EMPLOYMENT TRIBUNALS

Claimant: Ms J Williams

Respondent: Hertfordshire County Council (1)
Governing Body of Saffron Green Primary School (2)

Heard at: Watford Employment Tribunal (in person)

On: 14 to 17 December 2021

Before: Employment Judge Quill; Ms K Turquoise; Mr P English

Appearances
For the claimant: Mr M Ahmed, counsel
For the respondent: Ms R Davies, counsel

JUDGMENT

(1) All of the claims are dismissed against both respondents. The complaints of direct discrimination because of race fail, as do the complaints of victimisation.

(2) Judgment was given orally on 17 December, and written reasons were requested by the Claimant's representative.

REASONS

1. These proceedings took place over 4 days. It was a hybrid hearing. The Employment Judge was present at the hearing centre and the two non-legal members of the panel attended remotely by video. The representatives for each party attended in person, both respondents being represented by the same counsel. The claimant was also present throughout the first three days of the hearing and attended remotely for judgment on day 4.

2. The document bundle was originally 109 pages. Page 110 was added on the first day being a document which the claimant's side asked to have included (a timetable).

3. On the first day, the panel asked the respondents to make further enquiries to see if any other documents existed, in particular any correspondence passing back and forth between the school and the local authority. Some further items were located

and these were brought to the tribunal on day 2. By agreement, the further items were added to the bundle. The four new items were an email trail between the Head and the Secretary to the school which attached notes of a meeting dated 13 February 2020. That attachment was two pages. The first page was already in the bundle with page reference page 60, the second page of it was not. Further disclosure also included an email trail between the head and the local authority which post-dated the claimant's dismissal. There were also two handwritten notes which the head identified as her own handwritten notes of conversations she had had with the local authority's Human Resources provider on, according to the notes, 15 January and 13 February 2020 respectively.

4. As well as the bundle we had written statements from five individuals. On the claimant's side there was one statement from herself; on the respondent's side there were four statements one each from Ms Storey, the Head Teacher, Ms Kent, the Inclusion Manager, Ms Burchell, the Early Years Foundation Stage and Key Stage 1 Leader in the school, as well as being a Reception Teacher, and Ms Curran, who was at the relevant times, Key Stage 2 Lead and Assistant Head Teacher as well as being a Year Four Teacher.

5. All of the witnesses other than Ms Curran attended the hearing and gave evidence on oath to confirm the contents of their witness statement and to be cross examined. Ms Kent and Ms Burchell attended by video and the claimant and Ms Storey gave evidence in person. Ms Curran did not attend. The fact that she was not going to attend was communicated to the claimant the day before the hearing began. The reason given initially was that she no longer works for the employer.

6. On day 1 the claimant's side objected to her statement being considered by the tribunal. The respondent's side suggested on day 1 that the appropriate course of action in these circumstances was for the claimant to apply for a witness summons and the tribunal rejected that suggestion. There was no application from the respondent's side for a witness summons for Ms Curran. We were also given the additional reason that she was paid daily and would therefore lose income if she were to take time away from work to give evidence. We invited the respondent to speak further to Ms Curran to see if she could give evidence for example by video. Arrangements were made for the witness to give her evidence at 4pm on day 2, which was a time at which we had then been told she would be available. We took a short break shortly before 4pm on day 2 but, when we came back after the break, we were informed that Ms Curran was not able to join because of a family emergency, the details of which were explained to us.

7. The claimant's oral evidence commenced on day 1 in the afternoon and continued into the morning of day 2. The respondent's witness evidence commenced around midday of day 2 and concluded shortly after 1pm on day 3. We heard submissions on the afternoon of day 3 and gave judgment and reasons on day 4.

The claims and the list of issues

8. In terms of the list of issues the respondent had produced a draft list of issues for discussion and a copy of it had been supplied to the claimant and her representative had a copy of that.

9. At paragraph 6 of the proposed list of issues were five alleged acts or omissions, under the heading 'Direct Discrimination'. The tribunal was satisfied that those five allegations could be gleaned from the claim form, and the claimant's representative confirmed that there were no additional acts of alleged direct discrimination. We will comment further in due course in relation to Item 6(a). But under the heading 'Victimisation' at Item 9, there were three acts of alleged victimisation. Upon the suggestion of the panel Item "(d) dismissal" was also added to paragraph 9. It was confirmed by the claimant's side that there were no additional alleged acts of victimisation.

10. The list of issues confirmed that the alleged protected act being an email sent by the claimant on 14 January 2020 was admitted as a protected act and this was also confirmed by the respondent's counsel during closing submissions. The grounds of resistance had not made this admission or an outright denial either.

11. On day 1, there was a discussion about the observation in the grounds of resistance that the only named respondent was Hertfordshire County Council, and the respondent's position was that the only correct respondent should be Governing Body of Saffron Green Primary School. The respondents were not seeking any technical argument that the claim should be struck out or otherwise dismissed but simply suggesting a substitution of respondent. The claimant's side did not agree to that submission. The tribunal's decision therefore was to add the Governing Body of Saffron Green Primary School as a second respondent without dismissing Hertfordshire County Council.

12. Another issue discussed on the morning of day 1 was the fact that the claimant's witness statement contained a heading at paragraph 8 'Harassment' and three items, a, b, c, listed underneath. It was the respondent's position that no allegations of harassment had been included in the claim form and that, if the claimant wished to pursue her harassment allegations, she would need to make a formal application to amend. We invited submissions from the claimant's side on that particular point, making clear that we would listen to submissions either arguing that harassment was included in the claim form or, alternatively, seeking amendment. Following the discussion, the tribunal's decision was that it was clear that the alleged harassment referred to in the witness statement had not been included in the claimant's form. Furthermore, we said that, in the circumstances, the matters having been flagged up in the claimant's witness statement, it would be appropriate that, if any amendment application was to be made, it would need to be made and decided upon before the commencement of witness evidence. We invited the claimant and her representative to consider the position and inform us of their decision at 2pm on Day 1, which was the time at which we were resuming following our pre-reading.

13. At 2pm on Day 1, the claimant's representative confirmed that there was no application being made to amend the claim. The panel asked the claimant's representative to confirm that the claimant and her representative understood that that would therefore mean that the matters in paragraph 8 of the witness statement would not be matters for adjudication by the panel and that it would be entirely a matter for the respondent's side whether or not they wished to cross examine on those matters which were (therefore) background material only. It was confirmed that the claimant's side did understand that that was the case.

