EMPLOYMENT TRIBUNALS

Claimant:	**Ms E Ewome**
Respondent:	**Burnt Mill Academy Trust**
Heard at:	**East London Hearing Centre**
On:	**8-11 November 2022 & 14, 18-19 July 2023** **21 – 22 2023 July in chambers**
Before:	**Employment Judge J M Jones**
Members:	**Ms J Clark** **Mr L O'Callaghan**

Representation

Claimant:	Mr C Price (Counsel – 8-11 November 2022) Mr W Brown (Solicitor – 14, 18-19 July 2023)
Respondent:	Mr D Masters (Counsel)

JUDGMENT

The Claimant's complaints of race and sex discrimination fail and are dismissed.

REASONS

1. This was the claimant's complaint of race and sex discrimination.

2. The tribunal had a list of issues at pages 0A to 0D of the bundle of documents. The tribunal will refer to this list of issues in the section below when applying the relevant Law to our findings of facts.

Evidence

3. The Tribunal heard from Carolyn Welch, HR and Cover Lead and Office Manager for the school; Marion Cook, Maths Supply Teacher (October 2018 – December 2019) and Ebenezer Sasu, former Art & Design teacher at the school (2019 – 2021), Adam Smith, Teacher at the school, and the Claimant; on the Claimant's

behalf. For the Respondent, the Tribunal heard from Vincent Omilli, Deputy Head Teacher at the school; John Blaney, Assistant Chief Executive Officer of the Trust (replacing Stephen Hehir in June 2021); Helena Mills, Chief Executive Officer of the Trust; Sophie Laing, Assistant Chief Executive Officer of the Trust; Michael Yerosimou, Head Teacher at the school, Sahbi Benzid, Deputy Head Teacher at the school and Jasmine Pampolina, HR Lead and Office Manager. The Tribunal had witness statements from all those who gave evidence.

4. The Tribunal made the following findings of fact from the evidence in the hearing.

5. The Tribunal apologies to the parties for the delay in the promulgation of these reasons and the judgment. This was due to pressure of work on the Judge, the Judge's ill-health, the number of issues involved, difficulties with a backlog of typing and the number of issues involved in this matter.

6. This matter was listed for hearing over four days beginning on 8 November 2022. At the end of 11 November 2022, the Respondent had not finished presenting its case and therefore the matter was part-heard to six days beginning 14 July 2023. At a case management hearing on 20 March 2023, it was determined that the Respondent's witnesses would be heard between 14 and 19 July and that after submissions, the Tribunal would deliberate and deliver its judgment on 21 July. Unfortunately, due to various matters, that did not happen, and the evidence did not complete until the afternoon of 19 July. The Tribunal met in chambers on 20 and 21 July.

7. When this matter adjourned in November, it was due to resume on 21 to 23 March 2023. In the interim period, the Claimant issued a new claim, claim number 3205797/2022 for victimisation. The Claimant also changed her legal representative. By letter dated 15 February 2023, the Claimant's new representative asked for the claims to be joined and heard together and for the listing in March to be converted to a preliminary hearing to case manage both claims.

8. This was agreed. The possibility of re-listing the matter to resume on 4 April was canvassed with the parties but was not possible. In the interim, the Claimant's new representative requested a copy of the Tribunal's notes of evidence from the November 2022 part of the hearing, but this request was refused by REJ Burgher. We note that the second claim was presented to the tribunal on 7 December 2022 and was served on the Respondent on 18 January 2023. The first and second claims were consolidated during the preliminary hearing on 20 March, and it was agreed that the second claim would be heard during the resumed hearing in July 2023.

9. However, by a letter dated 10 May 2023, the Respondent applied for the claims to be separated. The Respondent contended that when the Claimant lodged her grievance in relation to the allegations that formed the complaints in the second claim, she had also filed a fit note, which stated that she was not fit to attend work due to

PTSD and that she was not in a healthy state to attend any meetings. The Respondent stated that because of the fit note, it decided that it would not commence an internal grievance process until the Claimant's health improved.

10. By 10 May 2023, the Claimant had yet to return to work. It is the Respondent's case that this is why her grievance was still outstanding. The Respondent asked the Tribunal to separate the claims and restrict the resumed hearing in July to the first claim only, to enable them to conclude their investigation on the Claimant's grievance. The Tribunal considered the Respondent's application and having had no correspondence from the Claimant objecting to the application, wrote to the parties on 30 May, to grant the Respondent's application to postpone hearing the second claim until completion of the grievance. The Respondent had copied the Claimant into its application. On 11 June 2023, the Claimant wrote to the Tribunal to oppose the application and to ask for the Tribunal's decision to be reconsidered.

11. By letter dated 5 July, the Claimant applied for the forthcoming hearing to be postponed. The Claimant informed the Tribunal that she had recently submitted a third claim of constructive unfair dismissal and that her preference would be for all matters to be consolidated and heard together. The Claimant wished to save costs, time and to reduce the stress on her mental health likely to be caused by having separate hearings. The Respondent opposed the application and suggested instead that the second claim should be consolidated with the third and heard in due course and that the arrangements for hearing the first claim should continue as the hearing was part-heard and the dates had already set down.

12. Having considered both parties' positions, it was this Tribunal's decision that the hearing in July should focus only on the matters in the first claim and that the second and third claims would be consolidated and heard together on a separate listing.

13. Just before this hearing resumed on 14 July, the Claimant notified the Tribunal that she was suffering from serious mental health symptoms. The Tribunal had a letter dated 14 July 2023 from the Claimant's GP informing us that due to the effect that her case and related matters was having on her mental health in terms of exacerbating her PTSD and trauma symptoms, she had attended a hospital's (Accident and Emergency) A&E department the previous evening after self-harming at home, in fear that if she remained at home her self-harming would escalate further. The GP's letter was written after the Claimant attended the surgery during the day on 14 July for further advice. The Claimant's GP confirmed that he would be referring her to the crisis team on 14 July.

14. On the morning of 14 July 2023, Mr Brown for the Claimant attended court and informed the Tribunal that he had spoken to the Claimant that morning and that she had been distressed on the phone. He submitted that her preference was for everything to be heard together. In her mind, consolidating all matters would be the best thing for her. The Respondent informed the Tribunal that it had three witnesses

lined up to attend the hearing remotely that day and that they were all were due to be on leave on the following week. We were mindful also that this case comprised of some historic allegations, which allegedly occurred in 2020 and that the claim has been ongoing for some time. After due consideration of the Claimant's health, the overriding objective and the need to progress matters, the Tribunal decided to progress with the witnesses who were lined up to give evidence that day. We would ensure that the Claimant was given a link so that she could attend the hearing remotely, by CVP, if she was able to do so. She was not due to give evidence as her evidence had been given in November 2022. The Claimant would be able to continue to give instructions to her solicitor, as required, as she had done that morning. Given her ill-health, the Tribunal excused the Claimant's non-attendance at the hearing. The Claimant attended the rest of the hearing on the following days, and the Tribunal made adjustments in terms of appropriate breaks to enable her to attend every day and give instructions to Mr Brown who was presenting her case.

15. The Tribunal made the following findings of fact from the evidence heard. The Tribunal has only made findings of fact on the matters that are necessary for determining the issues in this case.

Findings of fact

16. The Claimant began her employment with the Respondent on 1 January 2010. The Claimant was a teacher of D&T and Food Tech in 2010.

17. In 2016 she was promoted to Head of Year.

18. The Claimant applied for and was successful in obtaining the post of Acting Assistant Head Teacher. This was a fixed term appointment, and the appointment letter stated that it was for the period of 1 January 2019 to 31 August 2019.

19. From 1 July 2019 the Claimant was appointed to the post of Acting Senior Assistant Headteacher. She was one of two Assistant Headteachers who were promoted to the post out of a cohort of 13 Assistant Headteachers. She was the only black woman in the school's SLT (senior leadership team). This was another temporary post, due to end on 31 August 2020. The letter of appointment referred to Behaviour, Attitude and Christian ethos as being part of her job role.

20. The letter stated that it was a temporary secondment acting up role. The letter reminded the Claimant that at the end of the period she would revert back to her substantive appointment of Teacher (Food Tech) and Director of Learning from 1 September 2020.

21. In addition to the Claimant, the other Acting Assistant Senior Headteacher was a teacher called Sarah Viccars. Both the Claimant and Ms Viccars were due to revert to their previous roles in September 2020. It was the Claimant's evidence that as far as she was aware, in September 2020, hers and Ms Viccars' duties did not change. Only the title was taken away.

22. The Respondent is a multi-academy trust comprising of 12 schools. Five of those schools are primary schools and the rest are secondary. The school in which the Claimant worked, Epping St John's School, is a larger than average secondary school for pupils aged 11 – 18, based in a predominantly white area. Approximately 1100 pupils attended the school. The school cohort are of mixed races and ethnicities. In November 2017 the school joined the Trust. Ms Mills told us in her evidence that when the Trust took over the school there were concerns about the quality of education and about behaviour. She talked about threatening to close the school as she was concerned that the children were not safe there. Prior to the school joining the Trust it had been assessed as '*requires improvement'* by Ofsted. There was also a perception among the black members of staff who we heard from that they felt that there was racism within the school and that incidents of pupils using offensive language, offensive graffiti and other incidents had not been handled well.

23. George Yerosimu, Mr Yerosimu's father, was a previous Headteacher in the school before it became part of the Trust. It is likely that he retired from the school in or around 2015.

24. At the time the school was facing some challenges. These continued after the school joined the Trust. After Mr Yerosimu retired, the school had a series of Headteachers who only stayed for a short time. We were told that there were 4 new Headteachers, which contributed to a period of instability at the school.

25. Mr Stephen Hehir was one of three assistant CEOs of the Trust. Each Assistant CEO would usually take responsibility for a school or some schools within the Trust, depending on the need. As there had been so many changes of leadership at Epping St Johns and it needed some stability, Mr Hehir took responsibility for it.

26. Mr Michael Yerosimu began working at the school in 2006 as an English teacher. Mr Yerosimu describes himself as a white British male with Greek Cypriot grandparents. He had various responsibilities over the years until he was appointed as Assistant Headteacher from 2016 and 2019. He was appointed to the post of Head of School in September 2019 and has since been appointed as Headteacher from September 2022.

27. Mr Sabhi Benzid began his employment with the Respondent in September 2018. AT the time that he was the Assistant Headteacher, the Claimant was Head of Year. His ethnic background is Arabic. Mr Benzid became Deputy Headteacher in 2019, along with Mr Omilli. They were part of the structure put in to support Mr Yerosimu as a newly appointed Assistant Headteacher, along with the Claimant and Ms Viccars' appointments as Acting Senior Assistant Headteachers. Mr Omilli is white, and he told us in November that his ethnic background is French.

28. The school's School Review Report dated October 2019, which was done using the Ofsted criteria, set out that pupils' behaviour and attitude in lessons required improvement. The report stated that the school had high expectations for behaviour

and conduct, which although commonly understood, were not always applied consistently. There was often low level disruption to learning.

29. The report also set out that there were good opportunities for personal growth in the school and that leaders had a clear and ambitious vision for providing high-quality education to all the pupils.

30. Mr Yerosimu set targets for the academic year, 2019/2020 for the Claimant. The target points were '*reduction of detentions, reduction in FTE comparison to last academic year, reward trips for Very Good students – through self-worth program and a high percentage of ACE points issued to all students'.* The document at page 85 sets out the actions required, which the Claimant needed to do in order to show that she had achieved or met this target. At the time, the Claimant was the only person who had Behaviour as part of her job title and her Management and Leadership responsibilities set out at pages 532 and 370 included many aspects of Behaviour management, policy development and celebration.

31. The Claimant was good at her job. All the witnesses we heard from stated that she performed well. Mr Sasu referred to looking up to her and Mr Smith nominated her for the Jack Petchey Achievement Award, which is a prestigious school leadership award - which she was awarded. Mr Yerosimu described the Claimant as inspirational, impactful for students and colleagues and a wonderful colleague.

32. The Claimant undertook a project as part of the NPQSL process. Her sponsor was the Executive Headteacher, Mr Hehir. We were told that this is a leadership programme that senior leaders undertake with the support of their line managers. It allows leaders to compile a dossier to show their leadership skills. The Claimant passed this in 2020.

33. The Claimant described her job to Michala Aylward in the meeting on 21 January as follows: she was timetabled to teach 38 sessions per fortnight, she was in charge of whole school behaviour including monitoring detentions, attendance and attitude. She also line managed 5 Heads of Year, 2 DT teachers, 2 DT technicians and 2 Guidance Managers. Lastly, the Claimant was also in charge of the faith aspect of the school, which means liaising with the local parish Church to arrange events.

34. During the first national lockdown in 2020 related to Covid-19, the Claimant oversaw the wellbeing calls for all the students at the school. This involved ensuring that all pupils received a call to check how they were doing. Mr Adam Smith, who was also on the SLT, gave evidence of doing this work with the Claimant. Upon the return to school in the summer, once restrictions changed, the pupils were placed into year bubbles with staggered timings for the day.

