



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Forsbrook

Respondents: (1) The Governing Body of Windsor Clive Primary School
(2) Mr K Fisher
(3) Cardiff Council

Heard at: Cardiff via CVP On: 20-23 September 2022

Before: Employment Judge R Havard
Members: Mrs J Kiely
Mr M Pearson

Representation:

Claimant: Mr D Curwen, Counsel;
Respondent: Ms H Roddick, Counsel.

RESERVED JUDGMENT

1. The unanimous judgment of the Tribunal is that the Claimant's claim of unfair dismissal is not well-founded and is dismissed;
2. The unanimous judgment of the Tribunal is that it is just and equitable to extend time in respect of the Claimant's claims of disability discrimination, harassment and victimisation;
3. The unanimous judgment of the Tribunal is that the Claimant's claims of direct and indirect discrimination are not well-founded and are dismissed;
4. The unanimous judgment of the Tribunal is that the Claimant's claim of discrimination arising from disability is not well-founded and is dismissed;
5. The unanimous judgment of the Tribunal is that the Claimant's claim for failure to make reasonable adjustments is not well-founded and is dismissed;
6. The unanimous judgment of the Tribunal is that the Claimant's claim of victimisation is not well-founded and is dismissed;
7. The unanimous judgment of the Tribunal is that the Claimant's claim of harassment against the First and Second Respondents is well-founded and succeeds;
8. The claim will be listed for a remedy hearing with a time estimate of one day.

REASONS

Introduction

1. By a claim form dated 17 December 2021, the Claimant indicated that she wished to pursue claims of: unfair dismissal; direct and indirect discrimination; discrimination arising from disability; a failure to make reasonable adjustments; victimisation and harassment.
2. A response form was lodged on behalf of all three Respondents in which it was confirmed that all claims pursued by the Claimant were disputed.
3. At a preliminary hearing on 4 May 2022 before Employment Judge Ward, directions were given to enable the parties to prepare for a final hearing, to include a direction that the Claimant must provide a schedule setting out the claims and against which Respondents those claims were being pursued. Such a schedule was produced, together with a disability impact statement and a schedule of loss.
4. Despite being directed to do so, the Claimant had not provided copies of the parts of her GP and other medical records that were relevant to whether she had the disability at the time of the events the claim was about although other medical evidence had been provided.
5. At the preliminary hearing, it was confirmed that the Claimant stated that the disabilities are: Eosinophilic asthma and PTSD. It was conceded by the Respondents that Eosinophilic asthma is a disability but required the Claimant to confirm the dates during which she had suffered from this disability.
6. The Respondents disputed PTSD but would review their approach once disclosure had taken place of the medical evidence.
7. In an email from the Respondents' solicitors of 24 June 2022, it was confirmed that the Respondents accepted that severe Eosinophilic asthma is a disability and that the Claimant has had this disability from 1971.
8. As for the Claimant's claim in respect of PTSD, in the same email of 24 June 2022, the Respondents' solicitors requested further information from the Claimant but this had not been forthcoming.
9. In the claim form, the record of the preliminary hearing on 4 May 2022, and the Claimant's witness statements, the Governing Body of Windsor Clive Primary School, Mr Kim Fisher and Cardiff Council are shown as First, Second and Third Respondents effectively.
10. In the response, the Respondents' witness evidence and the written submissions on behalf of both the Claimant and the Respondents, Cardiff Council, the Governing Body of Windsor Clive Primary School and Mr Kim Fisher are shown as First, Second and Third Respondents respectively.

11. This could give rise to considerable confusion; therefore, for the purposes of this Judgment, the Tribunal will refer to Cardiff Council using its full name or abbreviated to "the Council", the Governing Body of Windsor Clive Primary School as "Windsor Clive" or "the School", and Mr Fisher as "Mr Fisher".
12. This is particularly so as the issues contained within the record of a preliminary hearing and also the document entitled "Schedule of Allegations" show the School, Mr Fisher, and Cardiff Council as the First, Second and Third Respondents respectively.

Issues

13. At the beginning of the hearing, it was confirmed by Mr Curwen and Ms Roddick that the issues agreed at the preliminary hearing on 4 May 2022 did not require amendment save that, in respect of paragraph 5.1.3, the Claimant accepted that any allegation against Mr Fisher in respect of his alleged conduct in a meeting in June 2019 was not linked to her disability (pages 75 to 81).

Evidence

14. The Claimant gave evidence on her own behalf. Ms Julie Meadows, who was formerly the Headteacher at the school, also gave evidence on behalf of the Claimant.
15. The Respondents called:
 - 1.1. Mr Kim Fisher, Head Teacher;
 - 1.2. Ms Emma Walker, Senior Service Delivery Adviser for HR People Services at Cardiff Council;
 - 1.3. Ms Janet Palmer, Local Authority Governor at Windsor Clive Primary School;
 - 1.4. Ms Sara Fender, Parent Governor at Windsor Clive Primary School.
16. Those who gave oral evidence had provided written witness statements.
17. An agreed Bundle had been prepared by the Respondents and submitted together with an index. It ran to 672 pages. Unless otherwise stated, any page references in this judgment refer to pages in the Bundle.
18. In addition, the Tribunal was provided with the email that had been sent by the Respondent solicitors to the Claimant's solicitors and the Tribunal dated 24 June 2022.