14. There was also an application by the Claimant asking us to decide that page 60 of the bundle, a document headed "Notes of meeting 13/02/2020" was not admissible evidence. [At the time of the discussion, the Claimant's side, the Respondents' counsel and the panel did not know that this was the first page of a 2 page document; that only became clear the following day, as mentioned above.] For the reasons we gave at the time, our decision was that it was an admissible document and that its weight, its authenticity, and its significance were all matters to be determined by evidence and cross examination.

The list of issues (as at 2pm on Day 1)

Direct Discrimination (s.13 Equality Act 2010)

6. Did the following, separately or in combination, amount to 'less favourable treatment' than a hypothetical non-Afro-Caribbean comparator? (N.B. examples taken from claim form at [7])

(a) The actions taken by the school is disciplining the pupil … for his comments to the Claimant

(b) The meeting on 24th January 2020 between Ms Storey and the Claimant

(c) The meeting on 10th February 2020 between Ms Storey and the Claimant

(d) The meeting of 13th February 2020 between Ms Storey and the Claimant

(e) The Claimant's dismissal

7. Was the less favourable treatment because of race?

Victimisation (s.27 Equality Act 2010)

8. Did the email from the Claimant to Ms Storey at [51] amount to a 'protected act'? This is accepted by the Respondent(s).

9. Did the below constitute 'detriments' under s.27(1) and were they done because of the Claimant's email?

(a) The meeting on 24th January 2020 between Ms Storey and the Claimant

(b) The meeting on 10th February 2020 between Ms Storey and the Claimant

(c) The meeting of 13th February 2020 between Ms Storey and the Claimant

(d) dismissal

Findings of fact

15. We will refer to Hertfordshire County Council as "the local authority" and we will refer to the Governing Body of Saffron Green Primary School as "the school".

16. The head teacher at all relevant times was Ms Storey ("the head"). She is an experienced teacher, and she has worked at the school for about 10 years. She is employed by the local authority, as are all other staff who work at the school.

17. The head was asked about the statistics on Page 78 of the hearing bundle (part of "Equality Statement and Objectives") which stated that the school had "0" BME

staff at the time the page was written, in around 2017. BME was not defined in the document. The head was asked questions about the assertion in the document that there were no BME staff in 2017 and she answered questions on the basis of her understanding which was that staff were recorded as BME if, and only if, that is what they had ticked on their application form. On that basis, she said, there would be no employees in the last 10 years who were BME. The head said that she believes there were some Asian members of staff and some East European members of staff but because they had not ticked the box "BME" they were not included in the statistics. The head's evidence was that she did not believe that there had been any Afro-Caribbean members of staff in the last 10 years (ie non- at all, not just none who had ticked "BME" on application form).

18. Supply teachers who come to work at the school are not employed by the local authority or the school but rather they are effectively agency workers. When the school requires a supply teacher the agency supplies the agency worker and the school does not know anything in advance about the teacher, including their race. The head's evidence was that there had been supply teachers at the school that would potentially have been recorded in the BME statistics had they been direct employees and had they ticked the relevant "BME" box on the application form.

19. The claimant is an experienced teacher. Her past experience and qualifications are set out in the application form at pages 28 to 35 of the bundle. For the purposes of these proceedings the claimant describes her race, as being Afro-Caribbean and has stated that at box 8.2 of the claim form

20. The claimant saw an advert for a job at the school. The advert is at pages 66 and 67 of the bundle. It was for a permanent and full-time Year 6 Class Teacher. She applied for that position. She was interviewed by the head and the Key Stage 2 Lead, Ms Curran.

21. The advert on page 67 gives an outline of the duties of the vacancy, but is not the formal job description for the role. We were not provided with a copy of the job description and person specification. We were told by the head, and we accept her evidence, that the school uses a standard generic job description and person specification for every teacher role, which is the same for each post, including this one. We also accept that that job description and person specification had been available to applicants for the post by way of clicking on the relevant link in the advert. Furthermore, it was also available to all employees at the school once they commenced work. No copy of the job description and person specification was in the bundle.

22. The Year 6 Class Teacher post for which the claimant applied was one which required the successful applicant to start in January 2020. That was from the start of the second of the three academic terms of the academic year. The reason for that start date was that the Year 6 Teacher had left after the first term of the year. The Year 6 students were due to take their Key Stage 2 exams at the end of the academic year. The school has Early Years and also Key Stage 1 and Key Stage 2 pupils. It does not have secondary age pupils.

23. The Key Stage 2 exams were important both to the pupils and to their parents and also to the school. The head and Ms Curran formed the opinion that the claimant

did not have sufficient experience to guide the Year 6 pupils through the final two terms and up to and including their exams. They therefore did not offer her the role for which she had applied.

24. There was however another vacancy at the school and the advert for that is at page 70 of the bundle. We were told, and we accept, that the job description and person specification for this role were the same as the one for which the claimant had applied. This role was a temporary role for just two terms; it was providing maternity cover. The role was to provide nursery cover in the mornings and then provide cover as required in other parts of the school later in the day.

25. The claimant was offered and accepted that role. The contract start date was 1 January 2020. The contract was between the claimant and the local authority. We have seen no documents in the bundle - because the respondents have not provided them - about the school contacting the local authority and instructing it to issue this contract. However, we are satisfied that a valid contract of employment was entered into between the claimant and the local authority.

26. Being a community school, the governing body of the school is responsible for making decisions about who it wishes to appoint. The process is that the governing body makes the decision about who it wishes to appoint and then, having done so, it gives instructions to the local authority to issue a contract for the relevant job description and rate of pay to the chosen individual. Subject to some exceptions (which are not relevant for present purposes), the local authority is obliged to comply with the instruction to issue the contract of employment. If and when the school decides it no longer wishes to employ a particular person, it has the right to instruct the local authority to terminate the contract and the local authority is obliged to comply.

27. The head told us in her evidence, and we accept, that the governing body of this school has delegated the functions for hiring and firing of teachers and certain other staff to the headteacher. In other words, at the relevant times, those functions were delegated to her.

28. The claimant did start work in January 2020. We were not given specific evidence of the exact start date of the term, but it was on or around Monday 6 January.