35. During the national lockdown in the summer of 2020, it is likely that Mr Yerosimu telephoned the Claimant and informed her that the post of Senior Assistant Headteacher, would be removed from the Respondent's structure and that the

Claimant would be an Assistant Headteacher but no longer in an Acting capacity. He told her that she would be line managed by Mr Benzid. Mr Yerosimou told the Claimant that the role of Senior Assistant Headteacher post did not exist within the Trust's structure and that the decision to remove that post from the school had been made to keep the school in line with the rest of the Trust. The Claimant made no complaint about this at the time. The evidence was that Sarah Viccars, the other Acting Senior Assistant Headteacher, also reverted to the role of Assistant Headteacher, around the same time. This took effect in September 2020. She did not revert to the Acting position but to the post of Assistant Head Teacher, which made it permanent.

36. In September 2020, Mr Hehir, made a decision that all Assistant Headteachers would be appraised by Deputy Headteachers. Mr Benzid was the Claimant's line manager, a Deputy Headteacher, and the person with oversight on behaviour; (page 368) so it was appropriate that he conducted the Claimant's appraisal which was called a PMR (Performance Management Report).

37. The Respondent's PMR was part of the Respondent's performance management process. First, at the beginning of the academic year objectives would be agreed and would then be looked at against performance, at the end of the year. We referred above to the targets set for the Claimant by Mr Yerosimou at the start of the year. The PMR process at the end of the year would usually begin with the employee doing a self-review in writing, which would then be confirmed by their manager. The Claimant considered that she had met the objectives she had been set. On 29 September, Mr Benzid, as the Claimant's line manager with oversight on behaviour; met with her to conduct a review of her performance. The targets set by Mr Yerosimou in October 2019 do not appear in the document beginning on page 90, although the objectives are the same. In the box for a summary of performance, Mr Benzid wrote the following: *'Eposi has work tirelessly this academic year, she has supported and led the HOY and ensured the behaviour/attitude across the school has continued to improve'.* Mr Benzid had no difficulty in confirming that she had met her targets and passed her PMR.

38. Mr Benzid told us that in assessing the Claimant's performance he was aware that the Claimant had worked hard doing all the actions and putting in place the procedures for addressing behaviour issues in the school, as she had been asked to. Although Behaviour continued to be an issue in the school, he considered that this was not solely the Claimant's fault as it was due to other factors, such as legacy issues in the school as historically, behaviour expectations had been quite low. It was also because of disruption caused by the pandemic, which had a number of difficult management factors such as: - children being taught in bubbles, kept in classrooms rather than allowed to go out into the playground, and having extended periods away from school. For all those reasons he considered decision was that the Claimant had passed her PMR. He graded her as having met objectives 1 and 2, and partially meeting objective 3. The Claimant agreed with that grading.

39. Mr Benzid decided on the Claimant's grading and spoke to her about it, before he spoke to Stephen Hehir about it. As the Executive Headteacher with responsibility for this school, Mr Hehir had final oversight over the PMR process. Mr Benzid met with Mr Hehir after his meeting with the Claimant. Mr Hehir did not agree that the Claimant had passed her PMR. His position was that as the issue of Behaviour was still a serious issue in the school, she should not be graded as having passed her PMR. He directed Mr Benzid to meet with the Claimant again and to inform the Claimant that she had failed her PMR. Mr Benzid's live evidence to the Tribunal was that he now appreciates that what Mr Hehir instructed him to do was not right but at the time, he felt that he could not argue with Mr Hehir as he was the Executive Headteacher and had many years of experience over him. Mr Benzid took the opportunity in the hearing to apologise to the Claimant for following Mr Hehir's direction and stated that he would not do so now.

40. At the end of the day on Friday 23 October 2020, which was the last day of school before the start of the October half-term, Ms Carolyn Welch, the Respondent's HR lead, was called into a meeting with the Claimant and Mr Benzid. Mr Benzid's intention was to tell the Claimant in this meeting that she had in fact failed her PMR. Just before the meeting, Mr Benzid told Ms Welch what he was planning to do. She expressed her concerns about it. She was concerned that the Claimant had not been given the opportunity to have support with her at this meeting. She was also concerned that she had not been provided with evidence as to why the Respondent had decided to change the grading. Her evidence to us was that no one had ever approached her to share concerns about the Claimant's performance, prior to this meeting. In addition, the Claimant had not been given any notice of the meeting and would not have been expecting it. As far as the Claimant was concerned, the PMR process was finished. Ms Welch's recollection was that Mr Benzid did not have any evidence with him, which showed that the Claimant had failed her PMR and that she had not been given copies of the papers that he had with him.

41. The Claimant attended the meeting with Mr Benzid and Ms Welch. In the meeting, Mr Benzid told the Claimant that she had in fact failed her PMR. He was uncomfortable in doing so and clearly had not prepared what he was going to say to the Claimant. The Claimant asked for evidence of her failures, but Mr Benzid was unable to refer to anything.

42. In the meeting, the Claimant was given a letter, which she wrote on. It is likely that the letter stated that she had failed her PMR because behaviour had not improved in the school and because of a failure in leadership. The Claimant refused to take the letter and gave it back. At the meeting, it is likely that it was decided that Mr Benzid would go away and review the letter, find evidence for the position that she had not passed her PMR and present it to her at a resumed meeting, after the half-term break. Later, after the meeting, the Claimant asked Ms Welch for a copy of the letter. Ms Welch was unable to locate the same letter shown to the Claimant in the meeting. She had not drafted it and did not have it in her records. She suggested that the Claimant ask Mr Benzid for a copy.

43. Eventually, Ms Welch provided the Claimant with a copy of a letter, but the Claimant disputed that it was a copy of the original that had been given to her on the day. It is likely that the letter was amended after the meeting. The email at 418 confirms that the Claimant asked Ms Welch for a copy of the letter, and that Mr Benzid checked the contents of the letter with Mr Yerosimu and enquired whether it was correct, before sending it to the Claimant. Mr Yerosimu did not have sign off of the PMR process but at this time he was Head of School and Mr Benzid's line manager.

44. In the letter on page 93, the reasons for the unsuccessful PMR was stated as follows: *'the reasons behind this decision are linked to appraisal outcomes that have not been met in relation to our expectation of your leadership relevant to pay grade. These have been discussed with you and which you agree with. We will continue to monitor the situation closely in line with the trust performance management and appraisal system'*. The Claimant did not agree with the revised PMR grading.

45. There were clearly haphazard HR systems at the Respondent and Ms Welch stated that this was one of the reasons for her resignation. We find that the other Assistant Head Teacher, Sarah Viccars, had responsibility for personal development. She had a PMR around the same time as the Claimant. Her line manager was Vincent Omilli, the other Deputy Headteacher. He met with her around the end of September and informed her that she had passed her PMR.

46. On 21 October 2020, Mr Omilli met with Ms Viccars again, with Ms Welch present and informed her that she had in fact, failed her PMR. This was due to instructions from Mr Hehir. It is likely that Mr Hehir instructed Mr Omilli to do so because he believed that she had not exhibited the leadership skills expected from someone in her post. It is not clear what that was based on as the school was doing better in her area of responsibility – personal development – than it had before. The following day the Respondent wrote to Ms Viccars to advise her that she was not going to progress up the pay scale and the reason was linked to appraisal outcomes that have not been met in relation to the Respondent's expectation of her leadership relevant to pay grade. The letter stated that the Respondent would continue to monitor the situation closely in line with the Trust's performance management and appraisal system.

47. Mr Hehir met with Ms Viccars sometime in the New Year to inform her that he had changed his mind about her PMR and that she had in fact passed. In the letter sent to her in February, Mr Hehir confirmed that as the temporary secondment had ended on 31 August 2020, her current role was Assistant Head and that her leadership points were at 15. This was the same as the Claimant.

48. When we heard evidence in November 2022, we discussed the PMR process and in particular, Ms Viccars' process. It is likely that Ms Viccars was told about the evidence that had been given in Tribunal. She wrote to the Tribunal on the following day, to dispute the veracity of that evidence. She agreed that she had initially been told that she had passed her PMR, and that Mr Hehir had subsequently refused to

sign off on it. However, she believed that the reason for his decision not to approve Mr Omilli's decision that she had passed her PMR was not the reason Ms Welch gave us in her witness statement and in live evidence. Ms Viccars wanted to come to the Tribunal to give live evidence on this matter.

49. After consideration of representations from both parties, the Tribunal decided not to allow Ms Viccars to give evidence about the reason why she was told that she had failed her PMR, after having initially been told that she had passed. The reason why she had been told that she had failed her PMR, was not an issue that we had to decide in this case. We were not hearing Ms Viccars' complaint to the Employment Tribunal. The parties were agreed on the relevant facts, which were that Ms Viccars had initially been told that she had passed her PMR, then in October she was told that she had failed it and subsequently, probably after the half-term break, she was told that she had in fact, passed it. We therefore gave less weight to the contents of her letter to the Tribunal, in comparison to the tested evidence we had from the Claimant, Mr Omilli and Ms Welch, the last two of whom had been directly involved in her PMR process.

50. On 31 October, during the half-term break, the Claimant wrote a letter to Mr Hehir which she sent to him on 1 November 2020. In this long letter the Claimant set out her feelings about how she had been treated by the Respondent. She stated that she considered that she had been subjected to unfair treatment in a number of respects. The Respondent has conceded that this is a protected act for the purposes of the Equality Act. In the letter she referred to her confidence being crushed, feeling discontented, and like she had been persecuted/discriminated upon and prejudged even before she did anything. She described suffering from anxiety and palpitations following the meeting with Mr Benzid on 23 October.

51. She also addressed her feelings after being told that the reason for the failed PMR was because behaviour in the school had not improved, under her management. She highlighted that both her and Sarah, 9who we assume was Sarah Viccars), had previously pointed out to the Respondent that SLT members sitting in offices was not helpful to addressing the behaviour issues in the school. This was especially so of the deputy headteachers – who at the time were Mr Omilli and Mr Benzid. She felt that she was not listened to whenever she raised issues or had suggestions for behaviour and workload. She raised other issues such as there not being enough INSET training for staff on behaviour, her workload, and a heavy teaching timetable that did not allow enough time for her to get out and about in the school to monitor pupils' attitude to learning. She also complained about there being no behaviour support room despite several requests prior to the start of the new academic year.

52. The Claimant stated that just like Teaching and Learning, behaviour was a collective process that involved the whole school and not one person's agenda.

53. We find that during the half-term break, Mr Yerosimou spoke to Mr Hehir and they decided that the Claimant had in fact passed her PMR.

54. Mr Hehir met with the Claimant on either 2 or 3 November, once they were back to school from half-term break. Mr Hehir admitted to the Claimant that he had made a mistake and that she had in fact passed her PMR. Another HR and management failing was that Mr Benzid was not told of this meeting. In her evidence, the Claimant stated that she remembered that Mr Hehir apologised to her for failing her PMR but that he did not explain why this had happened. The Claimant was very upset by the way the whole PMR process had been handled by the Respondent.

55. Following the Respondent's confirmation that the Claimant had passed her PMR, the Claimant was invited to meet with Mr Hehir and Mr Yerosimu. We find that it likely that there was a meeting on or around 6 November in which the Claimant was informed that Mr Hehir and Mr Yerosimou had decided that having one person responsible for behaviour across the school was not working and that leaving her with that responsibility could be seen as setting her up to fail. She was told that the Respondent had decided that behaviour needed to be a focus for all SLT and not just one member of staff. The Claimant was told that she would continue to be a member of SLT, which meant that along with the other members, she would continue to have behaviour within her remit, but it would no longer be her sole responsibility.

56. We find it likely that in the meeting, Mr Yerosimou and Mr Hehir explained to the Claimant, the rationale for changing the way in which the Respondent dealt with behaviour and who would be responsible for pupils' behaviour from then on. The Claimant's managers appreciated her hard work in this area and included her in these discussions, rather than just informing her that this was what was going to happen. We heard from her witnesses that she was the only member of SLT who would be seen in the corridors taking up behaviour issues with pupils. In her letter to Mr Hehir over the half-term weekend, the Claimant had raised that other members of SLT needed to come out of their rooms and be seen to be addressing behaviour issues with pupils. She also stated in the letter that there was too much work for one person, especially with a full teaching workload. It is likely that in their discussions prior to this meeting, Mr Yerosimou and Mr Hehir decided that it was time for the school to organise the work on behaviour in a different way. We find it likely that all of this was explained to the Claimant in this meeting.

57. As part of the explanation, Mr Hehir said that if the school did the alternative, which was to maintain the status quo, with the Claimant being solely responsible for behaviour, it was likely that the targets related to behaviour would be unachievable, which could adversely affect her PMR. The Claimant recalled this as a threat, but we find it likely that the Respondent was acknowledging that the present way of dealing with behaviour was not working – not because of the Claimant – but because of a number of factors; and that a new approach was required. The Claimant had made similar points in her letter of 23 October viz. – that behaviour cannot be one person's agenda, that it needed to be a collaborative process and that the rest of the school needed to take ownership of behaviour. In the letter, the Claimant concluded that behaviour could not continue to be one person's responsibility. She acknowledged

that it was a bigger issue and not something that one person could successfully do on their own.