Submissions

19. Both Mr Curwen and Ms Roddick provided written submissions which they supplemented with oral submissions at the conclusion of the evidence.

Findings of Fact

20. In reaching its findings of fact, the Tribunal had listened carefully to the oral evidence provided by all of the witnesses who attended to give evidence together with the documents contained in the hearing bundle. In particular, the Claimant, Mr Fisher and Ms Walker gave substantial evidence regarding their involvement in the chronology of events.
21. The Tribunal concluded that, due to a number of inconsistencies in the Claimant's account, certain important aspects of her evidence were neither credible nor reliable. This was not to be interpreted as the Tribunal underestimating in any way the seriousness of the events which took place in 2014 which led to her condition of PTSD nor the effect of her asthmatic condition.
22. The inconsistencies are identified and addressed in the course of the Tribunal's findings set out below. The Tribunal also considered that there was no credible evidence to support the Claimant's assertion that, following his appointment, Mr Fisher, "*set out to create a hostile environment for the Claimant*", as described in paragraph 10 of the Particulars of Claim (page 17). Whilst, again, the Tribunal sets out below its detailed findings for reaching this conclusion, the Tribunal also took into account the fact that from 2015 to 2019, the Claimant had worked at the school via an agency, as opposed to being an employee, and she had also formed a friendship with the school's former Headteacher. Again, as described below, the relationship between the school and the Claimant changed shortly before Mr Fisher came to the school when she became an employee. The dynamic of the relationship between the Claimant and the school therefore changed. For example, it was only when the Claimant became an employee of the school that the school would be responsible for managing any absences from work.
23. The Tribunal had concluded that Mr Fisher was a credible and reliable witness. He gave his evidence in a measured way and his oral account was consistent with the documentary evidence. He accepted when he could not recall an event or what may have been said and also, he had accepted that errors had been made.
24. Ms Walker was similarly a measured witness and the Tribunal found her to be credible and reliable. She was a person of very significant experience in HR matters and the procedures followed by Cardiff Council and schools within its area. She also had considerable involvement in, and experience of, the school itself, although she had no prior involvement with, or knowledge of, the Claimant.
25. Cardiff Council is a local authority and carries out its statutory duties in the City and County of Cardiff, to include the provision of education in maintained schools such as Windsor Clive which is based in the suburb of Ely in Cardiff.
26. In 2008, Windsor Clive Infant School and Windsor Clive Junior School amalgamated to become Windsor Clive Primary School. Prior to the amalgamation, Ms Julie Meadows was Head Teacher of both the infant school and the junior school. She became Head Teacher of Windsor Clive Primary School in 2008 and remained in that post until her retirement through ill health in April 2019. Indeed, it was

confirmed by Ms Meadows that she last worked at the School in February 2018 and did not return before her retirement in April 2019.

27. In June 2019, Mr Fisher was appointing Acting Head Teacher at the School and this appointment was made permanent on 1 January 2020.
28. In 2015, the Claimant started to work at the School as a Teaching Assistant via an agency. She would work in the School's Nurture Class as a 1:1 Teaching Assistant working with young pupils with special educational needs. She would therefore undertake supply work as and when needed by the School.
29. When Mr Fisher started as Acting Head Teacher in June 2019, he had to deal with a number of issues on his arrival, to include a high level of absenteeism in the staff and behavioral issues with the pupils. This was his first Headship and he was put in touch with a number of key people at Cardiff Council and also had access to experienced Head Teachers as mentors.
30. Whilst Mr Fisher had come from a different local authority area, and whilst the policies were slightly different, he confirmed that he was familiar with the School Attendance and Wellbeing Policy together with the School Attendance and Wellbeing Employer Guide and the School Attendance and Wellbeing Manager Guides (pages 96 to 239).
31. With regard to the Claimant's medical conditions, whilst there had been a failure to comply with a direction of the Tribunal to send to the Respondents, *"copies of the parts of GP and other medical records that are relevant to whether they had the disability at the time of the events the claim is about"*, the Tribunal had read the disability impact statement provided by the Claimant. It had also read the correspondence from Llandough Hospital, Dr Bagshaw and the Primary Mental Support Service, (pages 656 to 670) and a report dated 16 May 2022 from Dr Bagshaw (pages 671 to 672).
32. On the basis of this evidence, it was conceded by the Respondents, and the Tribunal found, that the Claimant had suffered from eosinophilic asthma since childhood, and that this amounted to a disability in accordance with section 6 of the Equality Act 2010.
33. Based on the disability impact statement and the report from Dr Bagshaw of 16 May 2022, the Tribunal found that, as a consequence of significant trauma caused by her relationship with her former husband in 2014, the Claimant suffered from post-traumatic stress disorder. Nevertheless, the Tribunal noted that, whilst it was suggested by the Claimant that this was as a result of events in 2014, there was no evidence before the Tribunal of a formal diagnosis of PTSD. The only formal reference to this condition was contained within the report of Dr Bagshaw of 16 May 2022 prepared for the purposes of the Claimant's claim where it is stated:

"Regarding her Post Traumatic Stress Disorder this is first noted in her notes in 2016 when she was referred to the Cardiff and Vale Traumatic Stress Service by Dr Smith at the Practice. She was assessed by Mental Health Services 21st May 2021 as her most recent assessment where it was noted in their report that current stress in work had retriggered past trauma affecting her mood, anxiety and sleep each day. Up until

the start of stress in work she was managing her trauma from input from Trauma Services.....