29. On her first day, the claimant and some others were provided with Steps Training by Ms Kent, the Inclusion Manager. Ms Kent has had training from the local authority and is therefore an authorised trainer for Steps. Steps is a form of managing the behaviour of students which the school has adopted. The head's evidence, which we accept, was that the implementation of Steps has been successful in reducing the number of exclusions of pupils from the school. The proponents of the Steps model believe that helping the child understand why what the child did was wrong and enabling the child to reflect upon it and upon the consequence of their actions can potentially be a more successful long-term method of improving the individual child's behaviour in comparison to simply a punishment model, and that the punishment model perhaps causes the child simply to take measures to avoid being caught and/or might lead to the child refraining from bad behaviour while at school but carrying out that same behaviour while not at school.

30. Our finding is that the claimant was doing work covering nursery from the start of her employment (which was in the week commencing 6 January 2020). To the extent that either the head's statement or Ms Burchell's statement imply that the claimant worked in Key Stage 2 only for the weeks commencing 6 and 13 January 2020, we think that those are honest mistakes, but mistakes nonetheless.

31. Ms Burchell's comment in paragraph 10 of the witness statement implies that the claimant had been to several Early Years meetings. That would not be consistent with a start date in Early Years as late as Monday 20 January. Furthermore, on page 52 of the bundle, there is an email from Ms Burchell on 15 January - copied to the head - in which the claimant refers to the claimant having attended an Early Years Foundation Stage meeting the previous day, and making plans for future support for the claimant with planning and thinking of ideas. That email is also consistent with the claimant having started in the nursery around about 6 January rather than 20 January.

32. The claimant did work in other year groups as well. She was not exclusively in nursery in the first three weeks of her employment (weeks starting 6, 13 and 20 January 2020).

33. On 14 January, there was an incident with a particular student. At 15.42 on 14 January, page 51 of the bundle, the claimant sent an email to the Head Teacher. The respondent admits this is a protected act and it is the only protected act relied on for the purposes of these proceedings. The email states:

> During the plenary of a Science lesson this afternoon, [redacted] began to mimic me. I asked the to stop and he told me to shut up. I told him that he will need to see you as he should not say 'shut up' to any adult in the school. [redacted] then called me a monkey and then said I had hair like the butt crack of a monkey.
>
> As it was very close to home time I dismissed the children table by table.
>
> I think this behaviour has gone beyond any acceptable norm.

34. The name of the pupil is, quite correctly, redacted, but both sides are aware which pupil was named in the original email. It is signed off "Jackie Williams, Nursery" and this is further confirmation that the Claimant was already working in that part of the school. The email itself refers to an incident with older pupils, while the Claimant was providing afternoon cover.

35. The head replied at 16.34. She agreed that the behaviour had gone beyond any acceptable norm and she apologised. She stated she would phone Ms Kent the next day to discuss actions to be taken. She copied in Ms Kent and Ms Curran and spoke about arrangements for the pupil for the following day. She asked the claimant about when the claimant was next due to cover that particular class. The head's email went on to say, "Please do not cc Olivia in this email conversation going forward." She did not give any explanation in the email for that instruction. It would have been reasonable for her to explain why she had said that, because, given the lack of explanation, it risked coming across as curt and dismissive. It appeared that she was telling the claimant off. However, we accept the head's evidence as to her reasons for that particular comment. Her reasons were that pupil had family circumstances and other special educational needs issues that

the head regarded as being 'need to know' and, further, she did not regard the teaching assistant, Olivia, as being somebody who needed to know about those issues. The head was expecting that there could be a further discussion by email in which she, the head, might explain those issues to the claimant in more detail and did not want Olivia, the teaching assistant, to be part of that discussion. We have not been provided with any such further email correspondence where the child's circumstances were explained in writing to the claimant by the head.

36. The head was asked in oral evidence about previous exclusions for this pupil. The only evidence the tribunal has about the pupil's past behaviour is what the head said in cross examination. The claimant had not supplied any evidence of her own about the alleged reasons for past exclusions. We do, of course, accept that the claimant was not employed at the time of those exclusions, which took place in terms prior to the one in which the Claimant was employed. However, to the extent that the Claimant's barrister's questions sought to imply that the claimant did have specific information about the alleged reasons for those past exclusions, then that is a matter which would have had to be included in the claimant's witness evidence, and it was not. The head's answers, which we accept, are that she cannot remember the exact details of the exclusions. She did not recall there being a specific incident with a specific teacher which led to a particular exclusion but rather her recollection was that his behaviour had caused significant difficulties and that included that he had been swearing at adults. The head could not give details of the adults in question. However, we believe it is a reasonable inference that if the exclusion was because of swearing at adults then those adults included staff at the school including teachers, and that is the inference that we do draw. No disciplinary action was taken at those adults who had the interactions with the pupil during which he swore and for which he was excluded.

37. Furthermore, we discussed above the head's evidence about BME staff and the lack of BME staff (and the lack of Afro-Caribbean staff) working at the school. From that we think it is a reasonable inference that the adult members of staff who had been sworn at included were, at least predominantly, (and perhaps exclusively) white members of staff.

38. In terms of the actions taken in response to 14 January incident in relation to the student, we accept what is set out in Ms Kent's statement and her oral evidence. We accept that she challenged the pupil about whether he had been intending to make a racist remark to the claimant. His answer was that similar comments had been made to him in the past and when such comments had been made to him he did regard them as having been racist. However, his claim to Ms Kent was that he did not regard what he said to the claimant has having been racist and he denied that that had been his intention. His explanation was that he had sought to find words which were hurtful to the claimant but he had also sought to avoid swearing because it was swearing for which he had previously been excluded and he wished to avoid being excluded.

39. The head's evidence is that she recorded 14 January incident as having been a racist incident. She says she made a record in the school's own internal documents and the entry she made included the date of the incident, details of the adults and members of staff in question, and whether or not the parents were informed. She did not inform he claimant that it had been recorded as a racist

incident. She did not state in her witness statement that it had been recorded as a racist incident. The assertion that it had been recorded in this way (or at all) as a racist incident is not something mentioned in the grounds of resistance.

40. The head's evidence was that specific details of the specific incident were not reported either to the local authority or to the governing body. However, to both such bodies, her evidence was that statistical information was given to them about racist incidents, and those reports counted this particular incident as a racist incident. This was an important point. While not directly one of the issues in the list, it has significance in relation to what inferences we might draw from future behaviour and to whether or not there are facts from which we might infer victimisation. How this incident was recorded was relevant as being evidence of the school's and staff's attitude to racist incidents.