58. At the end of the meeting, Mr Yerosimu and Mr Hehir told the Claimant that she should work with Mr Benzid to plan and deliver training to members of SLT on the work that she had done/created on behaviour in the school so that they could all take ownership of it. The Claimant agreed. We find it likely that after that meeting, Mr Benzid meet weekly with the Claimant and worked with her to devise some training for staff on behaviour and on the policies and practices that she had devised and had been using with Heads of Year and the other staff for whom she was responsible. This ended up being a 6-week programme of continuing professional development for all SLT, which focused on behaviour.

59. The Claimant was not subjected to performance management or on any support plan or monitored. There were never any monitoring meetings with the Claimant.

60. We find it likely that on taking over the Claimant's line management in September 2020, probably around the time that he became her line manager, Mr Benzid took oversight of behaviour at the school. (page 368) The Respondent considered that expectations of behaviour at the school had been too low in the past, the Trust wanted its status within the organisation to be elevated. This resulted in Mr Benzid, as Deputy Head being given oversight for behaviour and attitude. This was while the Claimant had the practical remit of behaviour, including the responsibility for data collection and reports on the numbers of actions taken to curb disruptive behaviour such as detentions, suspensions and exclusions. These actions implemented on a scale of importance and so whereas only the Executive Headteacher could sanction an exclusion, Mr Benzid could sanction a suspension and individual teachers could give detention. All the information and figures the Claimant gathered were shared with Mr Benzid.

61. As the Claimant's line manager and the Deputy Head overseeing behaviour, it was appropriate that when the Respondent made the decision to move behaviour from being the responsibility of one person to that of everyone in the SLT, Mr Benzid was the person who worked with the Claimant on setting up the training for them.

62. It was also in this meeting that Mr Yerosimu told the Claimant that she would be taking over Achievement and PiXL for the whole school. Although the Claimant described this as a *'non-job'*, we find it likely that the job may have included the topics listed under Lee Perry's name on page 370. Mr Perry was also an Assistant Headteacher and in September 2020 was the teacher responsible for PiXL Strategy for Achievement. Within that heading were the following subheadings: - '*PiXL Strategy for achievement, Progress meetings with subject leads, Intervention for Year 7 low ability learners, Oversight of DofE, Aspiration Programmes Year 10/11, Study Leave Year 11 and Year 11 Raising Achievement Group Agenda and Actions (twice per half-term)'*. In the meeting the Claimant gave the impression that she was ready to get into this work. The Claimant made it clear in the meeting that she was not happy with

Mr Benzid's style of management, but that she was professional and would agree to continue to work with him.

63. In her evidence to us the Claimant stated that this job never materialised. She prepared a plan and sent it to Mr Omilli in March. There was no response to this.

64. It is likely that there was another meeting on 17 November, attended by the Claimant, the Heads of Year and Mr Yerosimu. In his witness statement, Mr Yerosimou denied that he made a public announcement in that meeting regarding the Claimant's roles and responsibilities. However, in his live evidence, he agreed that he needed to let Heads of Year (HOY) know that there were changes in leadership happening as they were going to be directly affected by this particular change. Although he did not agree with the Claimant's label of '*subordinate'*, he did agree that those who reported to her would have had to know what was happening in leadership as it directly affected them. The Claimant felt humiliated by this although she agreed that roles regularly shift within the SLT.

65. It is likely that the Claimant believed that she would remain solely responsible for behaviour until the end of term. On or around 3 December 2020, she saw a flyer from Ms Viccars and Ms Anne-Marie Petrou, in which they were offering some training related to behaviour. She was concerned that she knew nothing about it and had not been involved. Mr Yerosimou described it as a CPD training session offered to tutors in the Year 7 team. There was an issue of children becoming restless in the afternoon, after having been in the same room all day due to having to be kept in bubbles. The CPD training was of strategies to make the afternoon sessions more engaging and therefore hopefully improve behaviour. He told the Claimant that he was pleased that they had been '*proactive'* and reassured her that there was nothing to worry about. It is likely that he felt that this was in keeping with the discussions they had in the November meetings that behaviour was no longer only the Claimant's responsibility.

66. On 8 January 2021, John Blaney, the Trust's Assistant CEO met with the Claimant to discuss a grievance brought by a junior member of staff, Ms Hinds. Ms Hinds was black. The complaint included allegations about treatment of staff by the Head of School and the Claimant had been suggested as someone who had relevant information that may support the complaint. The Claimant talked with Mr Blaney about her own concerns. She told him that she had been having palpitations at work due to stress and that she had recently had a difficult few months. She recalled saying to Ms Hinds that they were *'trying to get rid of her'*. It is likely that the Claimant was recalling a brief conversation she had with Ms Hinds after she returned to school from half-term break, around November 2020. The Claimant told Mr Blaney about the PMR process and the meetings she had had with Mr Hehir, Mr Yerosimou and Mr Benzid. She felt that she had been put on weekly monitoring which she felt was more like being put on capability. She had refused to accept it and told him that the plan was never started because *'Mr Hehir would not let it happen'*. She told Mr Blaney that she felt that there had been an agenda to remove her from managing behaviour and to give this to Mr Benzid. At the same time, she confirmed to Mr Blaney that she had told Mr Hehir in

her letter of complaint that *'no one person can single handedly make behaviour improve in a school'* and that '*improving behaviour was a joint venture and had to be approached as a team'*. She confirmed that she was working with Mr Hehir to move things forward. Mr Blaney advised the Claimant that given the issues she raised with him she had the right to put in a grievance to the Respondent.

67. On 13 January, the Trust reached out to the Claimant, following up the information she gave Mr Blaney about her own concerns. The Claimant was invited to a meeting with Michala Aylward, Director of HR to discuss those concerns.

Micromanagement

68. In December 2020, Mr Benzid stopped being the Claimant's line manager. The Claimant did not ask for him to be removed from being her line manager but as he was one of the persons complained about in her complaint of 1 November, the Respondent decided to move him. Vincent Omilli became her line manager. Mr Omilli became a Deputy Head in September 2019. His evidence to us what that he still felt quite new in the role by February 2021. This was complicated even further by the changes necessitated by the Covid-19 pandemic. He told us that he asked all staff to copy him into their communications.

69. On 1 February 2021, the Claimant issued an email to all staff concerning registration of pupils. However, it is likely that the SLT had issued guidance that line managers should review '*All Staff'* emails before they were sent out. The Respondent was concerned that as another lockdown was put in place and the school was operating mostly by remote learning, SLT needed to manage the number of emails being sent between members of staff. The SLT wanted to get some sort of order and uniformity to the emails as there was a risk of duplication and of contradictory messages being sent out. Furthermore, the Claimant's email contained an error on the Code to be used to record absence/lateness.

70. Mr Omilli, asked the Claimant via WhatsApp to recall the email and to correct the code for late attendance, which was in the letter. The Claimant replied to say that she had never had her emails checked before and that *'if this is the new norm for all my emails please let me know'*. Mr Omilli was clear in his response that all managers were being '*micromanaged'*. He added '*we all make mistakes, no need to apologise'.* He also stated *'we will say that you sent me the email first to check'* so that if there was any fall out from it, he would be held responsible for the error.

71. The Claimant did not agree that there had been an email to say that emails had to be checked before being sent out. Mr Omilli's evidence to us was that it may have been part of a virtual briefing to senior leaders, which the Claimant may not have appreciated.

72. Mr Omilli explained that during lockdown the school was trying to control the number of emails going out to *All Staff.* He stated that historically, he had asked his reports to share emails with him first. We saw emails from two other of Mr Omilli's

direct reports, which were copied to him. One was from a white male teacher, who was also an Assistant Headteacher and the other was from a white woman with Turkish-Cypriot heritage.

73. We find that prior to becoming her line manager, the Claimant and Mr Omilli had a good working relationship. Some of the WhatsApp messages between them were in French.

74. We were shown an email dated 11 May 2022 from Mr Omilli to another of his direct reports in which he reminded that person that they should always wear their high vis while on duty and be punctual to his duty. Mr Omilli would usually tackle these issues head-on with his direct reports.

Grievance

75. The Claimant lodged her first formal grievance against the Respondent on 19 January 2021. In it she complained about '*Discrimination, Nepotism and Persecution'.* She sought the following redress - to be reinstated to the senior assistant head role *'with wider SLT input'* plus *'the right of equal treatment of all – not just family and friends'.* She stated that she did not feel comfortable working with Mr Benzid and Mr Yerosimou as she did not trust them and thought that they would find a way to get back at her by using other people.

76. The Claimant had a meeting with Michala Aylward, Director of HR, on 21 January. Ms Aylward was conducting an investigation into the Claimant's grievance. By that time, Ms Aylward had seen the written grievance, which the Claimant submitted. Following the submission of her written grievance, the Claimant had also submitted what she considered to be supporting documents, including emails, to Ms Aylward for her consideration. On 21 January, at the meeting, the Claimant outlined all her grievances with Mr Yerosimou and with Mr Benzid. We had the notes of that meeting and of the subsequent meetings with Mr Benzid, Ms Petrou, Mr Hehir and Mr Yerosimou, on 28 January.

77. Ms Aylward did not decide on the grievance or make any recommendations. She saw her role as conducting the investigation and presenting a report to a senior member of the Trust, who would use it as a basis from which they would decide on whether or not to uphold the grievance.

78. At the end of the investigation, Ms Aylward concluded that in relation to the first allegation which was about the removal of the Acting Senior Assistant Head role; that there was insufficient evidence to determine whether there was a case to answer. She noted that there was no one else with that title in the other schools in the Trust. She noted that the communication regarding the change/removal of the title could have been better. What happened could be regarded by the Claimant's colleagues as a demotion and therefore, affecting the Claimant's professional identity. In respect of the second allegation which was that behaviour had been removed from the

Claimant's remit as an act of persecution, she concluded that there was insufficient evidence to support the allegation of persecution. She also concluded that although the Respondent explained the reasons for the changes, they did not convince the Claimant and that the fact that the changes coincided with her being told that she had failed her PMR would have likely contributed to her feelings of dejection. In relation to the third allegation of nepotism, Ms Aylward outlined the relationships at the school between Mr Yerosimou and others but stated that the Claimant had not provided sufficient evidence from which she could conclude that there had been nepotism.

79. The Claimant declined the offer of a grievance resolution meeting. Sophie Laing, the Respondent's Assistant CEO invited the Claimant to a formal meeting to discuss the grievance and the investigation report produced by Ms Aylward. The meeting was scheduled for 18 March. That meeting was adjourned to give the Claimant the opportunity to read the grievance investigation report and appendices. The meeting resumed on 23 March 2021. The Claimant attended with her trade union representative.

80. The grievance was not upheld apart from one point related to the performance management review process, which was partially upheld. In her decision letter, Ms Laing said that "*Going forward the Trust will ensure all staff members are fully informed of the correct appraisal processes and any training gaps identified are rectified. Alongside this I will recommend to the Assistant CEO with oversight of Epping St John's and Head of School to carry out a review of communication channels and how we can make this process more effective and robust."*

81. On 9 April 2021, the Claimant appealed the grievance decision, and an appeal hearing took place on 6 May 2021, which was adjourned and continued on 13 May 2021. The Claimant appealed on the basis that she did not agree that the outcome covered the three areas of her grievance – discrimination, nepotism and persecution; that there had been insufficient investigation carried out and that the outcome did not take into account what she considered to be the lack of regard for her mental and physical health and wellbeing. She felt that she had been continuously humiliated and discriminated against, even while pursuing the grievance. The Claimant also submitted additional evidence but as the appeal panel were only concerned with whether the original grievance had been properly done, it was not considered. The grievance appeal panel was comprised of Mike Ford, Chief Financial officer of the Trust, Ms L Glynn, the Trust's Head of Operations and chaired by Helena Mills, the Respondent's CEO.

82. The panel agreed that there had been insufficient investigation into how and why the error with the PMR process had occurred and little enquiry into whether the failure to follow procedure demonstrated persecution. The panel decided that that there was insufficient evidence to reach a conclusion on this point but that this was an issue of procedure as the final decision on the PMR process lay with the Assistant CEO, Mr Hehir.

83. Ms Mills confirmed in her evidence that there had been a lot of hearsay about the appointments of staff in the school, which she believed led the Claimant to believe that there was nepotism in the school and to make a complaint about it. A number of staff members were either related to or connected in some way to the Yerosimou family. However, she was clear that the recruitment decisions had not been made by the Head of School.

84. The panel recommended that there should be a comprehensive investigation into the examples of discrimination, nepotism and persecution that the Claimant had provided that had not been addressed in the initial investigation. That investigation concluded sometime later and found no evidence of discrimination at the school.

85. The panel's decision was communicated to the Claimant on 20 May 2021. It agreed with the original decision that the grievance should be partially upheld because of the Respondent's failure to correctly follow its (PMR) performance management review process.