From previous notes a single event trauma incident in 2014 was noted and she had input from the Trauma Services then. She gave a good description of symptoms due to PostTraumatic Stress disorder and being triggered by an issue at work, a reawakening of past symptoms, advice was received to the Accessor from Dr. Julie Dorey, Trauma Services Psychologist and a recommendation made for Primary Care Trauma pathway....." (page 671)

34. However, no evidence was provided, for example in the form of GP notes or medical records, in relation to what is contained in, "*previous notes*". It was also confirmed by Ms Meadows that, at the time the Claimant was working at the School via the agency, there would not have been a personnel file relating to the Claimant and therefore there would have been no information about her circumstances and history.
35. It was agreed by the Claimant and the Respondents that she was employed by the School and Cardiff Council. When she applied for the position of Teaching Assistant at the School in March 2019, she was required to complete a number of documents.
36. One document the Claimant had to complete was entitled, "*New Appointment – Personal File Information*" (page 319). On the second page of that form, there is a section entitled "*Section F – D Disability*".
37. The document asks the question, "*Do you have a disability (as defined by the Disability Discrimination Act 1995)?*" and the Claimant has ticked the box to answer "No". Directly underneath that question is a section entitled "*Definition – "a physical or mental impairment, which has a substantial long-term adverse effect on a person's ability to carry out normal day-to-day activities"*". The document follows by setting out an explanation of what is meant by physical/mental impairment, substantial long terms effects, and ability to carry out normal day-to-day activities.
38. It had been suggested by the Claimant that she had difficulty in completing forms of this nature. Having listened to the Claimant give evidence and taking account of the nature of the work that she was undertaking, the Tribunal did not accept her evidence and found, on the balance of probabilities, that she was able to understand this and other documents she completed in the course of her period of employment.
39. At or about the same time, the Claimant completed a document entitled, "*Application for Registration with the Education Workforce Council (EWC)*" (page 324). On the second page of that document, there is a box entitled, "*Part 6 – Disability*". The box states:

"Please tick this box if you have a physical or mental impairment which has a substantial and long-term adverse effect on your ability to perform normal day-to-day activity Equality Act 2010)."
40. The Claimant did not tick this box.
41. On 7 March 2019 i.e. just before the Claimant commenced her employment on a part-time basis as a Teaching Assistant at the School, Cardiff Council wrote to the Claimant

asking her to complete and return a pre-work placement health declaration and medical examination. On the same day, Cardiff Council wrote to the Claimant confirming, on behalf of the governing body at the School, a conditional offer of employment as a Temporary Teaching Assistant. The appointment was subject to a number of conditions, one of which related to the provision of a medical report confirming her fitness to undertake the job and a pre-employment health questionnaire was enclosed with the offer letter. The Claimant acknowledged receipt of that letter of appointment on 11 March 2019 (page 338) and on the same day she acknowledged receipt of her contract of employment (pages 339 to 349).

42. On 12 March 2019, the Claimant signed a document entitled "*Confidential Pre-Work Placement Health Declaration*"(page 350). That document required the Claimant to tick a box answering yes or no to the following questions:

42.1 *Do you have an impairment/disability (physical or mental)?*

42.2 *Do you have an impairment/disability (physical or mental) that may affect your ability to undertake the tasks set out in the job description?*

42.3 *Have you ever had any illness, impairment or disability that may have been caused or made worse by work?*

42.4 *Have you ever left or been denied employment in an organisation on the grounds of ill health or been medically retired on the grounds of ill health?*

42.5 *Are you having, or waiting for treatment or investigations at present relating to your health?*

42.6 *Will you need any adjustments or assistance to enable you to do the job?*

43. To each question, the Claimant ticked the box to answer "No".

44. Consequently, the Tribunal finds that all official documentation completed by the Claimant on her application for, and commencement of, her employment confirmed that she did not have any impairment or disability let alone an impairment or disability that may affect her ability to undertake the tasks as a Part-Time Teaching Assistant at Windsor Clive.

45. As a consequence, the Occupational Health staff at Cardiff Council confirmed that the Claimant was "*fit for post*"(page 351).

46. The Tribunal noted that in March 2019, the Claimant worked additional hours as a Breakfast Supervisor and on 5 June 2019, signed a form accepting a role as a Midday Supervisor (page 359).

47. Prior to the appointment of Mr Fisher as Acting Head Teacher in June 2019, the only period during which the Claimant had been absent from work was between 21 and 22 May 2019 when the reason given for the absence was concussion.

48. At the time of Mr Fisher's appointment in June 2019, there were many problems and issues at the School which had to be addressed. As stated, this included a high level of absenteeism with regard to staff and also pupil behaviour. Mr Fisher brought the

staff together and indicated that he wished to make a fresh start with regard to the School and he indicated that many of the staff agreed with this approach.