41. The head has given evidence on oath about this point. There is nothing directly to contradict what she said. It is surprising that her record keeping about this incident was not dealt with expressly in her written witness statement and surprising that no documentary evidence to support the contention that it was treated as a racist incident and properly recorded and reported as such was disclosed. On the balance of probabilities, we accept her sworn testimony on the point and we rely on her sworn oral evidence for our finding that she did, in fact, record and count the incident as she has described.

42. The day after 14 January, the head made a telephone call to Chris Brown of the local authority's Human Resources provider. She told us in cross examination that the reason for doing so had been that amongst other things she believed that the claimant's actions had been a cause of the pupil's comments the previous day.

43. The handwritten notes record that there were some discussions with Human Resources which included about possible termination of the Claimant's employment. Disciplinary action was mentioned. Discussions about probation period and dealing with probation were mentioned. It was suggested that the head should act within the school's Performance and Capability Policy and that one potential option was to let the claimant go at the end of the month. She was asked (we infer from the note) about what training had been given. An option that was suggested to her by Human Resources was that she should meet the claimant and find out how the claimant was feeling and then, having done, so the head could set out her own concerns to the claimant. Those concerns were, according to her contemporaneous notes, behaviour management and the claimant appearing unhappy and that the claimant had spoken negatively to a teaching assistant. The latter refers to comments which had been reported to the head in which the claimant had allegedly said she was unhappy about the duties of the post and that she would not necessarily have been willing to put up with those duties but for the fact that she was on a short-term contract.

44. On the second page of the notes, there are references to "protected characteristic". It is clear that the "protected characteristic" in question is the claimant's because it comes under the heading "Understand how she is feeling". It is the second mention of it and comes immediately above the heading "PIP" (Performance Improvement Plan). It is clear that the claimant was being discussed at the time. We infer from this that the discussion between the claimant and Human Resources

included discussion of of the risks of dismissing the claimant, and that those risks included, according to the discussion, that the claimant might later allege that her dismissal had been because of a protected characteristic, in other words, direct discrimination contrary to the Equality Act.

45. The notes do not state that alleged demeanour to her colleagues had been a problem that the head was aware of.

46. In the head's evidence, she states that she did Learning Walks around the school. She refers to doing so at 9.30am and that this was reading time for the students and that they should be quiet at that time. She states that her observation was that the claimant's class had not been quiet and that this was one of her causes for concern. That is not accurate. Our finding is that the claimant was doing the nursery cover in the morning from the start of her employment and our finding is that the students in the nursery group were not expected to be doing quiet reading time at that particular time. We are not satisfied on the evidence that the head had directly observed the claimant while walking past the classroom and noticing it being disruptive at any time, and not satisfied that her statement was intended to state that her observations of noisy classrooms under the Claimant's supervision referred to afternoons while she was looking after non-Nursery.

47. In terms of Ms Curran's statement, we do not ignore it completely. We do not think it is appropriate to draw any adverse inferences against the respondent based on the fact that Ms Curran has not intended to give oral evidence. To the extent, in paragraph 6, that Ms Curran refers to having been involved in the discussion to move the claimant to doing exclusively Early Years work and away from Key Stage 2, Ms Curran does not add anything to the evidence of Ms Storey or Ms Burchell on the point. She gives no dates for these alleged discussions. Her paragraph 3 is of little, if any, weight; she refers to concerns of unnamed colleagues and she does not go into any sufficient detail for us to make any findings about what the exact concerns were supposed to be.

48. In Ms Curran's paragraph 4, we accept that she is stating a genuine opinion that the claimant required more support than she, Ms Curran, had been expecting her to require. However, given that Ms Curran did not appear to be cross-examined and to give more information about specifically what support she would normally expect a new teacher to need (new to the school that is, not newly qualified), we give that paragraph little weight overall.

49. On page 53 of the bundle, there is an email from Ms Burchell to the head dated 23 January. We accept that the email expresses Ms Burchell's genuine opinions and that she had expressed these opinions orally to the head and the head had asked her to put these matters in writing. She wrote:

> Here are my concerns about JW;
>
> She can be abrupt and come across aggressive sometimes, doesn't always listen and take in feedback, she isn't fulfilling the EYFS role at the moment but i need to address this with her - at the moment she doesn't interact with the children as much as she should, isn't completing observations and there is still planning issues (which has been addressed and Sara is now supporting her with this). I will keep you updated on this situation.

50. A meeting then took place on Friday 24 January between the claimant and the head. This meeting took place without the claimant having been given any advance notification in writing about the meeting and without being given any advance notice at all about the subject matter of the meeting. Rather, she was contacted by the head's secretary and invited to come to a meeting. The meeting took place that afternoon. A document was handed to the claimant during the meeting which is at page 54 of the bundle, it was a pro forma document "Performance Improvement/Support Plan". The first column lists three items which the head said were causes for concern: namely behaviour management for all year groups; demeanour and attitude with other staff; the need to interact more with the children particularly Early Years and Key Stage 1.

51. The fact that the comments in that document refer the need to interact "particularly" with Early Years and Key Stage 1, rather than exclusively, lead us to a finding that as per the claimant position (and contrary to the Respondent's position), the Claimant gad not been told before 24 January that there was going to be a change to the job for which she was originally employed.

52. During the meeting the claimant said that she did not agree with the concerns that were being raised. She was invited to sign this document by the head during the meeting. The claimant said that she wished to consider the matter. It was agreed that the claimant would take the documents away and come back to the head with any proposed changes to the Performance Improvement/Support Plan ("PIP").

53. After Friday 24 January, the claimant was off sick for the following two weeks, she returned on Monday 10 February 2020.

54. While the claimant was off sick Ms Burchell sent an email to her which is on page 55 of the bundle, Tuesday 28 January. It was sent to the Claimant's work email address and copied to the head:

> Following on from our meeting on Friday afternoon, we discussed how you should be interacting with the children and doing observations, capturing their learning and writing next steps for them/activity. As part of my leadership role i monitor the observations that have been done. I've checked the Nursery observations and have noticed a few things. They are mainly from Sara at the moment, as the class teacher you should be doing the majority of the observations. The 2 that you have done only have pictures and one has a really short sentence. Please use the observation guidance i gave you in our EYFS meeting to show you what a good observation looks like or log in to 2 simple and have a look at other's observations to support you.
>
> As always please email me or come and see me if you are unsure on anything as it is really important these observations are completed as it is the only evidence we gather for our children. I am happy to show you again how to complete one.