86. On 29 June, Mrs Mills wrote to the Claimant and offered her a job. She was in a position to do so as she was the Respondent's CEO. She offered the Claimant the position of an Assistant Headteacher, which was the same role she performed at her present school, with the same terms and conditions of employment, at a new school, which was also in the Trust. This was a brand-new school, which so far had only one or two year groups; year 7 and year 8. It was called Sir Francis Gibberd College. The Claimant would have had to teach French, which was not her main subject although she had taught it in the past.

87. The Claimant was also told that by bringing her grievance, she had raised issues that caused the Respondent to change some procedures within the Trust. Ms Mills spoke to the Claimant's trade union representative before she offered the Claimant the role.

88. The Claimant decided to refuse the role and instead, go to ACAS to begin the conciliation process.

89. In an email to Ms Mills on 29 July, the Claimant rejected the job offer. She stated that she was doing so because it would have effectively been a demotion because the offer would have meant being a Head of Year when that was a post she had held many years before and had progressed to managing Heads of Year. The Claimant saw this job offer as a step backwards for her. It was not clear to us how that could be considered a demotion as she would have been an Assistant Headteacher, which was the post she held at Epping St John's. Ms Ms Mills' evidence was that this was a new school where the Claimant would have had the opportunity to regain her health and her confidence. We were not told whether she would have been required to give up her grievances as part of accepting the role. The Claimant did not make any counterproposal but instead, refused it and decided that she wanted to remain at Epping and continue to deal with the grievances and other issues.

Incident on 10 March

90. Historically, there would be only member of staff on break duty at a time. During Covid-19 and from the period when the students returned to school after the initial lockdown, this was changed so that two members of staff would be on break and lunch duty because pupils had to be kept in bubbles while on break and separate while they queued up to return to their classrooms.

91. According to Mr Omilli's evidence, the members of staff on break duty had to supervise the students to ensure that they are safe, well behaved, not littering, and keeping their physical activity to walking or playing but no ball games. It also involved monitoring who was going in and out of the building to stop students going inside during breaks. At every break and lunchtime there was a lead person nominated to ensure that all staff are meant to be on duty where they should be and be there on time. The Respondent drew up a rota. Mr Omilli was monitoring staff to ensure that they were on duty in keeping with the rota and to ensure that the children's safeguarding needs were being met. It was unlikely that he monitored every single break, every day but he was clearly keeping an eye on it.

92. On 10 March, the Claimant was on duty with Lee on a part of the school grounds referred to as the MUGA. The rota showed that they should both have been on duty during break time and lunch time. Mr Omilli's evidence was that at the time, he would walk around the school site to make sure that each member of staff from the list is where they are expected to be. On that day, when he came by, he noticed that the Claimant was not on duty.

93. The Claimant accepted that she was not there at the time that Mr Omilli came past. The Claimant had started supervising break time but before it ended, she told the other teacher, Lee, that she was going to the toilet. She also got a piece of fruit because she thought she was unlikely to have time for lunch as she had lessons on both sides of the break. It is likely that she was away from her spot for about 10 minutes.

94. At 1.30pm Mr Omilli emailed the Claimant to say that as she was not on duty when he came past, he stood in for her. The Claimant responded and told him that she had asked Lee to cover for her so that she could get something to eat because she had been teaching a lesson before break and would be teaching another afterwards.

95. In his response, Mr Omilli told her that she should have spoken to the duty checkers, who at the time were either him or Mr Benzid; rather than Lee, because Lee could not cover for her as he was himself also on duty at that time. He also raised that Lee should not have been left on his own with the whole year group. The Claimant was reminded that the safeguarding of the students was equally as important as the fact that she needed to get something to eat.

96. The Claimant was unhappy with this response. She felt that it was not fair to refer to safeguarding as she was well aware of her responsibilities in that regard and that she was not away from the duty for a long time as she also needed to use the toilet. She opined that in future, a teacher's teaching timetable should be considered when deciding who should be on the rota so that they have time to use the toilet and get something to drink in between lessons. Mr Omilli responded to repeat his solution which was that the Claimant to inform the duty checkers if there was an issue so that they could arrange to cover the start or end of the duty so that she could get a comfort break. He did not say that she could not have a break. His instruction was that she tell him or Mr Benzid if she needed a break so that they can arrange cover, rather than telling the person who shares the slot on the rota because then they would not be able to cover for her. The Claimant took this to mean that the Respondent was saying that she could not take a break. In their continuing correspondence on this issue, the Claimant stated that there were other teachers around when she stepped out but agreed that she should have spoken to Mr Omilli rather than Lee before leaving her duty.

97. It is likely that although she agreed, this incident still rankled with the Claimant as on the following day, she sent that day's rota to Mr Omilli and asked why it was okay for three teachers to be on the duty slot on their own during lunch for Years 7, 8 and 10 but it was not okay for her to leave her place to use the toilet and pick up a snack. She reiterated that she had told Lee where she was going and that as far as she knew, he had explained this Mr Omilli when he was asked for her whereabouts. Mr Omilli responded to thank the Claimant for continuing to put the students first. He had already stated in an earlier exchange that it might be better for them to talk about this in person rather than continue through emails.

98. The Claimant felt that he had not answered her questions about school policy and if this had changed, so she referred the discussion to Mr Hehir in a letter of complaint dated 15 March (156).

99. In his live evidence, Mr Omilli confirmed that the Claimant had not been told that she could not have a break, but that staff should let SLT know if they are not able to do their duty or would be away from it for any period. He did not expect the Claimant to have to divulge personal, private information such as being on her period, before she could take a break or step away from break duty for a short while. He explained also that two members of staff were specifically scheduled to supervise breaks with Years 7 and 10 to ensure a smooth transition back to school after one of the Covid-19 lockdowns. Both Year groups needed more supervision as they were on the same playground – but at different sides – at the same time.

100. In the email to Mr Hehir, the Claimant complained that she had been on duty with two colleagues, Sarah and Serife on different days, and that they both asked her if they could go and collect lunch or to go to the toilet and that she had agreed. Mr Omilli had not checked on them while they were away from their posts. The Claimant had not reported this to the SLT until this email. Clearly, those two teachers

considered that all they needed to do if they wanted to go to the toilet/pick up their lunch, while on break duty, was to get agreement from the other person sharing the duty. As far as the Claimant was aware, neither of them sought out Mr Omilli or Mr Benzid to ask their permission. Mr Omilli did not come past when they were away from their posts.

101. We saw an email that Mr Omilli sent to Laura O'Boyle, a white teacher, in which he took her to task for not arriving on time to her duty spot. He advised that in future she should set herself a reminder on her Office 365 calendar. He also told her that it was *"important that duties are attended on time by all in order to supervise students and not leave us opened to incidents, littering or poor behaviour".*

102. On 12 September, Mr Omilli sent an email to another teacher, Alex Bitis in which he reprimanded him for not being on duty on the patio at the start of break. He told him that he should remember to attend duty and that *"it's a safeguarding requirement for students".*

Office move

103. On 19 March 2021 the Respondent circulated a new office plan, with a view to everyone moving to their new rooms on 12 April. Mr Yerosimou's evidence was that there is usually a reshuffle of offices every year. Mr Benzid's evidence was that offices were reshuffled due to logistical reasons such as where there was a large office with only two people sharing, moves were required so that the room could instead be occupied by four people. Staff was also moved where their roles and responsibilities had changed. The plan as to where people's offices were situated was dictated by agreement between the Deputy Head, the Head and the Head of HR coming up with a plan. In the Claimant's case, the Respondent wanted her to move near to the Maths Department so she could focus on Achievement and Rewards, which was now her area of focus. Year 11 Maths was a concern at the time. Staff were asked to move nearer to those they line managed and to be as close as possible to their department areas. The Claimant was to move out of the pastoral area as she was no longer the main person addressing behaviour issues in the school.

104. The Claimant had been in an office near to the Heads of Year as she had been their line manager, when she was in charge of behaviour. It is likely that the Claimant found it difficult to accept the change and was resistant to move. On 24 March she emailed Mr Benzid and stated that as another teacher, Sarah Montgomery had refused to move to her room, she would like to remain where she was. Mr Benzid insisted that the Claimant should move so that she could be with her faculty. The Claimant stated that the tables in her new room were '*unsafe'*. Mr Benzid agreed that one of the tables was wobbling. He agreed to contact the site team to ensure that the desks in the room were made safe. The Claimant, as an Assistant Head, also had the authority to speak to the site team and ask them to repair any furniture in the room that needed attention.

105. It is likely that the Respondent would sometimes get some push back from members of staff who are asked to move offices in the yearly reshuffle of offices. The Respondent considered that the Claimant should move nearer to the Math department and Mr Yerosimou got involved to ensure that she did. He emailed the Claimant on 25 March to clarify the process for getting any issues with furniture or anything else in the new office resolved, so that they can get on with the move. He informed the Claimant that he was content for Mr Benzid to chase up the site team on her behalf but that he would usually expect the person moving into the room to do it as then they can describe *'their precise requirements'*.

106. It is likely that in sending the Claimant this email, Mr Yerosimou was trying to reiterate to the Claimant what the Respondent wanted done and the process for doing so. She complained to Mr Hehir that Mr Yerosimou should not have got involved.

107. After the tables were repaired, the Claimant still did not want to move.

108. Mr Benzid's evidence was that Sarah Montgomery was the Designated Safeguarding Lead of the school and she needed to be in an office with privacy, due to the number of issues she had to deal with. It is likely that she did not move rooms. The Claimant also never moved rooms.

The Claimant's health

109. The Claimant went off sick from work with stress related illness on 24 May 2021. The Claimant was signed off for 3 weeks, until 14 June.

110. The Claimant was referred to Occupational Health (OH). On 26 May she had a telephone appointment with OH who advised the Respondent to undertake an individual risk assessment in consultation with the Claimant to identify her workplace stressors and implement appropriate control strategies. The Respondent was also advised that it was likely that the workplace stressors would continue until that assessment was done and adjustments put in place. Specifically, the Respondent was advised that the Claimant would benefit from being relieved of the task of collecting students from line up in the morning and from covering lessons, for a period of four weeks. The Respondent was advised that the Equality Act was unlikely to apply at that time. OH believed that a resolution to her issues at work would have a positive impact on the Claimant's health and wellbeing.

111. The Claimant was off with anxiety and depression, up to 3 September 2021. The sick notes referred to the Claimant being ill with mixed anxiety and depressive disorder.

112. On 2nd September the Claimant's GP gave her a fit note, which indicated that she could return to work with altered hours and amended duties i.e., leaving work at lunch time and not doing any cover duties. The Claimant returned to work on or around 13 September 2021.

113. On 30th September, the Claimant's GP indicated that she was fit to return to work on altered hours, amended hours and workplace adaptations (no duties or cover, finishing at lunchtimes, having a technicians). This covered a period of three weeks. The bundle also included another fit note issued on the same day saying that the Claimant was not fit to return to work until 1 October 2021.

114. The C provided a Self Certificate/Return to work Form on 4th October, which acknowledged that the Stage 1 meeting with respect to her sickness absence had been triggered. A meeting was arranged for 1st November.

115. Before the Stage 1 meeting happened, Mr Blaney, who became Executive Headteacher of the school after Mr Hehir was asked to leave, approached Ms Pampolina to ask for an update on the Claimant's health and absences. As he knew that the Claimant had been off sick for periods of time that year, he simply assumed that the Stage 1 meeting had already happened, and he wanted to move to Stage 2 of the Respondent's Absence Management process. Ms Pampolina advised him that the Respondent had to follow the process and start with Stage 1. Ms Pampolina advised him that they had to go through all the stages of the procedure.

116. Throughout the Claimant's illhealth Ms Pampolina or someone else from the Respondent conducted weekly well-being calls with her. She was also invited to use the Respondent's Employee Assistance Program.

117. The Claimant provided the Respondent with another fit note dated 29 October. The GP noted that the Claimant was fit to return to work with altered hours and amended duties. These were that she finished her working day by 3pm, with no full day, with 3 lessons or activities and no cover duties. The GP advised that the Claimant should leave at lunch time after food practice days and attend any meetings via Teams. This fit note covered a period of four weeks.

118. The Respondent conducted a stage 1 sickness review meeting with the Claimant on 1 November 2021. That meeting was held in accordance with the Respondent's Managing Sickness Absence policy, which we had in the bundle. The meeting was conducted by Debra McFarlane, who was the Respondent's Office Manager and part of the Respondent's HR team. The purpose of the meeting was recorded as being for the Respondent to get an update on the Claimant's current health, discuss any underlying medical conditions, the level of progress made and the likely duration of anymore absence. The notes of the meeting record that they discussed that the Claimant suffered from severe depression and anxiety but that she was making progress with her physical and mental wellbeing. The meeting noted that the Claimant had been ill between April – May when she could not walk and suffered from severe dizziness and nausea. It was also noted that since her return to work in September, she felt much better but there had been some issues because there was not food technician to support her role. She was upset that she was told on her return to work that she would be meeting with Mr Yerosimou, who she credited as being responsible for her illhealth. The Claimant told Ms McFarlane about a particularly

upsetting incident where she offered to stay behind for an open evening in September but was upset not to have technician support. This caused her to become ill again.