49. In his first month in June 2019, there were two meetings between him and the Claimant.
50. The first occasion on which Mr Fisher met with the Claimant related to circumstances where it was suggested that five or six staff had boycotted a party for a previous member of staff and that there was unrest between the staff who had attended the party and those who had not. It was at this stage that Mr Fisher met with all staff and, as stated, he told them that there was to be a new and fresh start for the School and that it was important to move on from past events. He then spoke with all members of staff who had not attended the party. Mr Fisher said the Claimant had indicated to him that she had been on lunchtime duty on the day in question and therefore could not attend the party. Whilst in the notes of the grievance meeting to which reference is made below it states that there was only one member of staff who did not attend, Mr Fisher stated that there were several who did not.
51. The Claimant suggested that Mr Fisher accused her of being a divisive and disruptive influence with regard to the party. On balance, the Tribunal prefers the evidence of Mr Fisher and finds that the Claimant was one of a number to whom he had spoken about their non-attendance at the party and that he fully accepted that the Claimant had been unable to attend because she had been on lunchtime duty. In reaching that conclusion, the Tribunal took into consideration the fact that the Claimant was a personal friend of Ms Meadows and also Mr Fisher had only just started at the School and his aim was to generate a more cohesive atmosphere within the School. Whilst the exchanges took place at a later date, the Tribunal also took into consideration the nature of the exchanges of both emails and texts between the Claimant and Mr Fisher, to which reference is made below, all of which suggested that Mr Fisher was supportive of the Claimant and adopted a friendly tone towards her.
52. It was confirmed at the outset of the hearing that the Claimant did not rely on what took place in this initial meeting between the Claimant and Mr Fisher in June 2019 in support of her claim but the Tribunal considered that it was relevant context in terms of its overall findings of fact with regard to the relationship between the Claimant and Mr Fisher.
53. The second meeting between the Claimant and Mr Fisher in June 2019 was a brief one-to-one conversation. Mr Fisher was conducting similar short introductory one-to-one meetings with all members of staff which numbered 60 at the School. The Claimant maintains that at this meeting, she informed Mr Fisher about her asthmatic condition and also that she suffered from PTSD. Mr Fisher does not accept that these topics were raised with him and that it was a very brief discussion to enable both the Claimant and him to start to get to know each other. However, he took no notes of any of the one-to-one meetings held with members of the staff, to include the Claimant, and he confirmed in relation to other meetings that he held at or about this time that he did not have a clear memory of what was discussed. On the other hand, in her oral evidence, the Claimant stated that she, *"can't remember the exact wording"* of what was said. The Tribunal concludes that the Claimant raised the fact that she had certain medical conditions but not in a way which would lead to an expectation on the part of Mr Fisher to take any further action based on that information. Furthermore, the

Tribunal noted that the Claimant made no mention of this one-to-one meeting in the Particulars of Claim contained within her claim form under the section "Background". The Tribunal also took into consideration the Claimant's evidence that she, "*was desperate to work*" and, "*loved the school and my job.*"

54. In any event, following this meeting, the Claimant continued to work normally until her first period of absence following the appointment of Mr Fisher. This period of absence commenced on 19 September 2019 and lasted until 6 October 2019. The statements of Fitness for Work documents covering that period of absence confirms that her absence was due to acute exacerbation of asthma.
55. By email of 7 October 2019 (page 377), HR People Services at Cardiff Council notified the School that, as the Claimant had been absent on two occasions in the six-month period, this triggered the Informal Support Stage of the Attendance and Wellbeing Policy and there was a requirement for the Claimant to be interviewed and the interview recorded on the Cardiff Council's platform "DigiGOV".
56. On 8 October 2019, a letter was sent to the Claimant asking her to attend an interview on 9 October 2019 to discuss the reasons for her absences, informing her of her right to be accompanied at the interview by either someone from her trade union or a work colleague (page 378).
57. The two period of absence being considered were those in May 2019 when the reason was concussion and the more recent absence from 19 September 2019 to 6 October 2019 due to her asthma.
58. In the return to work interview form signed by Mr Fisher and the Claimant on 9 October 2019 (pages 381 to 390), it was confirmed that the absence was not due to work-related ill-health nor was it an Equality Act absence. It was also confirmed that the Claimant had made a full recovery and also that the Claimant's health was not affecting her ability to carry out her job. It was also concluded that a referral to Occupational Health Service was not considered appropriate at that stage nor were any adjustments required. Indeed, two return to work interview forms were completed to reflect the Claimant's role as a Teaching Assistant and also as a Midday Supervisor and the forms were completed in an identical way.
59. Whilst there is reference to the reason for the Claimant's absence being an asthmatic condition, the Tribunal found that, having completed and signed both forms, at no stage did the Claimant inform Mr Fisher that she suffered from severe eosinophilic asthma. Having listened to the evidence, and having considered the documentation to include the exchanges of emails and texts between the Claimant and Mr Fisher to which reference is made below, the Tribunal accepted the evidence of Mr Fisher and found that, had the Claimant informed him that she had severe eosinophilic asthma during the return to work interviews, he would have immediately made a referral to Occupational Health.
60. However, and by way of contrast, the next development of any relevance related to an application made by the Claimant in a document dated 13 November 2019 to become a Breakfast Club Supervisor (pages 391 to 401). This application was supported by Mr Fisher who stated throughout that he considered the Claimant to be

very good and competent at her job as Teaching Assistant and believed that the Claimant was an ideal candidate for the role of Breakfast Club Supervisor.