55. Ms Burchell had also met the claimant in a separate meeting the previous Friday. At that meeting as described in her email, Ms Burchell had discussed with the claimant how the claimant should be interacting with children and doing observations capturing their learning and writing next steps. Ms Burchell stated in the email, and we accept, that after the meeting she looked at the observations in more detail. When she checked them, she found that the claimant had only done two and that in her opinion those two were not sufficiently detailed. In her email she stressed the importance of observations and offered to show the Claimant ("again") how to complete one.

56. The process for the observations is that they are done on an iPad and then uploaded from the iPad to the school's systems. We accept that the claimant had been shown how to do this. The contents of the observation are intended to show what a pupil has done during a particular week, with some examples of the learning that they have undertaken being demonstrated by both a picture and some completed text. We accept Ms Burchell's evidence that the expectation was that the teacher would generally do the majority of these rather than the teaching assistant. There were approximately 11 pupils in the nursery class and the school's general expectation was that in any given week for each one of those pupils there would be at least one observation per pupil. So 11 in total, each week, with the Claimant doing more than half of them.

57. On Monday 10 February 2020, the claimant returned from sickness absence and a meeting took place that day. The meeting was attended by the claimant, the head and Ms Burchell. This was effectively a continuation of the meeting with the head on 24 January at which the PIP had been issued. We are satisfied that but for the claimant's sickness absence then this meeting would have taken place on or around Monday 27 January. As things had been left on 24 January, the claimant was going to think about the PIP and to have the chance to make comments on it and ask for changes (if she wished) before signing it.

58. On 10 February, the claimant indicated that she was not willing to sign the PIP as it had originally been drafted. The head made some comments on the document which were in red text. We have the 10 February version of the document at pages 56, 57, 58 and 59 of the bundle. The document was signed by all three attendees: Ms Burchell, the claimant and the head.

59. The original planned date for review of the PIP had been 7 February but given the claimant's two week absence that was now agreed to be changed to Friday 28 February. In other words, the plan was that there would be three complete weeks from 10 February to 28 February to review her performance. The document reflects comments that were made by the head and Ms Burchell about the support that they said had been given to the claimant – in their opinion - including the teaching assistant showing the claimant how to put pictures into the observations and Ms Burchell showing the claimant how to do observations on the iPad and store them appropriately on the respondent's computer systems.

60. The claimant did not agree that she had a poor demeanour or attitude towards other staff. Her opinion was that she did interact already with the children. Ms Burchell suggested that she previously had given specific examples to the claimant of things that Ms Burchell expected the claimant to do and that the claimant had not subsequently done. She referred to minutes of meetings from the Early Years Foundation Stage Team. Those minutes were not in the tribunal bundle, but, at the 10 February meeting, Ms Burchell asserted that the minutes supported what she was saying to the claimant. The head stated that she wanted it to be recorded that the claimant had been taken on to cover both nursery and PPA and Key Stage 2 and that it had been her opinion and also that of Ms Curran, that the claimant's behaviour management skills were not adequate to manage a Key Stage 2 class. The head mentioned that to assist with that an offer had been made to the claimant for her to work full-time in Early Years Foundation and Key Stage 1. It is our finding that that the offer was made, and that it was made for the first time on 24 January.

It had not been offered (or accepted or declined, therefore) prior to then. The head wrote that she considered that to be a huge movement with regard to supporting what she said was an experienced teacher who had not – the head wrote – informed the school prior to the commencement of employment that she would need such support.

61. The claimant was presented with two particular options and she was asked to choose between them. The first option was "are you saying that you are an experienced teacher and can continue with your role?" The second option was "are you saying that you would like training and support from us at Saffron Green to continue with your performance improvement plan?" In other words, neither of the two options offered the claimant the opportunity for training and support without being on a Performance Improvement Plan. The claimant stated that she was not stating that she wanted the latter and we do not interpret that as meaning that the claimant was saying that she did not want training or support or that she did not need training or support. Our finding is that the claimant was disputing the need for her to be on the Performance Improvement Plan.

62. The claimant went on to say that she was an experienced teacher. She commented that different schools did things differently. She said that what she wanted to know was whether there was a particular way of doing things at the school. She said that if that was the case then she would want to do things the way that the school expected them to be done. She was informed that she had already been told what was required for Early Years and was asked if there was anything else specific that she wanted to know. She said that there was nothing specific but if she had questions in the future she hoped that they would be answered.

63. Following 10 February meeting, it was Ms Burchell's view that there was no immediate improvement in the claimant's performance in relation to the issues that had been discussed with her, including the need to do frequent observations and the need to manage the behaviour of the children effectively. It also became Ms Burchell's view that the claimant was not engaging with her and not discussing what needed to be done and then implementing what needed to be done.

64. There was a particular incident when Ms Burchell was called to the nursery class by the teaching assistant for the class. When she got there, she saw the teaching assistant taking two children out from underneath the art table. The teaching assistant brought those children to the door and Ms Burchell overheard the conversation which followed. The teaching assistant asked the children what they had been doing and they said that they had been arguing / fighting because of a disagreement over a particular game. The teaching assistant later gave some additional information to Ms Burchell, claiming that she had gone to the toilet and left the claimant alone in the classroom and, on her return, had seen the claimant standing away from the pupils with her back to the class (or some of them), and not being in a position to see what was taking place in the entire room. In particular, according to what the teaching assistant told Ms Burchell, the Claimant had not been in a position from which she could see what was taking place under the art table. Ms Burchell had observed for herself that when she arrived at the room that the claimant appeared to have her back to the class.

65. Ms Burchell relayed these concerns to the head teacher and the head teacher formed the view that matters were escalating and that it might be appropriate to terminate the claimant's employment. She telephoned the local authority HR provider and spoke to Jessica Lumley. The advice was that the school did have the option of waiting until 28 February 2020 review meeting and dismissing the claimant at that stage, but that another option was to invite the claimant to a meeting immediately. An option which was discussed was that the claimant could be told that things had not been working out and that she would be paid until the end of April but would be terminated with immediate effect and that the reasons for the termination would include unprofessional attitude.

66. The head arranged for the claimant to come to a meeting later that day (Thursday 13 February 2020) during which the head informed the claimant that she was being dismissed. She gave the claimant the option of working until the end of the day or leaving immediately. The claimant said that in those circumstances she would leave immediately.