119. Ms McFarlane discussed the Claimant's amended duties and hours. It was agreed that the Respondent would support the Claimant by agreeing to extend the amended duties for another four weeks. The Respondent was prepared to agree to the GPs recommendations – no cover duties, not have a full day of lessons, attend meetings via Teams - apart from the end of the working day. The Claimant was required to be in school until 3pm each school day. The Claimant was expected to commence a full day teaching by the fourth week and a fulltime table including cover, lunch/break duties and in person afterschool meetings by the fifth week. This meeting confirmed that a target of 100% attendance had been set for the following six weeks and that if it was not met, a stage 2 review meeting would be triggered.

120. On 5 November 2021, the Claimant met with Jasmine Pampolina, the Respondent's HR Lead and Office Manager, to discuss further details about her altered hours and duties. The Claimant reported feeling unwell but that she was making every effort to continue to attend work. The Claimant reported that she was experiencing nausea, weakness and loss of appetite. She was also experiencing depression. The Claimant stated that she was managing with her teaching timetable. They discussed the issue with the technician and adjusted the Claimant's timetable to take account of their availability. The Claimant did not want to meet with Mr Yerosimou or with Mr Benzid although she stated that she was happy for him to set her objectives and send them to her. Ms Pampolina set out the Claimant's adjusted timetable for her in an email record of the meeting.

121. The Claimant met with John Blaney, the Respondent's Assistant CEO on 12 November. The meeting was arranged as the Respondent wanted to discuss line management and PMRs with the Claimant. It is likely that this was also a return to work meeting. Mr Blaney stated that the Respondent had to assess the needs of the school and delegate work accordingly. He reiterated that the issue of behaviour management was now a shared responsibility across the teaching team. He told her that the Respondent wanted the Claimant to accept that this was now the situation and to meet with her line manager and/or Head of School to get some clarity on her role from now on. He also said that the Claimant was a senior leader in the school and the Respondent needed her to resume her responsibilities, such as looking at how to reward good behaviour. It is likely that the Respondent held this meeting with the Claimant to find out what support it could give the Claimant and what could be done to assist her in getting back to full health and covering all her duties.

122. Mr Blaney told the Claimant that she was the only member of SLT who did not currently have a line manager or PMR targets. They discussed her line management. He informed her that as the grievance appeals process had ended and her grievance had not been upheld, the Respondent was confirming Mr Benzid as her line manager as there was now no reason why he should not be. The Claimant was very upset by this news and became unwell at this point in the meeting. Ms Pampolina described it

as the Claimant becoming unresponsive and slumping over the desk. The Respondent telephoned her partner, and he came to the school and asked a first aider to assist the Claimant. The minutes noted that she became visibly upset and distressed. The Claimant's GP called her and she was advised to go home. The Claimant wanted to teach her classes scheduled for the rest of the day, but due to how ill she had been in the meeting, she was sent home as it was felt that she was not fit to be in school. The meeting was suspended and the Respondent made sure that the Claimant got home. The Claimant's GP provided another fit note for 15 to 22 November, citing *'anxiety and depressive disorder – stress reaction'* as the reason for her absence from work.

123. On 15 November, Mr Blaney asked Ms Pampolina to write to the Claimant to advise her to stay at home so that she could rest and recover because of how unwell she had been on the previous Friday. In the letter she was also informed that the Respondent had arranged for her to have an appointment with OH on Thursday 18 November. The Respondent advised her to stay at home until she had that appointment and the Respondent had time to consider any guidance/recommendations from the OH doctor or the Claimant's GP.

124. On 18 November, the Claimant attended an online Occupational Health assessment. OH concluded that the Claimant was "*Unfit for full contracted roles/any role"*. OH also advised that the Claimant experienced physical symptoms thought to be caused by an acute stress reaction. The Claimant reported that she was experiencing ongoing symptoms such as nausea and headaches. She felt that a line manager who she believed had discriminated against her was being forced on her. She referred to three individuals who she was '*fearful'* of and that any thoughts of having one-to-ones or being alone with them caused her to panic and have a stress reaction. It is likely that this was a reference to Mr Yerosimou, Mr Benzid and another senior manager.

125. The OH advisor's opinion was also that the Claimant required recovery time and time to regain control over anxiety. The Claimant had been prescribed extra medication for sleep as this had been affected. She continued to experience nausea, headaches and dizziness and the Claimant spoke about her experience of feeling electric shocks in her body, which she had spoken to Mr Blaney about when they met in November. It was the OH advisor's judgment that given the Claimant's ongoing symptoms, she was not fit to be at work but required further time at home for recovery. In terms of any recommendations of helpful adjustments for the Claimant, the advisor recommended that the Respondent should offer the Claimant *"the extra technician support while she is phasing back to work, which could be changed once the other issues are resolved".* OH stated that it did not think that the Claimant's condition came within the ambit of the Equality Act because it was thought that her ill-health would soon resolve and that she would make a full recovery. The Respondent did not receive this OH report until 1 December. In the meantime, the Claimant presented the Respondent with an updated GP fit note for the period 18th to 26 November, which indicates that she remained unfit for work. The reason for her absence was stress, depression and anxiety brought on by work.

126. The next GP fit note the Claimant sent to the Respondent dated 26 November indicated that she was fit to return to work with altered hours and amended duties. It listed the following *"3pm finish, no full day with 3 lessons or activities. No cover duty. Needs review of line management. Will attend meetings via Microsoft teams"*. This certificate was stated to cover a period of four weeks.

127. At the end of November 2021, the Respondent had a GP fit note which stated that the Claimant was fit to return to work and another GP fit note presented a few days earlier which stated that she remained unfit because of stress, depression and anxiety. The Respondent had not yet received the OH report from the appointment on 18 November. Because of the conflicting GP fit notes, Ms Pampolina decided to ask OH to provide an updated report. In the meantime, Ms Pampolina emailed the Claimant on 28th November to confirm that she should stay at home until the Respondent received the updated OH report. In the email she stated *"As outlined in our previous email, we advised you stay off work until we receive your OH report so that we could gain further guidance on how we could best support you in the workplace."*

128. The Claimant's telephone appointment with OH was booked for 30 December. This did not happen as the Claimant did not hear her phone ring. There was clearly a missed call as the Claimant emailed the OH provider and Ms Pampolina to ensure that they were aware that she had missed the call. She stated in an email to Medigold, the OH provider on 30 December that the Respondent needed the report before she would be allowed to return to work at the start of the new term. Ms Pampolina arranged for the OH assessment to be rebooked for 22 January. She informed the Claimant of this, on 1st January. The Claimant stated that her GP would also be in touch with feedback about her health. Nothing further was heard from the Claimant's GP.

129. On 5 January, the Claimant returned to work. This was a surprise to the Respondent. The school was not expecting the Claimant to return that day. Mr Yerosimou had not sent the Claimant an invite to the SLT meeting that day as he was not expecting her to be fit to return to work and there had been no arrangements for a phased return. However, the Claimant had been invited to the inset meeting. Even though the Claimant had been in touch with Ms Pampolina in December and early January, she had not referred to coming back to work on 5 January.

130. The Respondent was waiting for the updated OH report before making arrangements with the Claimant for a phased return. The Claimant was upset to overhear Mr Benzid ask HR why the Claimant was in the building. He was not expecting her to come to work that day. Ms Pampolina took the Claimant in a room and told her that she needed to leave. The Claimant was allowed to check her emails and was then advised to go home. The Claimant was unhappy about this as she felt that Mr Benzid had been disrespectful to her and because she felt that she was ready to work and that being at work was better for her mental health. The Respondent wanted the Claimant to stay at home until it had professional guidance on how to support her in the workplace.

131. Email correspondence between the Claimant and Ms Pampolina on 5 January indicates that the Claimant was keen to work since she felt it was better for her mental health than staying at home. In contrast to her email to Medigold on 30 December, the Claimant stated in her email to Ms Pampolina on 5 January that there was no mention of her not coming in after the failed OH appointment on 30 December. There had not been any return to work date set between the parties. Ms Pampolina reiterated in her response that the Respondent's decision was that the Claimant should stay at home until they had received the OH report.

132. As the Claimant impressed on the Respondent that she was well enough to return to work, Ms Pampolina wrote to the Claimant on the afternoon of 6 January, offering to meet with her at 8.15am on 7 January for a return-to-work meeting. Ms Pampolina intended to also incorporate a risk assessment into that meeting. This meeting did not take place as the Claimant did not see the email in time.

133. The Claimant made a further attempt to return to work on 12 January but was unable to do so because she became unwell that morning.

134. The Claimant returned to work on 24 January, after the OH report was produced. She met with John Blaney on 26 January, where adjustments were discussed. They decided that she would have two weeks with no SLT duties but that she would shadow someone on SLT so that she knew what was expected of her once the phased return ended.

135. A stage 2 sickness absence review meeting happened on 1 April 2022. The Claimant attended a meeting with Mr Benzid and Ms Pampolina attended as notetaker. The notes of the meeting were in the bundle and confirm that the Respondent was aware that the Claimant was suffering from depression and anxiety, which was having an impact on her physical and mental well-being. The Claimant indicated that she wanted to be at work but that certain situations at work triggered her anxiety. The Claimant reported that she was still taking medication for anxiety. The Claimant complained about how feedback had been given to her recently and that it had been done in the presence of her line manager, which made it more formal. Although Mr Benzid agreed that it was unusual, he stated that he wanted to be there for the first observation meeting. He agreed that feedback should have taken place in the classroom and that language about policy should not have been used.

136. The Claimant was set a target of 100% attendance for the next six weeks. The next meeting date of 27 May was agreed and noted in the record of the meeting. Although she was challenged about this in the hearing, at the time the Claimant did not suggest that it was an impossible target or that it was unfair to set that target. The Respondent set the target to ensure that its expectations were consistently applied across the school and to ensure her attendance at work.

137. Ms Pampolina's evidence was that it was not possible to dismiss an employee at Stage 2 of the Respondent's Absence Management procedure although the

member of staff would ned to be advised that if there are any further issues with their attendance, the Respondent may move to Stage 3, which could have dismissal as a possible outcome. Decisions are not made before the meeting with the member of staff. Unfortunately, Ms Pampolina made a mistake and used the wrong letter template to write to the Claimant after this meeting. The letter sent to her stated that she was being given a warning that any future concerns regarding her level of absence may result in further action under the procedure, which could include a recommendation for a Final, Stage 3 Absence Review meeting to consider whether her employment should be terminated. The letter stated that she should take it as a formal written warning, in line with the Trust's Disciplinary Policy that any future concerns regarding her absence could lead to a hearing to consider her dismissal. We find that this was a mistake because it does not accord with the minutes of the meeting. The minutes record that another meeting was fixed for 27 May. There was nothing recorded about a warning. The Claimant confirmed this in her email of 20 April where she stated that *"At the meeting, you never informed me that I will receive a formal written warning for my absence."*

138. The Respondent confirmed that the warning letter that was sent would usually be sent if there was further absence after the Stage 2 meeting. The Claimant was not at that stage yet as this was only the Stage 2 meeting.

139. Once Ms Pampolina became aware of the error, she wrote to the Claimant and sent her the correct letter. The Claimant had been told in the meeting that if she has more absence after the Stage 2 Meeting, there will need to be a further review. It is likely that the letter was sent in error. It clearly distressed the Claimant as can be seen by her email on pages 266 – 268.

140. The issue of the Food and DT technician was a matter that concerned the Claimant. It is likely that after she returned to work after her sick leave, she no longer had a dedicated technician to help her with lessons. Ms Pampolina's evidence was that the Claimant raised this with her in their meetings but that as Food and DT was not as popular after the Covid-19 lockdown, the technician had not been as busy as before and had therefore been given other duties to do, while still being available to assist with Food Tech, as and when it became necessary. The Claimant was not happy with that as she considered that this was done because of her and that it was a reduction in the support given to her. When they met, they agreed to arrange the Claimant's teaching timetable for when the technician would be available.

141. The Claimant issued this claim on 13 August 2021. The Claimant has since issued two further claims. She resigned her employment on 31 May 2023.

Law

142. The Claimant complains of direct race discrimination, indirect sex discrimination and victimisation.

143. The law the Tribunal considered in relation to each complaint in this matter is as follows:

Direct discrimination

144. The Claimant complained of direct discrimination which is prohibited by section 13 of the Equality Act (EA). If, because of a protected characteristic (in this case race), A treats B less favourably than it treats or would treat others, then that is direct discrimination.

145. In this case, the Claimant relied on actual comparators as she compared her treatment to Ms Serife Horner, Naomi van Der Lith, Adam Smith and Sarah Viccars. Ms Horner, Ms van Der Lith and Mr Smith are white British and/or Caucasian. She also relies on a hypothetical comparator.

146. The Claimant identifies as Black Cameroonian.

Indirect Sex Discrimination

147. Section 19 of the Equality Act 2010 refers. It states as follows:

> (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a protected characteristic of B's,
>
> (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if-
>
> a. A applies, or would apply, if to persons with whom B does not share the characteristic,
>
> b. It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
>
> c. It puts, or would put, B at that disadvantage, and
>
> d. A cannot show it to be a proportionate means of achieving a legitimate aim.