61. The Tribunal noted that, in the Claimant's application of 13 November 2019 (pages 391 to 401) there is a section the Claimant was required to complete entitled, "Disability" (page 399). In answer to the question, "do you identify as a disabled person" the Claimant answered No. In the same document there is a section which is entitled "Equal Opportunity Policy" which had been completed by the Claimant as part of her application (pages 400 to 401). Again, in that document there is a section entitled "Disability" and it states as follows:

"Identifying as a disabled person can include people with hearing or sight impairments, people with mental health difficulties or learning disabilities, people with mobility impairments, or those who have long-term health conditions, for example, depression, diabetes, asthma, multiple sclerosis, HIV or cancer".

62. In the same box, the same question is asked of the Claimant, namely:

"Do you identify as a disabled person?"

to which the Claimant answers "No".

63. The Tribunal accepted the evidence of Mr Fisher who stated that he knew the Claimant had suffered a flare-up of her asthma condition but did not appreciate the severity, history or ongoing nature of the Claimant's asthmatic condition.
64. In advance of the commencement of the Claimant in her role as Breakfast Club Supervisor, she completed a pre-work placement health declaration (page 406) and, again, answered "No" to questions regarding whether she had an impairment or disability as set out in paragraph 42 above save that the Claimant ticked "Yes" in answer to the question whether she was having, or waiting for, treatment or investigations at present relating to her health. This form is completed and returned to Cardiff Council as opposed to the School or Mr Fisher but Cardiff Council's Occupational Health Department did not contact the Claimant. However, the paragraph at the bottom of the form is not clear as it suggests that for the Claimant to be contacted by Cardiff Council's Occupational Health Department, the Claimant would have had to answer "Yes" to questions 2 to 6 before being contacted by Occupational Health.
65. In the "New Appointment – Personal File Information" completed and signed by the Claimant on 26 November 2019, there is a designated section, "Section F – Disability", which asks the Claimant whether she has a disability as defined by the Disability Discrimination Act 1995 to which she answers "No". As in the New Appointment form completed by the Claimant when she started her part time employment as a Teaching Assistant in March 2019, the form sets out again the definition of a disability (page 409).
66. The next period of absence from work by the Claimant commenced in December 2019. There are inconsistencies in the evidence relating to this absence.

67. The statement of Fitness for Work (page 411) is dated 31 December 2019 and confirms that the reason for her absence is due to asthma. It refers to the Claimant having been recently admitted to hospital with an asthma attack.
68. At paragraph 12 of her Particulars of Claim (page 17), the Claimant stated that, on 12 December 2019, she felt unwell, that she had to drive to GP's surgery and, whilst at the surgery, she collapsed and was given emergency first aid and then sent to Llandough Hospital. At paragraph 15 of her witness statement, the Claimant stated that it was on 31 December 2019 that she had to visit her GP's surgery and, when at the surgery, she collapsed and was taken to hospital. In her oral evidence, the Claimant confirmed that she did not have an exact date when this event occurred but confirmed that it was sometime before the Christmas holidays.
69. Prior to this absence the Claimant had resigned from her position as Midday Supervisor. On 13 December 2019, Mr Fisher wrote to the Claimant (page 414) thanking her for all her hard work and commitment to the children at Windsor Clive and confirmed that he looked forward to the Claimant continuing in her role as a Teaching Assistant.
70. Whilst the Claimant returned to work on 9 February 2020, there had been exchanges of text messages between the Claimant and Mr Fisher commencing on 2 January 2020 (pages 415 to 424).
71. On 2 January 2020, the Claimant sent a message to Mr Fisher informing him that she had been at the hospital on 19 December 2019 and was taking medication with regard to her asthmatic condition and had been signed off until 20 January 2020.
72. In response, on the same day, Mr Fisher wrote:
- "Hi Steph. So sorry to hear that you are not well. Hope things improve quickly and you feel better soon. Thanks. Kim."*
73. On 7 January 2020, Mr Fisher sent a message to the Claimant asking how she was feeling and then requested a DBS form for her Breakfast Club role. The Claimant responded in relation to her DBS certificate but also referred to her need to return to hospital for a CT scan and Mr Fisher replies *"That's fab. Thank you. Hope you feel better soon."*
74. Further messages are sent by the Claimant indicating that she had a sick note to 9 February 2020 and Mr Fisher replies: *"Thanks Steph. Sorry to hear you are still unwell."*
75. There are further exchanges with regard to the DBS certificate and on 23 January 2020, Mr Fisher sent a message saying, *"If you could chase that would be good. How are you feeling?"* to which the Claimant said that she was feeling much better and looking forward to coming back.
76. On 26 January 2020, further exchanges took place regarding the DBS certificate and Mr Fisher says, *"No problem. Hope you're feeling better."*

77. When the Claimant sent a sick note by message to Mr Fisher, he responded saying *"Thank you Steph. Hope you're feeling OK."*

78. In a subsequent message, Mr Fisher says *"Afraid so. But I'd imagine you'd get the vaccine quite soon as well. Hope you are well and we'll keep in touch with whilst you're off."*

