. The Claimant next maintains that there was an unfair dismissal in circumstances and because of the failure to make reasonable adjustments. The Tribunal has of course just addressed the separate reasonable adjustment complaints and has found that the second Respondent did not fail to comply with any duty.
99. The Claimant next raises that the second Respondent did not take any steps to support the Claimant's return to work when occupational health said on 6 July that the Claimant was fit to work. That again is not statement which can be taken as accurate in that occupational health said that the Claimant was not fit to work in the current working environment with no reference to any reasonable adjustments which could be made to enable her to return. Furthermore, the Claimant's own GP up to the point of the capability hearing certified her on 12 September 2016 as straightforwardly not fit to work. The Claimant was fit to work somewhere in some capacity, but not fit to work in her substantive role which necessitated communication with and management by Mrs Dale. Again, that proximity to Mrs Dale could not be removed either as reasonable adjustment or at all in terms of the practicality of the school's operations. There was never any suggestion of an alternative role which the Claimant could undertake in the school and indeed there was no vacancy for any more junior role, which that alternative would inevitably have to have been, if it was to avoid the degree of management by Mrs Dale which caused the Claimant so much stress and anxiety. The Claimant did not want to return

to her substantive position but wanted redeployment which necessitated the progression to a formal capability hearing.

100. The Claimant complains that the Respondent took no action against Mrs Dale for her bullying of the Claimant, but again the Tribunal has not made no finding of such bullying and the Claimant did not wish to pursue such allegations internally. Without her so doing the second Respondent had nothing to investigate in terms of potential bullying.
101. The Claimant next, as an aspect of unfairness, raises that the Respondent allowed Mrs Dale to stay in contact with her during her sickness absence which was indeed the case - Mrs Dale remained the Claimant's point of contact and the person who managed her sickness absence. However, during that process there was at no stage any objection by the Claimant or her union representative to Mrs Dale's involvement and indeed there was a positive agreement made during the meetings that Mrs Dale would contact the Claimant periodically to provide her with updates as to what was going on within the school. Without such objection, Mrs Dale was clearly the person in a position to manage the Claimant's sickness and any return to work as her immediate and only line manager.
102. Similarly, the Claimant next maintains that the Respondent behaved unreasonably in allowing Mrs Dale to present the management case at the dismissal and appeal hearings. Essentially, the way in which the Claimant's sickness was managed, which was not on the Tribunal's findings itself unreasonable, necessitated Mrs Dale presenting the management case. Whilst it was not necessary for her to have been at the appeal and certainly Mr Moore could have presented the rationale behind his decision making, Mrs Dale's presence and assumption of that role certainly within itself is insufficient to render dismissal unfair. The Tribunal does not find that Mrs Dale's involvement at any stage prevented her from putting forward her case, if any, against dismissal.
103. The Claimant contends that the Respondent acted unreasonably in delaying exploring redeployment opportunities for the Claimant and putting her on the redeployment register. This point has already been addressed in the context of the Claimant's complaint in this regard regarding a failure to make reasonable adjustments. The school had no choice regarding the process which was operated separately by the first Respondent and again the Claimant was not on the evidence before the Tribunal in any way disadvantaged by any delay. Overall the evidence is that the second Respondent progressed the redeployment process reasonably quickly and again in circumstances where, if there had been the preliminary hearing, which the Claimant now maintains that there ought reasonably to have

been, there would have been a delay in her being placed on the redeployment register.

104. The Claimant maintains that the second Respondent acted unreasonably in failing to redeploy her to another school, but of course it could not do so unless there was a vacancy at another school as identified in the first Respondent's redeployment process and unless the Claimant then applied and that other entirely independent school made her an offer of employment. There is no evidence of any opportunity for redeployment.
105. Finally, the Claimant refers to her being dismissed despite being fit to work. The Tribunal has already more than once addressed this point and reiterates that the Claimant was not and did not at the time maintain that she was fit to return to her substantive position at the second Respondent school, certainly not without measures in place - measures which were not practicable.
106. The Tribunal must assess fairness looking at the process overall. In this case, the Claimant had been absent due to sickness for a substantial period of time. There was no reason why the second Respondent could not treat the Claimant as it would treat any employee absent on long-term ill-health, in that there was nothing arising out of the cause of the Claimant's absence which rendered it unreasonable for the Respondent to manage the Claimant under its attendance management procedure and no reason why her situation ought reasonably to have been handled differently. A number of sickness absence review meetings took place with the Claimant where she had an opportunity to explain how she felt and where there were discussions regarding the possibility of a return to work. The Claimant was referred to occupational health and an up-to-date occupational health report was within the Respondent's possession prior to the capability hearing as well as an up-to-date fitness note from the Claimant's GP. The further GP fitness note which referred to the Claimant being fit if preventative measures were taken was before the appeal panel and considered by it. The Claimant herself immediately prior to the capability hearing was requesting redeployment, which by that stage had been properly discussed with her by Mr Hall and occupational health, such that the Claimant understood the process she would be placing herself under, the lack of guaranteed success in finding her an alternative position and that the process would require her dismissal on notice from the school.
107. At the point of the capability/dismissal meeting the Claimant, on the evidence before the Respondent was not fit to resume her business manager role and there was no prospect of her being able to do so in the short to medium term. The panel at this stage might justifiably be criticised