Victimisation

148. Section 27 Equality Act 2010

> (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.

(2) The first question for the Tribunal was whether the Claimant did protected acts. The Respondent conceded that the Claimant had done protected acts by raising grievances on 1 November 2020 and 19 January 2021 and by issuing this claim in the employment tribunal.

(3) The Tribunal has to decide whether the Claimant was subjected to any detriment because she did a protected act/s.

Burden of proof in relation to all the discrimination complaints

149. The burden of proving discrimination complaint rests on the employee bringing the complaint. However, it has been recognised that this may well be difficult for an employee who does not hold all the information and evidence that is in the possession of the employer and also because it relies on the drawing of inferences from evidence. The concept of the "shifting burden of proof" was developed to deal with this aspect. This concept is discussed in a number of cases and is set out in section 136 of the Equality Act which states that 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 contravention occurred. If A is able to show that it did not contravene the provision then this would not apply. (See *Igen v Wong* [2005] IRLR and subsequent cases including *Madarassay v Nomura International Plc* [2007] IRLR 246).

150. In the case of *Laing v Manchester City Council* [2006] IRLR tribunals were cautioned against taking a mechanistic approach to the proof of discrimination in following the guidance set out above. In essence, the employee must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the employer had committed an unlawful act of discrimination against them. The tribunal can consider all evidence before it in coming to the conclusion as to whether or not a claimant has made a prima facie case of discrimination (see also *Madarassay* referred to above).

151. In every case the tribunal has to determine the reason why the claimant was treated as she was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572 "this is the crucial question". It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish

discrimination. It need not be the only or even the main reasons. It is sufficient that it is significant in the sense of being more than trivial.

152. In assessing the facts in this case, the tribunal is aware (*Bahl v The Law Society* [2003] IRLR 640) that simply showing that conduct is unreasonable and unfair would not, by itself, be enough to trigger the reversal of the burden of proof. Unreasonable conduct is not always discriminatory whereas discriminatory conduct is always unreasonable. It was also stated in the case of *Griffiths-Henry v Network Rail Infrastructure Ltd* [2006] IRLR 865 that an employer does not have to establish that he acted reasonably or fairly in order to avoid a finding of discrimination. He only has to establish that the true reason was not discriminatory. Obviously, if unreasonable conduct occurs alongside other factors which suggest that there is or might be discrimination, then the tribunal should find that the claimant had made a prima facie case and shift the burden on to the respondent to show that its treatment of the claimant had nothing to do with the claimant's gender or her status as a disabled person or the fact that she made protected disclosures (as applicable) and in so doing apply the burden of proof principle as set out above.

Time

153. It was the Respondent's submission that the only allegation of direct race discrimination that was in time was allegation 4(l). The Respondent submitted that the primary time limit would have expired on 28 September 2021 and that the Tribunal does not have jurisdiction to consider any of these complaints.

154. In order to be able to consider complaints before it, the tribunal has to ensure that the claim was issued within the relevant time period.

155. The Tribunal has to consider whether or not it is just and equitable to extend the time limits for presentation of the complaint where it determines that the complaint has been submitted outside the statutory time limit. The primary time limit is set out in section 123 of the Equality Act 2010, which states that proceedings may not be brought after the end of the period of three months starting with the date of the act on which the complaint relates. In determining the date that the act occurred, the tribunal has to decide whether the complaints are part of a continuing act or conduct extending over a period (subsection (3)(a)). If the claim has been brought outside of the 3 month period, taking the last act as the starting point where there is a continuing act; the tribunal has a discretion as to whether to extend time as it thinks is just and equitable, to allow the complaints to be considered.

156. The Tribunal is mindful that time limits are to be exercised strictly in employment cases and there is no presumption that a tribunal should exercise its discretion to extend time on the just and equitable ground unless it can justify failure to exercise a discretion. The onus is always on the Claimant to convince the tribunal that it is just and equitable to extend time. It has been held that whether a claimant succeeds in persuading a Tribunal to grant an extension in any particular case is not a question of either policy or law; it is a question of fact and judgment, to be answered in each individual case, by the Tribunal at first instance which is empowered to answer it.

157. In considering whether to apply this discretion, a Tribunal can take into account and can apply similar formula to that given to the Civil Courts by section 33 of the Limitation Act 1980 and referred to in the case of *British Coal Corporation v Keeble* [1997] IRLR 336. The Tribunal is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: -

(a) the length of reasons for the delay;

(b) the extent to which the cogency of the evidence is likely to be affected by the delay;

(c) the extent to which the party sued had co-operated with any request for information;

(d) the promptness with which the Claimant acted once she knew the facts giving rise to the cause of action; and

(e) the steps taken by the Claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

158. Although, these factors will frequently serve as a useful checklist, there is no legal requirement on the Tribunal to go through such a list in every case, provided that no significant factor has been left out of account by the tribunal in exercising its discretion (*London Borough of Southwark v Afolabi* [2003] IRLR 220).

Applying Law to Facts

159. We will apply the law above to the issues set out at pages 0A to 0D of the bundle of documents. This was the final, agreed list of issues in this matter.

Jurisdiction –

1. *Whether the complaint was presented to the Tribunal before the end of the period of three months beginning when the act complained of was done as required by section 123(1)(a) Equality Act 2010 (EA) and, if not,*

2. *Whether the Tribunal should consider the complaint on the grounds that it is just and equitable in all the circumstances to do so pursuant to section 123 (1)(b) EA?*

160. This Claim was issued on 13 August 2021. The ACAS Conciliation process began on 1 July 2021 and ended on 20 July 2021, which is the date of the Claimant's ACAS certificate.

161. From the dates listed at page 4(a) – 4(e), the Claimant's complaints range in date order from 30 October 2020 to 10 November 2020. It is this Tribunal's judgment that these allegations are a series of connected events. They also connect to item 4(f).

162. It is also our judgment that the way in which the Respondent handled the Claimant's PMR in October 2020 was the subject of items 4(a) – 4(e) and 4(f) is the next action that arose out of the PMR process. The PMR process broke the relationship between the parties and that relationship arguably never recovered. The remaining items in allegation 4, are also connected to the PMR process since thereafter, the Claimant's relationship with senior management at the Respondent changed. There was no evidence that before that happened, the Claimant would have taken issue with a proposed office move or had any of the other complaints as set out in allegations 4 (g) – (l). If there had not been the failed PMR, it is unlikely that she would have taken the issues with Mr Omilli so seriously as they had previously had a good working relationship and it is unlikely that his character drastically changed. It is more likely that these allegations are all related to the way that the Claimant's attitude to work changed after the failed and then passed PMR. The grievance is also related and the offer of a new job from Helena Mills arose out the grievance process and was her attempt to try to resolve matters with the Claimant.

163. It is this Tribunal's judgment that the matters alleged in allegations listed as 4(a) – 4(l) are all part of a continuing act, which were therefore issued within three months of the last act complained of. The last allegation is dated 29 June and the claim was issued in August.

164. In addition, it is also this Tribunal's judgment that if the matters alleged at items 4(g) – 4(l) are not part of a continuing act with items 4(a) – 4(f), it is just and equitable to extend time to allow the Tribunal to consider them. It is clear to the Tribunal that the Claimant waited until the grievance process was complete before starting a claim. The Claimant had worked at the school for a long time and was part of the SLT. She did not want to jeopardise this by bringing litigation against the Respondent, if her grievances could be settled in another way. It is also clear that the Claimant genuinely believes these allegations and always wanted to take action on them but hoped that the internal process could resolve her issues.

165. There is no requirement to go through an internal process before issuing in the employment tribunal but where a claimant has done so in a genuine effort to resolve her differences with her employer, that can be taken into account when deciding whether it is just and equitable to extend time.

166. The outcome of the grievance clearly upset the Claimant as her sick leave started straight after she was told of the outcome. It is not until the appeal against the grievance outcome fails does she consider taking legal action and after she had refused the new job. The Claimant was certainly not in a rush to come to the employment tribunal. The Claimant clearly sees all her allegations as part of one

whole. If time were not extended, the Claimant would not be able to bring these matters elsewhere.

167. In the circumstances, it is this Tribunal's judgment that some of the allegations of direct discrimination are part of a continuing act, and it is just and equitable to extend time to allow the Tribunal to consider the Claimant's complaints in this claim.

168. As far as the allegations indirect sex discrimination and victimisation are concerned, these are later in time than the allegations of direct race discrimination and they postdate the issue of the claim.

169. The Tribunal's judgment is that it has jurisdiction to consider all of the Claimant's complaints.

Direct Discrimination

3. *Whether the Claimant has been treated less favourably because of race contrary to section 13 Equality Act 2010?*

4. *.(a) Being told on 30 October 2020 that she had failed her performance management review (PMR).*

   (b) Being told on 30 October that she would be monitored weekly

170. It is our judgment that Mr Benzid concluded, as her line manager, that the Claimant had passed her PMR as she had done her best to address the behaviour issues in the school. The Claimant had put in strategies and developed procedures that addressed the issues. For example, it is likely that she had set up procedures to monitor detentions and other behaviour trends. That did not mean that the behaviour issues were all resolved. It was agreed by everyone who gave evidence that the school continued to have behavioural problems. Some of those were historical and some were caused for example, by the Covid-19 lockdown and the time pupils had away from school, the need to be in bubbles on coming back to school and the need to spend longer than usual cooped up in a classroom together. Behaviour had not historically been a priority in the school and the Respondent wanted to address that.

171. Mr Hehir decided that the Claimant should be held responsible for all of the behaviour problems in the school, since it came within her responsibility and that she should be considered to have failed her PMR. This was not fair to her.

172. The Respondent readily accepted in the hearing that the way in which the PMR process was handled was shabby. In this Tribunal's judgment, it was messy, unprofessional and had a devastating effect on the Claimant's psyche and her trust in the Respondent.

173. The reason she was told on 30 October that she had failed her PMR was partly for the reason stated in allegation 4(a). It was because Mr Hehir decided that behaviour in the school had not improved, and this was the Claimant's sole responsibility. We did not have evidence that it related to a member of the Claimant's team not meeting his leadership target.

174. At the end of the meeting on 30 October the Claimant was given a letter that stated that she had failed her PMR and would be put on weekly monitoring. This was later changed to *'weekly line management support'.* It is our judgment that this was part of Mr Hehir's decision that the Claimant had not met her targets which had been set by Mr Yerosimou and had not redressed the problem behaviour in the school. It is also our judgment that the proposed 'line management support' meetings never started as the Claimant was later told on their return from half-term break, that she had in fact passed her PMR. Mr Hehir reversed his decision. It is our judgment that this was also an upsetting experience for the Claimant.

175. Telling the Claimant that she had passed her PMR, then telling her she had failed and later, telling her that she had actually passed all along, was less favourable treatment. Was it because of the Claimant's race? We had to consider the Claimant's comparators in order to decide this.

176. Although Sarah Viccars is referred to in the list of comparators at paragraph 5 of the list of issues, the Claimant submitted that we should not accept that Ms Viccars, her white colleague, was treated in the same way and that the Respondent had constructed the evidence in the hearing, to defeat her claim. This had not been put to any of the Respondent's witnesses. The letters sent to Ms Viccars in October 2020 and February 2021, were not challenged by the Claimant as not being genuine until submissions.

177. The Tribunal accepted Ms Welch's evidence about this matter as she had been at both the Claimant's and Ms Viccars' meetings. Ms Welch had been a witness called by the Claimant.

178. It is our judgment that Ms Viccars is an appropriate comparator for this complaint. She and the Claimant were both Acting Assistant Senior Headteachers at the same time and both were due to revert to their previous roles in September 2020. They were both having their PMRs done around the same time, and both were at the same level of responsibility in the SLT structure.

179. Mr Omilli met with Ms Viccars in September and told her that she had passed her PMR. In October, she was told that she had failed and would not be getting the increment. This was done, as it had been done to the Claimant – on the instructions of Stephen Hehir. It was Mr Hehir who reversed that decision in the new year, as he had done to the Claimant.

180. We did not have information about the PMR process of the other individuals referred to by the Claimant in her submissions and note that Adam Smith, Serife Horner, Lee Perry and Naomi van der Lith were all junior members of staff compared to the Claimant and were therefore not appropriate comparators. We did not have any evidence about their PMR processes.

181. In our judgment, Sarah Viccars, a white woman was treated in the same or similar way to the Claimant in relation to the PMR process. She was told that she had failed, when she had in fact passed her PMR. Unlike the Claimant, her area of work had shown some improvement over the year. While the Claimant had completed the work set for her by Mr Yerosimou, behaviour was still a cause for concern at the school. Nevertheless, they were both told that they had failed their PMRs and were going to be monitored. It is likely that neither of them were, as after half-term, the decisions were changed and their PMRs were recorded as passed.