79. On 14 January 2020, the Claimant sent a message saying *"Hi Kim, hope you're all ok missing school very much. I was wondering whether would be ok if I made a video for [pupil] and [Amina] so they know I have not disappeared and that I am thinking of them. And I could send it to [pupil]."*

To which Mr Fisher responded, *"I'd love to that Steph. Very kind of you!"*

80. On 15 January 2020, Mr Fisher writes again in another message asking, *"How are you doing?"*

The Claimant responds *"I am fine frustrated I am not in school helping out. But know that I am lucky keep safe."*

And Mr Fisher states *"That's the main thing! Have a good weekend."*

81. Whilst further reference will be made to email exchanges between the Claimant and Mr Fisher, the tone of the exchanges of messages is not consistent with the comments made by the Claimant at paragraph 10 of her Particulars of Claim (page 17) stating, *"Over the course of time that the Claimant and KF worked at the School, KF continuously and repeatedly sought to create a hostile environment for the Claimant. KF, without reason or explanation, would alienate the Claimant, make allegations against her without any context or explanation."*

82. Having been absent from work for 41 days, the Claimant returned to work on 9 February 2020. On 10 February 2020, Mr Fisher wrote to the Claimant inviting her to a Stage 1 sickness absence formal interview. It is a template letter from the DigiGOV platform as illustrated by the word DigiGOV being at the very top of the letter (page 430). The interview was due to take place on 24 February 2020.

83. At paragraph 16 of her statement, the Claimant states that, whilst the letter refers to a discussion on 9 October 2019, she had no recollection of a conversation taking place when she had been offered assistance but this is not consistent with the return to work interview forms of that date (pages 381 to 390).

84. In any event, whilst no reference was made to it in the Particulars of Claim nor the Claimant's statement in which it is alleged that the Claimant received no support, on 9 February 2020, the Claimant met with Mr Fisher and the outcome of their conversation is encapsulated within the return to work interview form (page 433). At that time, Mr Fisher stated, and the Tribunal found, that he was not aware that the Claimant was on medication or that she had suffered from asthma since childhood let alone that it was severe eosinophilic asthma but nevertheless considered that it would be appropriate to make a referral to occupational health. Indeed, this is despite the Claimant considering that she did not have a disability under the Equality Act. The Tribunal considers that it was reasonable for Mr Fisher to conclude that the Claimant's

asthma was sporadic. In the return to work interview form at paragraph 7 Mr Fisher confirms that he considered a referral to the Occupational Health Service and it was an agreed action with the Claimant that she should be referred to Occupational Health.

85. On 24 February 2020, the formal Stage 1 meeting took place between the Claimant, Mr Fisher, and Miss Emma Walker from HR People Services at Cardiff Council. Ms Walker had considerable prior involvement with the School, to include numerous issues experienced at the School when Miss Meadows had been Head Teacher but she had no prior knowledge of the Claimant or her medical condition. The Tribunal listened carefully to the evidence provided by Ms Walker who had been employed by Cardiff Council for over 20 years and had been Senior Service Delivery Advisor for HR People Services for over 10 years. The Tribunal found her to be a credible and reliable witness.
86. Ms Walker confirmed that this Stage 1 meeting would have been automatically triggered by DigiGOV but, once the meeting started, whilst the Claimant stated that Ms Walker stopped the meeting, the Tribunal preferred Ms Walker's evidence who stated that she recommended that the interview should be postponed to enable Occupational Health to be consulted and this is consistent with the return to work form when Mr Fisher had documented that a referral to Occupational Health should be made. The Tribunal accepted Ms Walker's evidence and found that the arrangement of a Stage 1 formal interview would always be automatically arranged taking account of an employee's absences. The Tribunal had considered the document entitled "Stage 1 Formal Written Caution Form" (page 445) which would have been submitted to DigiGOV. The Tribunal accepted Mr Fisher's evidence and found that this would have been done on his behalf by his Clerical Assistant, EP, to DigiGOV (page 445). However, Ms Walker confirmed that, on submission of this document, DigiGOV would automatically issue a caution unless the person submitting the form has used the dropdown function and selected "No" instead of the default answer which was "Yes".
87. Consequently, the Tribunal was satisfied that, at no stage, was the intention for the Claimant to be issued with a Stage 1 warning or caution and that the decision not to issue such a caution was a discretionary one on the part of Mr Fisher; he would have been entitled to issue a caution but he decided not to do so. This had consequences for future events in respect of the Claimant's absences as described below.
88. At or about the same time, and as illustrated in a document entitled "Notification of Employee Change in Current Position" (page 446) Mr Fisher rectified an error in relation to the Claimant's salary. Mr Fisher stated, and the Tribunal found, that he had discovered that a number of Teaching Assistants were either being paid too much or too little for the hours that they were working and he wished to rectify these inaccuracies. The Claimant suggested that it was Ms Walker who had said that she would rectify the issue of the Claimant's underpayment and that Mr Fisher did not accept it. However, Ms Walker stated that, at the Stage 1 meeting on 24 February 2020, no such conversation took place. Nevertheless, Ms Walker had held a discussion with Mr Fisher with regard to all Teaching Assistants to discuss their hours and pay and Mr Fisher was anxious to rectify any anomalies. The Tribunal found that it would be unusual for a discussion about inaccuracies with regard to pay to be raised at the Stage 1 meeting regarding her sickness absences and preferred the

evidence of Ms Walker who confirmed that Mr Fisher was *"fully supportive of increasing (the Claimant's hours) by 15 minutes per day"*.