for a lack of curiosity and preparedness to consider and investigate the Claimant's allegations against Mrs Dale. However, the appeal panel certainly remedied that situation by going to great lengths to almost encourage the Claimant to allow a grievance investigation to take place. The Claimant, however, did not wish allegations to be investigated in circumstances where it was clearly explained to her that the panel could not take into account the suggestion that her sickness had been caused by Mrs Dale in reaching its decision. The Claimant wanted to get things over with, as she herself expressed at the time. Mr Moore's panel may have placed too much reliance on the GP's basic statement that the Claimant was not fit to work when the situation was certainly more nuanced, but the Claimant's capabilities were fully considered on appeal and it was indeed the case that the Claimant could not return to her existing role. She knew that meant confirmation of a dismissal subject to her success in finding alternative employment elsewhere through the redeployment process operated by the first Respondent. For there to be any other solution reasonably available, the Claimant had to indeed allow her allegations to be investigated which was, if her complaints had been upheld, a potential route to her being afforded some form of "protection" in that there may have been findings that Mrs Dale needed to change or adapt her management style (indeed those findings could have been made even if the Claimant's allegations had not been fully upheld) or indeed Mrs Dale might have been disciplined and therefore been under some form of warning to change her management of the Claimant or indeed may have been dismissed, thus removing from the school the person whom the Claimant perceived as the block on her return to her business manager position there.

108. However, without the Claimant taking those steps, the second Respondent was left with an employee who was not fit to return to her substantive position and where no alternative position was available within the school and where indeed, as already discussed, there was no way in which her role could be reorganised to remove the need for her to communicate with Mrs Dale or be managed by her. All that was left was allowing the Claimant an opportunity to be redeployed and that, in itself, necessitated firstly the Claimant being dismissed from the second Respondent. Allowing the Claimant's sickness to continue indefinitely or for a defined period was not a step which a reasonable employer would have had to have made in circumstances where there was no reason to believe that this might have allowed the Claimant to return to her role. On the other hand, the Claimant had been absent for a period of around 12 months from a key position within the school, a school which required more focused management, including of its non-teaching operations if it was to succeed and overcome the adverse OFSTED rating.

109. The Claimant brings a further complaint of unlawful discrimination on the basis that her dismissal was an act of unfavourable treatment

arising from her disability. Certainly, in such complaint, the Claimant gets over the first hurdle in that she was indisputably dismissed for reason of ill-health which arose out of her disabling impairment of stress and depression. This then puts an onus on the Respondent to show that in dismissing the Claimant it acted proportionately in pursuit of a legitimate aim. The Respondent indeed relies on its need to have in place a fully functioning and consistent management of its non-teaching resources for the efficiency of its operations – ensuring reliable and efficient administrative support was necessary to ensure that the school's objectives in terms of a quality learning environment could be met. Mrs Dale had gone to some significant lengths to assess and devise a new structure for the management of the school which she felt would deliver the necessary improvements following the OFSTED review. An integral part of that was the role of business manager reporting directly to her. Whilst for a period of the Claimant's sickness absence the school had functioned without the Claimant in place or a replacement employee and whilst indeed the situation had become further complicated by Toni Wilson as finance manager being absent on maternity leave and a temporary manager having been appointed to cover both her and the Claimant's role, the Tribunal is satisfied that the Respondent needed to ensure that sufficient management of the non-teaching side of its operations was in place. This required someone fulfilling the Claimant's role in circumstances where the Claimant herself had maintained that her duties were onerous for the herself to perform on the term time only basis. Further, in view of the length of absence and process adopted where no alternative solution could be found and where the Claimant was not and was not going to be fit to return to a role working with Mrs Dale, dismissal must be viewed as a proportionate step to take, particularly given that it was potentially going to be ameliorated from the Claimant's point of view had she been successful in the redeployment process (which she herself was seeking).

110. Not only was the dismissal justified, it was, in all the circumstances and looking at the process adopted by the Respondent as a whole, fair. The decision to dismiss fell within the band of responses open to a reasonable employer
111. The Claimant's complaints therefore of disability discrimination and unfair dismissal must fail and are accordingly dismissed.

Employment Judge Maidment

Dated: 11 January 2018