182. It is our judgment that the decision to fail the Claimant's PMR in October 2020 was made by Stephen Hehir and not Sabhi Benzid. It is also this Tribunal's judgment that the evidence shows that the reason for her being told that she had failed her PMR was because Mr Hehir decided that she should be held responsible for the ongoing issues with behaviour in the school. This was unfair because, as she pointed out in her letter dated 1 November 2020, behaviour was an issue for all staff and not just for her. The Respondent decided that she had in fact passed her PMR. She was told this as soon as school resumed in November.

183. She should not have failed her PMR in the first place. Neither should Sarah Viccars. It is our judgment that it was not done because of the Claimant's race. It was not an act of race discrimination even though it was shabby and unprofessional and an upsetting experience for the Claimant. The part of the grievance that was upheld by Ms Laing was that the decision to fail the Claimant's PMR had been a grave error and that it should not have happened. She told the Claimant that the Respondent would ensure that the communication issues which caused this would be rectified.

184. It is this Tribunal's judgment that the Claimant has failed to prove facts from which the Tribunal can infer that the reason for the failed PMR on 30 October and the intention to institute weekly monitoring, was the Claimant's race.

185. The Claimant was very distressed by what happened on 30 October. Mr Benzid and Mr Hehir clearly had not discussed the Claimant's or Ms Viccars' appraisal before Mr Benzid set up the meetings with them. Mr Benzid had a different view of the Claimant's performance to Mr Hehir and it would have been more professional and organised for them to have sought HR prior advice prior to meeting with her, discussed this between themselves first or for Mr Benzid's view to remain, as he was her line manager, with ultimate responsibility for behaviour. He was quite capable of making a judgment on her performance on his own. Mr Benzid should have taken on board Ms Welch's concerns about process. Instead, none of those things happened.

186. The Claimant took her work at the school very seriously and took great pride in it. She was devastated by what happened.

187. At the same time, the Claimant's letter to Mr Hehir during the half-term shows that she understood that behaviour was an issue for everyone, particularly in the SLT and that she should not have been held responsible for all the behavioural management issues that the school was facing. She advocated for everyone taking responsibility for behaviour and that it should nor rest only on her shoulders. However, she wanted to continue to be the lead for behaviour in SLT. The Respondent chose a different way to address the behaviour issues in the school. They decided to address it by sharing responsibility equally among the members of SLT. It is our judgment that the Claimant has failed to prove that they did so because of her race.

> *4(c) On 3 November 2020, was the Claimant told by Mr Hehir to 'give up her role now or it would be held against her at the next performance review'?*
>
> *4(d) On 6 November, did Mr Hehir and Michael Yerosimou confirm the Claimant was going to lose remits of her role, namely, behaviour and attitude, pastoral lead, anti-bullying and reward?*

188. It is this Tribunal's judgment that the Claimant met with Mr Hehir a few times on their return to school after the half-term break and that the rationale for removing behaviour from the Claimant as an area of work was explained to her. The Claimant was not happy with this decision. It is our judgment that it is highly unlikely that Mr Hehir told the Claimant to give up her role now or that it would be held against her at the next performance review. They had a good working relationship, as the Claimant had with all her colleagues. It is likely that what she was told was that if the status quo was maintained, then it was likely that she would not be successful at the next PMR round as she would not be able to singlehandedly, solve all the behaviour needs/issues at the school. It is this Tribunal's judgment that the Claimant was not threatened by Mr Hehir in this meeting.

189. As she stated in her letter to Mr Hehir, behaviour was an issue for everyone, particularly members of SLT and not just one teacher. Issues such as her heavy workload, a lack of inset training for staff on behaviour and a lack of a behaviour support room despite several requests, were also matters that she highlighted in her letter. She also pointed out that behaviour was a collective process that involved the whole of SLT. During the half-term break, the Respondent reconsidered her PMR and agreed with her. They also chose to organise responsibility for behaviour in a different way.

190. On 6 November, the Claimant was told that responsibility for behaviour and attitude would be distributed to all members of SLT and be the responsibility of all staff. The Claimant did not agree with the way in which the Respondent wanted to organise behaviour and attitude, pastoral lead and anti-bullying; but it is our judgment that it

was not less favourable treatment for the Respondent to decide to re-organise the work and share that responsibility among the SLT rather than leave it with one person.

191. It is also our judgment, that a hypothetical comparator who in this allegation would be a white teacher who was solely responsible for behaviour - where at the time of appraisal, there was still an ongoing problem with behaviour in the school – would have also had their portfolio reduced by behaviour being taken away. It is likely that they would also have been given the lead on Achievement and PIXL, if that had been an available area of work.

192. The Claimant's complaint is also, that this was all given to Mr Benzid. It is our judgment that Mr Benzid was her line manager and that he had oversight of this area of work – behaviour and attitude – from September 2020. When the Claimant ceased to have sole responsibility for behaviour, Mr Benzid retained oversight of that issue, which was now distributed across the SLT. It was not that he had taken this from her but that responsibility for behaviour had been elevated to the Deputy Head from the beginning of the academic year. He was responsible for ensuring that the whole of SLT took responsible for it. It was not taken from her and given to anyone else - it was distributed among the SLT, with Mr Benzid retaining oversight.

> *4(e) On 10 November 2020, did Mr Yerosimou confirm that the Claimant would be taking over the Achievement and PiXL lead.*
>
> *4(f) On 17 November 2020, did Mr Yerosimou announce that the Claimant was no longer in charge of her team with effect from the new year (January 2021)?*

193. It is this Tribunal's judgment that the Claimant was given a different portfolio by the Respondent once she was relieved of having total responsibility for behaviour. She was asked to take on Achievement and PiXL lead. Although the Claimant did not believe that this was as important as behaviour, it was important to the school as it was trying to encourage the pupils to aim higher and to achieve as best as they could. It is likely that there was some crossover with behaviour. The Claimant as a member of SLT still had some responsibility for behaviour but this was now a matter for the whole cohort of senior staff in the school, overseen by Mr Benzid. The Respondent considered the Claimant to be a senior member of staff, a member of SLT and someone who could lead on Achievement in the school.

194. It is therefore our judgment that Mr Yerosimou did tell the Claimant that she would be taking over the Achievement and PiXL lead and that this was important work for the school and not an act of less favourable treatment.

195. It is also our judgment, as he confirmed in evidence, that Mr Yerosimou would have told the team supporting her with behaviour that she was no longer in charge of behaviour. He would have needed to inform her Heads of Year about what was happening as they would no longer be required to report to her on behaviour issues.

196. The Claimant felt that these changes were unfair, even though she had expressed her frustration in her letter to Mr Hehir that she was left alone to deal with behaviour issues and that members of SLT did not come out of their rooms to tackle incidents or did not appear to take behaviour seriously. It is our judgment that the Respondent took these measures as part of its continuing work on addressing the behaviour issues in Epping St John's school.

197. Although the actions of - removing behaviour from the Claimant as an area of work, giving her Achievement and PiXL instead and telling the Heads of Year that she was no longer going be in charge - all felt to the Claimant like less favourable treatment, it is our judgment that they were not. These changes happened because the Respondent wanted to address the conduct/behaviour issues in the school in a different way. These acts were the consequences of that change. The Claimant may not agree that this was the best way and it was not the way that the Claimant would have organised it but that does not mean that it was less favourable treatment or that it was in any way related to her race.

198. The Claimant has failed to prove facts from which the Tribunal could conclude that these decisions were made because of the Claimant's race. The Claimant's area of responsibility was changed but she was not demoted, she was still an Assistant Headteacher. She did not lose her position, or her title and her pay was unaffected by these changes.

4 (g) In early December 2020, did the Claimant discover via an "all staff" email that Sarah Viccars and Anne Marie Petro were to lead on delivery of behaviour CPD training to staff which bypassed the Claimant?

199. The Claimant's colleagues, Ms Viccars and Ms Petrou were junior teachers who came up with an initiative to solve a problem caused by the pupils having to gather and work in bubbles. This was not directed at the Claimant.

200. The Claimant believed that this was done to undermine her and bypass her. We bear in mind that this was shortly after the schools were back after lockdown and that the issues with behaviour would have been apparent to all. These junior members of staff came up with an idea that they wanted to deliver a CPD to all staff to help.

201. We did not have evidence that this was directed at the Claimant or that they did it to undermine her. The Claimant and Ms Viccars had a good working relationship, so much so that they were in touch during the hearing in November; and it is unlikely that she would be seeking to undermine her.

202. We did not have evidence that could lead us to infer that this was done because of the Claimant's race or that if a white teacher had been in charge of behaviour before the October half-term, these teachers would not have offered to organise this CPD course for their colleagues. It is likely that they would have done the same.

4(h) On 1 February 2021, was the Claimant micromanaged by Vincent Omilli?

4(i) On 10 March 2021, did Mr Omilli question the need for the Claimant to go to get food and to the toilet?

203. It is our judgment that the Claimant got on well with Mr Omilli before this. Mr Omilli treated the Claimant the same as he did all those staff who reported to him.

204. Mr Omilli took over her line management from Mr Benzid in December 2020/January 2021, soon after she lodged the formal grievance, but there was no evidence that Mr Omilli had taken against the Claimant because of her grievance.

205. It is also our judgment that Mr Omilli did not question the Claimant's need to go to the toilet. He noticed that she was not on duty when he came by. He asked that in future, she was to let him or the duty checker know if she needed to leave the duty so that they could arrange cover. The Claimant was not prevented from going to the toilet. Mr Omilli did not question the Claimant's need to go to the toilet. He simply said that if she needed a break from her duty, she should tell the duty checker so that they could arrange cover.

206. It is also true that Serife and Sarah did not refer to the duty checker before they took breaks. Mr Omilli did not come past when they were on their break and so he did not take the matter up with them. It is likely that Mr Omilli managed his staff in his own way. We were not told whether they were managed by Mr Omilli or whether he had been aware that they had not referred to the duty checker before going on break.

207. We saw his emails to other members of staff where he told them off for minor infractions. This was his management style. He emailed Mr Bitis and Ms Boyle when he noticed that they were not at their posts for their break duty. This was similar to the initial email he sent to the Claimant.

208. The Claimant has failed to prove facts from which the Tribunal could infer that Mr Omilli micromanaged her more or differently to how he micromanaged others who reported to him. There were no facts from which we could infer that Mr Omilli treated the Claimant less favourably or that if she was micromanaged, that he did so because of the Claimant's race.

4.(j) On 24 March was the Claimant reprimanded for not making arrangements for unsafe tables to be replaced when it was not her responsibility to do so?

4(k) During the same incident was the Claimant told that she must move offices irrespective of Sarah Montgomery staying in her office?

209. It is this Tribunal's judgment that the Claimant was told that she had to move rooms as this was what the Respondent did on a regular basis. The evidence was that there was a lot of movement of staff every time roles and responsibilities changed. The Respondent's staff team was dynamic and things were always changing. People

did not like to move offices, but they were told that they had to. As the Claimant did not want to give up the responsibility for behaviour, she also did not want to give up the office space that went with it. The Claimant was reluctant to move.

210. Mr Yerosimou wrote to the Claimant and advised that he had agreed that Mr Benzid could speak to the workmen to help her with the furniture in the room she had been assigned but that this was something that she could do herself. It is our judgment that this was not a reprimand. The Respondent was making it clear that she had to move but she was not reprimanded.

211. The Respondent told the Claimant that she had to move but, in the end, the Respondent did not insist on it because she did not move.

212. The Claimant failed to prove facts from which the Tribunal could infer that the Claimant was treated less favourably when she was told that she could have arranged directly with the repair staff to have the tables in the office repaired or when she was told that she had to move offices. Lots of staff moved offices at that time and it is likely that some of them were unhappy about it but still moved. Ms Montgomery was able to keep her office as the Respondent agreed that she needed to stay where she was because of the remit of her job. The Claimant's new remit of Achievement and PiXL lead meant that she needed to be in a different room. It was not less favourable treatment to require her to move.

> *4.(l) On 29 June 2021, the Claimant was offered a job in another school within the Trust. Would that move have been a reinstatement of the Claimant's seniority or was the role on the same salary as her then role?*

213. It is our judgment that Ms Mills offered the Claimant the job at the new school in an effort to resolve the situation that was developing at Epping St Johns and to give the Claimant the opportunity to have a fresh start somewhere else in the Trust. It was open to the Claimant to refuse the job offer.

214. It is our judgment that the offer of the new job at the new school, with no drop in salary or lowering of job title, was not less favourable treatment. It is unlikely that an offer of a job could be less favourable treatment, especially if it is on the same terms and conditions. It is our judgment that this job offer was not a detriment or less favourable treatment to her. She was entitled to refuse it but the offer itself was not less favourable treatment.

215. At the end of the grievance appeal, the Respondent admitted in writing that they accepted that things were not perfect and Mr Hehir, the person who had decided to make the Claimant responsible for all the behaviour issues in the school by failing her PMR – had been asked to leave. It is our judgment that this job offer was a genuine attempt to give the Claimant a fresh start elsewhere.

216. It is this Tribunal's judgment that the burden of proof does not shift to the Respondent in respect of any of these allegations and that the complaint of less favourable treatment because of race fails and is dismissed.