67. The claimant was not provided with notes of this 13 February 2020 meeting near to the time of the meeting. She received page 1 of the notes (page 60 of the bundle) in 2021 during the course of this litigation. A full copy of the notes (which is now pages 120 and 121 of the bundle) was not provided to her until part way through this hearing. However, we are satisfied that the document on pages 120 and 121 was all produced by the head's secretary on 13 February 2020. The head's secretary had been present at the meeting and had taken notes.

68. In the meeting upon being told that she was being dismissed, the claimant raised the point that she had not had the opportunity to be accompanied to the meeting by a union representative. This is correct. She had not been given any notification of the meeting other than being invited to attend orally immediately beforehand.

69. The claimant said that it was her opinion that she was being dismissed as a result of the incident on 14 January 2020. She said that the head had changed her attitude to the claimant because of that incident. The head denied that and said it was about standards and expectations of jobs.

70. The head's handwritten notes include her discussions with Jessica Lumley of HR on 13 February and include discussions of what was said during the meeting with the claimant. It is not argued that these notes were intended to be a full and complete record of everything that was said. However, it is noticeable that at no place in those handwritten notes is it suggested that the head had regarded the things that the claimant had done as posing a serious risk or any risk to the health and safety of children. Nor is that mentioned in the typed minutes at 120 and 121. Nor is it mentioned in the subsequent letter which was sent to the claimant dated 25 February and which stated that it was confirmation of the dismissal. Furthermore, no report was made to any relevant authorities suggesting that children's health and safety had been endangered. We were provided with no copy of any written statement at the time from either the teaching assistant or Ms Burchell about exactly what they had seen in the classroom in relation to the children being under the art table.

71. It is common ground that the claimant was not offered the opportunity to appeal against her dismissal either orally on 13 February 2020 or in the 25 February 2020 follow up letter. As far as we know from the documents, the school did not follow the correct procedure by instructing the local authority to issue a termination letter but rather it has purported to do so itself.

72. We turn now to the law which we must consider in making our decision.

The law

73. Under the Equality Act the burden of proof provisions are codified in s.136. S.136 is applicable to all the contraventions of the Equality Act alleged in these proceedings. In other words, direct discrimination and victimisation.

> 136 Burden of proof
>
> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contraventionoccurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

74. In other words, it is a two-stage approach. At the first stage the tribunal considers whether the tribunal has found facts - having assessed the totality of the evidence from both sides and drawn any appropriate inferences - from which the tribunal could potentially conclude, in the absence of an adequate explanation, that a contravention has occurred. At this stage it is not sufficient for the claimant to simply prove that the alleged treatment did occur. There has to be some evidential basis from which the tribunal could reasonably infer from the facts that there was a contravention of the Act. However, the tribunal can look, and should look, at all the relevant facts and circumstances when considering this part of the burden of proof test and make reasonable inferences where appropriate.

75. If the claimant succeeds at the first stage then that means that the proof has shifted to the respondent and the claim is to be upheld unless the respondent proves that the contravention did not occur.

76. Direct discrimination is defined in s.13 of the Equality Act. A person discriminates against another if, because of the protected characteristic (in this case race) they treat the other less favourably than they treat or would treat others. This definition has two elements. Firstly, whether the respondent has treated the claimant less favourably than it has treated others ("the less favourable treatment question"). Secondly, whether the respondent has done so because of the protected characteristic ("the reason why question").

77. For the "less favourable treatment question", the comparison between the treatment of the claimant and the treatment of others can potentially require decisions to be made about whether another person is an actual comparator and/or the circumstances and attributes of a hypothetical comparator.

78. However, "the less favourable treatment question" and "the reason why question" are intertwined and sometimes an approach can be taken where the tribunal deals with "the reason why question" first. If the tribunal decides that the protected characteristic was not the reason even in part for the treatment complained of then it will necessarily follow that a person whose circumstances are not materially different would have been treated the same. That might mean that in those circumstances there is no need to construct the hypothetical comparator.

79. When considering the reason for the claimant's treatment we must consider whether it was because of the protected characteristic or not and we must analyse both the conscious and the sub-conscious mental processes and motivations leading to the acts, omissions and decisions.

80. For direct discrimination, if the burden of proof shifts to the respondent then the claim would be upheld unless the respondent proves that the treatment was in no sense whatsoever because of race. In assessing the evidence in the case and considering the burden of proof provisions the tribunal can have regard to the guidance given by the Court of Appeal in for example, Igen v Wong [2005] EWCA Civ 142 and Madarassy v Nomura International plc [2007] EWCA Civ 33. The burden of proof does not shift simply because the claimant proves a difference in race or a difference in treatment. That only indicates a possibility of discrimination, and it is not sufficient; something more is needed.

81. In Deman v The Commission for Equality and Human Rights [2010] EWCA Civ 1279, the Court of Appeal suggested that something more does not need to be a great deal more. An example - depending on the facts of a particular case - might be the non-response from a respondent or an evasive or untruthful answer from a respondent or an important witness. That could be something more, potentially.

82. In other factual circumstances it may simply be the context of the act itself. In SRA v Mitchell UKEAT/0497/12/MC, the Employment Appeal Tribunal upheld a tribunal's decision that the burden of proof shifted based on a finding that the employer had given a false explanation of the less favourable treatment. That being said, it is important for the tribunal to remind itself that the mere fact alone that a tribunal might reject some or all of the employer's explanation for one or more particular act or omission does not mean that the burden of proof necessarily shifts. See for example, Raj v Capita Business Services UKEAT/0074/19/LA.

83. As per Essex County Council v Jarrett UKEAT/0045/15/MC, where there are multiple allegations, the tribunal has to consider each allegation separately when determining whether the burden of proof has shifted in relation to each one. Importantly, of course, that does not mean that we should take an approach of ignoring the facts and evidence in relation to the other acts and omissions when deciding whether the burden of proof has shifted in relation to one particular allegation; we can and we must take into account the totality of the evidence.

84. The definition of victimisation is contained in s.27 of the Equality Act.

> 27 Victimisation
>
> (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
>
> (a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

85. There is an infringement if a claimant is subjected to a detriment and the claimant was subjected to that detriment because of a protected act. The alleged victimisers improper motivation could either be a conscious motivation or an unconscious motivation. A person is subjected to a detriment if they are placed at a disadvantage. There is no need to prove that the claimant's treatment was less favourable than a comparator's treatment.