89. The referral of the Claimant to Occupational Health was made on 25 February 2020 (pages 449 to 451).
90. On 18 March 2020, Occupational Health produced its report following a consultation with the Claimant. In this report, there is the first reference to the Claimant's condition of eosinophilic asthma, the care that she had received in respect of this condition since childhood and that the symptoms appeared to be worse during the winter months.
91. At or about the same time, the Claimant was required to shield due to her underlying condition as a result of Covid-19.
92. Occupational Health concluded that the Claimant should be fit to return to work when her period of self-isolation had elapsed subject to any updated guidance that had been issued.
93. In its recommendations, Occupational Health confirmed that:

"I would recommend that [the Claimant] refrain from carrying out yard duties at morning break and lunch time during the winter months.

It is of course for the employer to decide whether these adjustments are reasonable and sustainable by the organisation."
94. This is the first document that would have referred to the specific type of asthma to which the Claimant has suffered. The Tribunal found it credible that Mr Fisher would not have been familiar with this condition and accepted his evidence that he would have had to have looked it up to understand its characteristics.
95. Mr Fisher confirmed that he used his discretion to discount the claimant's absences prior to that date.
96. On 16 August 2020, the Claimant was informed by Cardiff Council that she no longer needed to shield.
97. On 26 August 2020, Mr Fisher carried out a *"Covid-19 restart workforce risk assessment"*(pages 469 to 471). Initially, the Claimant stated that she had no recollection of this assessment but accepted, on production of the document, that this had taken place.
98. On 1 October 2020, having received additional funding, Mr Fisher offered to increase the number of hours the Claimant was working by 12.5 hours per week. This would mean her contracted hours would increase from 20 hours per week to 32.5 hours per week. The Tribunal considered that this supported Mr Fisher's account that he held the Claimant in high regard as a Teaching Assistant and that there was no ill feeling towards her. The Claimant accepted the increase in working hours (page 472) and clearly felt capable of taking on the extra work.
99. It had been alleged by the Claimant that Mr Fisher had failed to take account of the recommendations contained within the Occupational Health Report of 18 March 2020

in that she was required to carry on with outdoor supervision of break times. However, Mr Fisher stated that he had discussed the recommendation with the Claimant and the Claimant had stated that she preferred to enjoy some fresh air. As Mr Fisher stated that the Claimant was a very capable person when it came to supervising children, it was agreed between them that she would carry on supervising the break in the morning but would no longer do so at lunchtime. The Tribunal preferred the evidence of Mr Fisher. The Occupational Health report contained a recommendation as opposed to a direction, as outlined above, and this arrangement was put in place in October 2020 before the weather turned cold. It was an adjustment that was made with the agreement of the Claimant and which could be reviewed.

100. It was also suggested by the Claimant that Mr Fisher and the School prevented her from attending an autism course in or about Autumn 2020. Indeed, the Claimant stated that she did not attend such a course (pages 18 & 21).
101. First, the Tribunal found that it was not Mr Fisher who raised any concerns about the Claimant attending such a course. It was a Deputy Head, Mr Ellis. Secondly, the Claimant did attend an online autism course and Mr Fisher confirmed that, due to Covid restrictions, this was the only such course that was being run.
102. In a document entitled Windsor Clive Primary School – Performance Management Objectives Setting and Review (page 478), it states in the second page (page 479):

"I have done an autism course and I am hoping to present what I have learnt and what I have study myself at an Inset Day and will continue share with my colleagues as I learn more" [sic]
103. In the next box, the Claimant stated, "*my Headmaster has encouraged me to do my autism course . . .*"
104. The Claimant had also stated in her oral evidence that she had suggested to Mr Fisher, that, at the next Inset Day, she would give a PowerPoint presentation on what she had learnt at the autism course and Mr Fisher said that this was a great idea.
105. This is in direct conflict with the Claimant's evidence at paragraph 18 of her Particulars of Claim (page 18) and paragraph 22 of her statement.
106. In the same period in the Autumn term of 2020, the Claimant was wearing a child's mask when working at the School. Mr Fisher stated that it was a requirement for all staff to wear the blue medical IIR face covering in accordance with Covid-19 guidance and that there was no automatic exemption for those suffering from asthma. The Tribunal accepted Mr Fisher's evidence that this was at a time prior to the development of vaccines and when he called the whole school together to inform them of the importance of adhering to the guidance and wearing a mask.
107. The Claimant maintained that wearing the blue medical IIR facemask caused her to struggle with her breathing and it was for this reason that she wore the smaller cloth child's mask. When, in or around November 2020, the Claimant was seen by Mr Fisher wearing the smaller mask, he required her to wear the full facemask. Mr Fisher stated that, when questioned by him, the Claimant told her she wished to wear the child face covering to support a charity.