Indirect sex discrimination

> 8. *Whether the Claimant has been subject to indirect sex discrimination contrary to section 19 EA?*
>
> *9. Did the Respondent apply the PCP of requiring staff to inform the Deputy Head of the need to go to the toilet?*
>
> *10. Did the Respondent apply that PCP to the Claimant?*
>
> *11. Did the Respondent apply any such PCP to any male member of staff?*

217. In answer to allegation (9), is this Tribunal's judgment that the Respondent did not apply a provision, criterion or practice that all staff needed to inform the Deputy Head of the need to go to the toilet. There was no such PCP applied.

218. Mr Omilli told the Claimant that when she is on break duty, she should speak to the duty manager if she wants to leave her post for any reason so that they could arrange cover while she is away. This is the PCP that was applied. The Respondent accepts that this PCP was applied at this time in 2021.

219. In answer to allegations (10) and (11), it is this Tribunal's judgment that this PCP was applied to all staff. Mr Omilli wrote emails to at least two other members of staff who reported to him to admonish them for not being at their posts when they were showing on the rota as being on break duty. One email was sent to a male member of staff and the other to a female member of staff. It is our judgment that the PCP was applied to all members of staff.

220. The Tribunal was not aware of whether those two members of staff continued the email conversation with Mr Omilli so that he needed to remind them of the need to alert the duty checker of their desire to leave their posts early so that they could get some fruit or use the toilet, so that the duty checker or someone else could take their place. Similarly, Mr Omilli did not bring that up to the Claimant in his first email. He only did so after the conversation had carried on through a few more emails.

221. In answer to allegation (12), the Claimant submitted that only women get periods and that during those times they would need to go to the toilet more frequently than their male colleagues. However, as submitted by the Respondent, not all women get periods, and some men may have prostrate and other urinary health issues that require them to visit the toilet regularly and possibly more than post-menopausal or other women.

222. The Claimant did not provide the Tribunal with statistics to support her position. She failed to show that the PCP put women at a particular disadvantage when compared with men. It is likely that both male and female teachers may need to use the toilet, while they are on break duty. The PCP that the Respondent applied, which is different to that set out at paragraph (9) of the list of issues, did not put those with whom the Claimant shares the characteristic, i.e., women, at a particular disadvantage when compared with women.

13. Did the PCP put the Claimant at that disadvantage?

223. It is our judgment that the application of the PCP did not put the Claimant at that disadvantage. On 10 March, the Claimant was on break duty and did that duty for some of the time with her colleague Lee. She left her duty post and went to the toilet and picked up a piece of fruit. She was not disciplined or sanctioned for doing so. Mr Omilli, her line manager, reminded her that she should have been on duty and that he had stood in for her. That was the sum total of his email to her.

224. The Claimant was unhappy about him saying so and queried it with him so that he reminded her of the PCP, which it is likely that she was already aware of, and she agreed that she should have spoken with him rather than Lee before leaving her duty. There was no disadvantage to the Claimant.

225. Subsequently, she raised it with Mr Hehir, which appeared to be the end of the matter.

14. Was the PCP a proportionate means of achieving a legitimate aim?

226. In addition, it is this Tribunal's judgment that the Respondent had this PCP in place because of the need to safeguard pupils. The Claimant did not dispute with Mr Omilli in the email chain nor in live evidence that the duty cover was provided mainly, to safeguard pupils. The Respondent decided that two teaches were needed to do this at this time because of the additional challenges brought on by the Covid pandemic. Large groups of students were being supervised in the playground at one time and needed to be kept separate. The Respondent's approach was proportionate since there was no ban on breaks, simply a requirement that staff on duty were required to inform the duty checker if they needed a break so that someone else could cover while they took that break – for whatever reason.

227. In this Tribunal's judgment, that was a proportionate means of achieving the legitimate aim of safeguarding the pupils at school.

228. The Claimant's complaint of indirect sex discrimination fails and is dismissed.

Victimisation

16. Whether the Claimant suffered victimisation contrary to section 27 EA.

17. Did the Claimant do a protected act by any of the following? -

a. *On 1 November 2020, the Claimant submitted a grievance citing discrimination to Mr Stephen Hehir.*
b. *On 19 January 2021, the Claimant submitted a formal grievance to the Respondent's assistant CEO.*
c. *On 18 March 2021, the Claimant raised a grievance citing discrimination and bullying against Mr Omilli.*
d. *On 13 August 2021, issuing a claim in the Employment Tribunal alleging discrimination and victimisation.*

229. The Respondent conceded that the letter on 1 November 2020 was a protected act. In that letter, the Claimant raised complaints about discrimination and unfair treatment.

230. In the letter of 19 January 2021, the Claimant raised her first formal grievance and alleged that she had suffered discrimination. It is also a protected act.

231. On 18 March 2021, the Claimant put in a complaint against Mr Omilli but she did not specify what allegation she was making. Page 199 suggests that she is complaining about an infringement of her basic human rights. It is unlikely that this is a protected act as it does not refer to breach of the Equality Act.

232. On 13 August 2021, the Claimant issued this claim in the Employment Tribunal alleging discrimination and victimisation. This is a protected act.

233. It is this Tribunal's judgment that the Claimant did three protected acts.

18. If so, because of any of the protected acts listed above, did the Respondent subject the Claimant to detriment?

19. The alleged detrimental treatment complained of is:

(a) On 12 November 2021, the Claimant was told that she would be line managed by someone who had caused her mental and physical health problems?
(b) On 15 November 2021, did the Claimant receive a letter from HR advising her to stay at home until an occupational health report had been received?
(c) On 26 November 2021, was the Claimant's return to work note from her doctor disregarded in that she was told that there would be another occupational health review before she would be allowed to return back to work?
(d) and
(e) were withdrawn at the hearing

(f) 30 December 2021, the Claimant explained that she had another meeting with her GP but the Respondent paid no attention to this information?
(g) On 5 January 2021, the Claimant was sent home from work and not allowed to return to work?

234. This is the Tribunal's judgment on each of these alleged detriments using the numbering above.

(a)

235. It is this Tribunal's judgment that the Claimant was informed that Mr Benzid was the Claimant's line manager well before the PMR process. Mr Yerosimou informed the Claimant of that in 2020 when he telephoned her to advise her that the post of Senior Assistant Headteacher was going to be removed from the Respondent's structure. Following the PMR process, the Claimant raised a grievance about Mr Benzid among others. While that was being investigated by Ms Aylward and grievance meetings were held; the Claimant's line manager was changed to Mr Omilli. Once the Respondent had the outcome of the appraisal process, which found that there had been no discrimination, the Respondent wanted to have Mr Benzid restored as the Claimant's line manager.

236. The Respondent knew that this was not what the Claimant wanted but there were only a few individuals who could be the Claimant's line manager, given her seniority and the importance the Respondent placed on the work that she was to do. By November 2021, the Claimant had also raised a grievance against Mr Omilli and had complained about Mr Yerosimou in her initial grievance. She had spoken in the investigation meeting about her belief that the PMR was failed because of Mr Yerosimou, even though he had not actually been involved. This was still her belief at the end of the hearing as it was her submission that it was his fault and that Mr Hehir had nothing to do with it.

237. In the circumstances, as Mr Blaney said to her at the meeting on 12 November, she had to have a line manager and she needed to have targets set for her. Her grievance had not been upheld. It is not an act of victimisation for the Respondent to uphold the result of a grievance investigation by returning the Claimant to Mr Benzid's line management, in circumstances where there was no finding of discrimination against him.

(b)

238. On 15 November, the Claimant did receive a letter from Ms Pampolina advising her to stay at home until the Respondent had received an OH report. The Claimant had been positive in the meeting with Ms Pampolina on 5 November when she talked

about managing her timetable and continuing to work. She was still unwell as she discussed feelings of nausea and weakness but stated that she wanted to continue to work. The Respondent also wanted the Claimant to be at work. She was a valued member of staff and a hard worker.

239. The meeting on 12 November had been a return to work meeting. The Claimant became unwell at the meeting with Mr Blaney and Ms Pampolina when she was advised that she would be returned to Mr Benzid's line management. The Claimant was unresponsive and had to have the attention of a first aider. She was asked to go home rather than continue her classes and it is likely that the Respondent was concerned about her.

240. The Claimant began a period of sickness from 15 November and the GP fit note she eventually sent to the Respondent signed her off until 22 November on the basis of anxiety and depressive disorder. In those circumstances, the Respondent's decision to seek OH advice and guidance on the Claimant's ability to fulfil her role was a sensible one and that actions of a responsible employer. The Respondent was being cautious even though it was aware that the Claimant wanted to work, as a responsible employer it was obliged to seek medical opinion on whether she was actually in a fit state to be at work, given the level of responsibility she had at work and the workload she was carrying.

241. It is this Tribunal's judgment that it was not an act of victimisation to ask the Claimant to stay at home until an OH report was received which would give the Respondent some advice on the Claimant's ability to return to work and any adjustments that might be needed if and when she did so. When the OH report was sent to the Respondent after the appointment on 18 November, the Respondent's concerns were correct as the report stated that the Claimant was unfit for her full contracted role and any role.

242. It was not an act of victimisation to ask the Claimant to remain home while the Respondent waited for an OH report to give them some guidance on the Claimant's ability to do her job and on any adjustments that they might need to make to assist her.

(c)

243. In the space of a few days the Respondent had been given conflicting medical opinions on the Claimant's ability to return to work and do her job. As stated above the Respondent knew that the Claimant wanted to return to work. However, as she had a serious incident on 12 November, in Mr Blaney and Ms Pampolina's presence, the Respondent had to ensure that she was fit and well enough before allowing her to return to work. To allow her to work when she was not well enough to do so could have caused her health to worsen.

244. The OH report produced from the appointment on 18 November stated that she was not well enough to do any role. A GP's fit note for the period 18 – 26 November stated that she remained unfit for work. Another GP fit note produced on 26 November stated that she was fit to return to work with adjustments. Given that this was a GP note and that was in conflict with the OH report produced just over a week earlier, it was not an act of victimisation for the Respondent to seek to check with OH that she was fit to return to work and that the GP's recommended adjustments were all that was needed. The Respondent was not victimising the Claimant by checking with OH that the Claimant was indeed fit to return to work. It is likely that the Respondent considered the change between the GP's fit note of 18 – 26 November and the fit note of 26 November to be quite drastic and wanted to ensure that the Claimant was indeed well enough for the busy, intense school environment, before allowing her to do so.

245. It is this Tribunal's judgment that the Respondent did not victimise the Claimant by asking her to stay at home until it had a up-to-date OH report on her fitness to return to work since the last report from the appointment on 18 November had stated that she was unfit to do her job or any role, which the first GP's note also agreed with.

(f)

246. It is correct that the Claimant told Ms Pampolina on 30 December, that the Respondent would hear from her GP. At the time she knew that the Respondent was in the process of organising an OH report and that it needed that report before it would allow her to return to work. The Respondent could not allow the Claimant back to work on the promise that her GP would be in touch. It is not an act of victimisation to wait for the OH report. The Tribunal had nothing to show what the GP's advice was on 30 December. The Respondent, as the Claimant's employer is entitled to wait until it has the report from OH. Ms Pampolina told the Claimant to inform the Respondent of her GP's opinion, but nothing was heard from him in the new year. The Claimant simply attended work on the morning of 5 January.

(g)

247. The Respondent asked the Claimant to go home on 5 January as she had not been expected back at work, no arrangements had been made for her return and because the Respondent had not yet heard from or received a report from OH. The Claimant was not expected. The Claimant had been advised in two emails, on 15 November and on 28 November, to remain at home until the Respondent had received an updated OH report. The Respondent was not using the OH report as a way to keep he home. The Claimant had been seriously unwell on the last occasion that she was at work. She had been unwell in the presence of Mr Blaney and Ms Pampolina. They took this seriously and it was in keeping with their duty of care as an employer to make sure that they have confirmation that she was fit and well enough to work, before allowing her to return to work. On 30 December the Claimant promised that her GP would be in touch but there was no information or fit notes from the Claimant's GP between 30 December and 5 January that would have updated the Respondent on

the Claimant's health and her ability to do her job. The Respondent had the OH report from the appointment on 18 November which stated that she was not fit for her role or any role. It had two GP's fit notes – one of which agreed with the OH report and the other, a few days later, which stated that she was fit.

248. It is this Tribunal's judgment that the Claimant knew that the Respondent needed an up to date OH report before allowing her back to work, as she stated in her email to Medigold but she was hoping that they would allow her to return anyway because she loved her job and was desperate to get back to it. But she was also very unwell and it was in keeping with their obligations as an employer to wait for a definitive report from OH and not rely on a GP's fit note which was contradicted by a fit note sent only a few days earlier.

249. This was not an act of victimisation.

250. The Claimant's complaints of direct race discrimination, indirect sex discrimination and victimisation fail. These claims are dismissed.

251. The Tribunal will liaise with the parties to list the Claimant's second and third claims for trial as soon as possible.

252. The parties may wish to send in dates to avoid so that those claims can be listed.

Employment Judge Jones
Dated: 8 February 2024