86. To succeed in a claim of victimisation the claimant must show that she was subjected to the detriment because she did the protected act or because the employer believed that she had done or might do a protected act. Where there is a detriment and a protected act then those two things alone are not sufficient for the claim to succeed. The tribunal has to consider the reason for the treatment and decide what (consciously or otherwise) motivated the respondent to subject the claimant to the detriment. That requires identification of which decision makers made the relevant decisions as well as consideration of the mental processes of those decision makers.

87. The claimant does not have to demonstrate that he protected act was the only reason for the detriment. If the employer has more than one reason for the detriment, then the claimant does not have to establish that the protected act was the principal reason. The victimisation complaint can succeed provided the protected act has a significant influence on the decision making. An influence can be significant even if was not of huge importance to the decision maker. A significant influence is one which is more than trivial.

88. A victimisation claim might fail where the reason for the detriment was not the protected act itself but some feature of the communication which could properly be treated as separable from the protected act itself such as the manner in which the protected act was carried out. That is not an argument that is made in this particular case.

89. Section 136 applies and so the initial burden on the claimant is to demonstrate that there are facts from which the tribunal might conclude that the detriment was because of the protected act. If the claimant does that then the burden of proof shifts.

90. Section 39 deals with contraventions of the Act including amongst other things, that an employer must not discriminate against, or victimise, an employee by dismissing them or subjecting them to any other detriment.

Analysis and conclusions

91. Item 6(a) in the list of issues, as agreed on Day 1, was stated to be: "*The actions taken by the school is disciplining the pupil … for his comments to the Claimant*".

92. The claimant accepted in her oral evidence that she was not seeking to argue that something else should have been done to the pupil. She was not suggesting punishment and she was satisfied with the actions taken in relation to the pupil. She said in her oral evidence that really her complaint was that the school had not acted correctly in relation to following its equality policies.

93. Looking at the claim form itself, box 8.2, page 7 of the bundle, that is indeed what the claimant says in the last sentence of the third paragraph, namely: "*No action was taken by the headteacher in line with the school's Equality Policy*".

94. The tribunal's decision is that it is reasonable and appropriate therefore for us to address the matter on that basis. Had it been necessary for us to do so we would have potentially invited further comments from the respondent on that amendment to the list of issues. However, it is not necessary in the circumstances because we are satisfied (and as we have said in the findings of fact, we have relived entirely on the head's testimony on oath; the Respondents provided no documentation) that the matter was recorded as a racist incident and appropriately reported.

95. Other than recording and reporting the incident, there is no other specific matter mentioned by the claimant in her evidence in chief as something that was a breach of the school's Equality Policy. She did say, in response to questions put to her, that she believed that it might have been appropriate to offer her some specific support with the undoubted distress that was caused to her by the pupil's comments.

96. In relation to (the amended) 6a, the burden of proof does not shift. In reaching that decision, we considered two hypothetical comparators.

    96.1 We have considered a hypothetical comparator being somebody of a different race to the Claimant (any other race) who was on the receiving end of some racial abuse. It could be a white comparator or it could be a comparator of some other race other than Afro-Caribbean.

    96.2 The other hypothetical comparator that we have considered is a teacher who received abuse from a pupil that was about another protected characteristic under the Equality Act. So, for example, homophobic abuse or abuse because the person had a disability, for example.

97. Having considered the hypothetical comparators in each case we are satisfied that the burden of proof does not shift. From the totality of the evidence we are not satisfied that there are facts from which we might infer that the hypothetical comparator would have been offered more support by the head or either respondent than the claimant was offered. Nor is there evidence from which we might infer that the incidents with the hypothetical comparator might have been reported differently.

98. So allegation 6(a) fails because:

    98.1 On the Claimant's own evidence, the school's dealings with the pupil in response to his behaviour were appropriate. She was not suggesting that the school should have carried out some form of punishment, instead of, or as well as, the actions which Ms Kent took.

    98.2 We have accepted that the incident was recorded as a racist incident.

    98.3 We have not been persuaded that different/additional support would have been given to a teacher of a different race following a similar incident.

99. Turning now to items 6(b) and 6(c) we think it is convenient to consider both of these two matters together. These are meeting on 24 January and the meeting on 10 February. As we have mentioned in our findings of fact the meeting on 10 February was effectively a continuation of the 24 January meeting. In any event and for the avoidance of doubt, the reason why the 10 February meeting took place is that at the end of 24 January meeting the claimant had been offered the opportunity to reflect upon the draft PIP and to ask for any changes prior to signing it. That is why the meeting on 10 February took place.

100. The reason why the meeting took place on 24 January was that during the first three weeks of the claimant's employment the head had received feedback from staff including Ms Burchell and Ms Curran and she had decided that there were some concerns over the claimant's performance as a teacher.

101. It is strange and not necessarily reasonable that the head decided that the claimant had been at fault for what was said to her on 14 January 2020 by the pupil. No evidence has been provided to this panel to suggest that the claimant was in any way the cause of that particular incident. Furthermore, when the head was asked for more information about why she had decided that the Claimant was in some way to blame, she could not recall any specific reasons for her opinion that the claimant might have been responsible. She was also unable to give a detailed account of the past exclusions for this pupil and, therefore, about why the staff involved in past incidents had, seemingly, not been blamed for the pupil's actions on those occasions, and – therefore – how any why the Claimant's own interactions with the pupil were somehow different to what the staff had been doing during those past incidents.

102. However, the concerns had been mounting prior to 24 January and the events of 14 January were not the only, or the main, reason for deciding to hold a meeting to discuss performance. There is contemporaneous documentation from Ms Burchell prior to 24 January to show that she had concerns. As we have mentioned we have taken Ms Curran's evidence into account while not ignoring the fact that she was not cross examined on that.

103. The reason that the head held those meetings are accurately reflected in the handwritten document of head's notes of discussion with Chris Brown on 15 January. On the third page, she summarises her concerns which she would put to the Claimant if there were a meeting: "(a) Behaviour Management – STEPS"; "(b) Appear unhappy"; "(c) spoke negatively to TA". The most significant of those

three reasons was behaviour management for the pupils. That was a concern which the head had by 15 January and, by 24 January, the head had formed the view that it was no longer appropriate for the claimant to continue to manage the Key Stage 2 pupils. Hence the meeting that day to convey that information and supply the "Performance Improvement Plan" document.

104. The burden of proof does not shift to the respondent on items 6(b) and 6(c). The fact that other staff had interactions with the pupil and were not subject to disciplinary or performance management is not enough, because firstly we have insufficient information to conclude that the circumstance were the same, but, secondly, we are satisfied that it was not only that incident that led to the head's concerns. It is our decision that the claimant was not treated less favourably because of her race than any actual or hypothetical comparator.

105. It is convenient to move straight on to the victimisation allegations 9(a) and 9(b), because that is the same two meetings, but as victimisation allegations.

106. We make similar comments as we did for direct discrimination. The claimant's actual email to the school (page 51) was not the reason for the performance management meetings, or for the PIP being drawn up, or the meetings on 24 and 10 February. One of the things which the head did take into account was the interaction between the pupil and the Claimant on 14 January. That actual incident itself is distinct from the Claimant's email. As far as we are aware the first thing that brought that incident to her attention was the claimant's email. However, while she formed a view - reasonably or not - that the claimant was at fault for the incident, it was not the fact that the claimant communicated details of the racist incident to the head which caused the head (or the respondents) to instigate the Performance Improvement Plan. The burden of proof does not shift. We take into account the fact that we have found that there were some inaccuracies in the evidence on behalf of the respondents. We have taken into account the late disclosure of documents. However, we have not been satisfied that those are sufficient to be the something more that would cause the burden of proof to shift.

107. Holding the meetings on 24 January and 10 February were not acts of victimisation.

108. We go back now to items 6(d) and 6(e) which are the direct discrimination allegations relating to 13 February meeting and the dismissal itself which took place during that meeting. It is not really necessary to separate these issues. It has not been argued by the respondents that the claimant was invited to the meeting in order to hear what she had to say, and that a decision about whether or not she would be dismissed depended on what the claimant had to say during the meeting. It is not argued that something other than dismissal might have been the outcome of the meeting. The decision was made to dismiss the Claimant (with effect from 13 February 2020) and that is the reason why she was called to the meeting. The claimant was told at the outset of 13 February meeting that the decision had been made that she was going to be dismissed. The only input which the claimant was to have into the outcome of the meeting was to say was whether she preferred to leave immediately or at the end of the day.

109. We are satisfied that the reason why the dismissal took place is that the head formed the view - based largely on comments from Ms Burchell - that the claimant's performance had not sufficiently improved since 24 January (so on Monday to Thursday 10 to 13 February, which are the only days on which she worked after 24 January). We reject the suggestion that there was a health and safety risk to any of the school's pupils caused by the claimant's actions. However, we do accept that the alleged incident of the children quarrelling under the art table was reported to Ms Burchell, and that Ms Burchell believed the report, as did the head when Ms Burchell reported it to her. Ms Burchell and the head believed that the incident demonstrated that the claimant was paying insufficient attention to the class. That incident was the main trigger for the decision to dismiss the claimant on 13 February, instead of giving her the full three weeks to try to improve prior to a decision being made on 28 February.

110. The burden of proof does not shift. The respondent's evidence on this point is plausible and the decision to dismiss in these particular circumstances, does not seem inherently unreasonable or suspicious.

111. In deciding that the burden does not shift, we have taken into account the faults in the respondent's evidence and the lack of prompt disclosure of relevant documents (including the handwritten notes of discussions with HR). It is our opinion that the incident with the children under the art table has been significantly exaggerated by the respondent's witnesses. Perhaps that exaggeration started during this hearing in December 2021 although we acknowledge what was mentioned in the grounds of resistance and the witness statements. We do not think that at the time they thought that it was a serious as they portrayed it to be to these proceedings. However, that does not cause the burden of proof to shift. We are satisfied that their reasons for the exaggeration were to try to bolster their defence to the victimisation claims and/or the discrimination claims rather than because it was an invented reason or not the true reason for deciding to dismiss the claimant.

112. We have taken into account that in the handwritten notes of discussion with HR "discrimination. she has to prove it" is a written by the head. She was not subjected to cross examination on this comment. However, assuming - as we do - that the notes were written in chronological order, this appears to be a note made after the dismissal meeting with the claimant had ended and after the claimant had raised, during the meeting, for the first time the suggestion that the reason for her dismissal was connected in some way with the 14 January incident.

113. Items 9(c) and (d) of the list of issues is the allegation that it was victimisation to dismiss the claimant on 13 February. Our decision - for similar reasons as just mentioned in relation to discrimination - that the burden of proof has not shifted. The protected act on 14 January was not the head teacher's reason for dismissing the claimant and did not unconsciously form part of the motivation. It was the Claimant, not the head, who raised that matter in the dismissal meeting, and did so after she had been informed of the decision.

114. Furthermore, for both victimisation and discrimination, we have taken into account that the school did not follow the correct process for terminating employment. The school ought to have informed the Claimant that the school had decided that her employment would be terminated and would be informing the local authority and

that the local authority would contact the Claimant to formally terminate her contract of employment. However, the reason that process was not followed was not because of race or because of the protected act. The reason was that the head did liaise with the local authority's HR providers, but the head was not advised by them that she should write to the local authority about termination rather than purport to directly communicate to the Claimant that the contract was terminated.

115. So, for those reasons, all of the victimisation claims fail as well as all of the direct discrimination claims.

Identity of Respondent

116. Both the Respondents argued that, if there was liability, the judgment should be against the school only, and not the local authority. The argument was set out in the Grounds of Resistance and repeated at the hearing. Had we decided that there was liability then we might have concluded that it should be joint and several liability between the two respondents. In any event, we think that it is unlikely that we would have been satisfied that the local authority should have been dismissed from the proceedings in such circumstances. Had there been liability then that would have meant that an employee of the local authority (the Claimant) had shown that the acts and decisions of other employees of the local authority were breaches of the Equality Act, including (perhaps) in connection with decisions to terminate her contract of employment with the local authority.

117. However, given that we have decided that there is no liability against either respondent, it is not necessary for us to seek to conduct a full analysis of the 2003 Regulations and the Schedule to those regulations, and to decide how that Schedule should be interpreted now that the Equality Act 2010 is in force, and/or whether the apparent failure to comply with Regulation 20 of the School Staffing Regulations 2009 makes any difference to such analysis.

Employment Judge Quill

Date: 21 February 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

24/2/2022

N Gotecha

FOR EMPLOYMENT TRIBUNALS