108. The Tribunal was given an illustration at the hearing, albeit remotely, of the Claimant wearing the child's facemask which had some drawings on it, and then the difference between that mask and wearing a surgical mask. The Tribunal was not persuaded by this illustration, nor was it consistent with the guidance available. The Tribunal had taken account of the guidance available (commencing at page 301). A comparison is drawn between when an IIR medical facemask must be worn, which is described as PPE, and when a fabric face covering should be worn which is described as not PPE. It was clear that staff should be wearing the medical IIR mask and not cloth covering masks. Furthermore, the guidance confirms the following:

"The prolonged use of medical masks can be uncomfortable. However, it does not lead to CO₂ intoxication nor oxygen deficiency."

and

"FACT: the prolonged use of medical masks when properly worn, DOES NOT cause CO₂ intoxication nor oxygen deficiency."

109. The Claimant made reference to the use of visors for the first time when she gave her oral evidence. No mention of visors is made in either her Particulars of Claim or her statement. In any event, the Tribunal accepted the evidence of Mr Fisher and found that guidance stipulated that visors were not sufficient when worn indoors.
110. The Claimant had not provided Mr Fisher with a letter from her GP or any other evidence to say that she should be exempt from wearing a IIR medical mask. He confirmed that, had the Claimant done so, he would have had no difficulty in acting on such evidence. Indeed, he said, and the Tribunal found, that he had supported another member of staff who had satisfied him that they were exempt; that member of staff wore an official lanyard to confirm that they were exempt.
111. Again, in this period, Mr Fisher required the Claimant to undertake a PCR Covid test and the Claimant considered that he was acting unreasonably in making such a request.
112. It was alleged by the Claimant that, on 4 December 2020, Mr Fisher called her out of the class and told her to go and get tested for Covid-19. The Claimant denied that she had any symptoms of Covid-19 and told Mr Fisher that she was having breathing difficulties caused by her asthma and having to wear a surgical mask.
113. Mr Fisher maintained that it was a colleague of the Claimant who had informed him that the Claimant was coughing continuously in the classroom which was one of the main symptoms of Covid-19 and there was a requirement for anyone displaying Covid symptoms to self-isolate and book a PCR test immediately. All staff were given the same instruction and, therefore, even though it was understood by Mr Fisher that her symptoms may have been an aggravation of her asthma, it was still necessary for her to take a test.
114. In her oral evidence, the Claimant accepted that it was another member of staff who had reported her to Mr Fisher. Indeed, she stated that her Special Education Needs Co-Ordinator ("SENCO") could hear the Claimant wheezing and told her to go to Mr Fisher. The Claimant refused and therefore the SENCO went to Mr Fisher and

informed him which led to the requirement for the Claimant to take the PCR test. It was suggested by the Claimant that Mr Fisher said to her, *"that it was not just about me."* Whether those were the precise words used, the fact remains that the requirement to take the PCR test would have been necessary, not only to protect the Claimant but also others within the school to include staff and pupils and would be in accordance with Government guidance.

115. In December 2020 the Claimant was involved with her church in raising funds for the School and in particular for poorer families in her local community. The Claimant had done the same over previous years, to include 2019.
116. However, whilst there was some dispute between the Claimant and Mr Fisher with regard to the way in which they initially discussed this matter in December 2020, what was not in dispute was that Mr Fisher had told the Claimant that staff and parents had complained to him about the manner in which the funds raised by the Claimant's initiative were being distributed; certain staff and parents did not consider it to be fair. It was suggested by the Claimant that, *"it felt like it was Mr Fisher who had the issues with this, more so the fact that it was me doing it. I suspect he would not have raised issue with the initiative had someone else in the school been doing it."*
117. The Tribunal did not find any evidence to support the view that the Claimant had reached with regard to Mr Fisher's motive. It was not disputed that members of staff and parents had complained to Mr Fisher and he reacted to those complaints. He considered that, whilst the fundraising initiative was a very kind and thoughtful idea, the School taught pupils who came from a number of vulnerable families, with 60% of the children entitled to free school meals. The Tribunal accepted the evidence of Mr Fisher and found that he suggested to the Claimant that the funds could be put towards Christmas parties for all classes and the Claimant did not appear to object. In his oral evidence, Mr Fisher indicated that they were funds raised effectively by the church and therefore ultimately it should be the church which decided how those funds should be utilised.
118. Whilst the Claimant stated that it was on 11 December 2020 that she went to see her GP for a check up due to her symptoms of asthma becoming worse, the statement of fitness for work (page 481) would suggest that the GP assessed the Claimant's case on 7 December 2020 and decided that she was not fit to work until 20 December 2020.
119. On 20 December 2020, on further assessment, the GP confirmed that the Claimant was not fit for work (page 482) but in any event, the Claimant had received a letter from the NHS on 22 December 2020 informing her that she had to shield. Indeed, having been signed off from 11 December 2020, the Claimant did not return to work before her dismissal on 7 December 2021.
120. The Tribunal found that there were clear errors in the process that was followed in respect of the management of the Claimant's absence commencing in January 2021.
121. Whilst the Claimant had not returned to work, on 20 January 2021, HR People Services sent an email to Mr Fisher informing him that he was required under the Attendance and Wellbeing Policy to carry out a return to work interview with the Claimant for the period of absence from 7 December 2020 to 11 January 2021 (page 493).

122. Ms Emma Walker of HR People Services and Mr Fisher exchanged emails with regard to the reasons for the Claimant's absences and Mr Fisher had confirmed that they were asthma-related (page 494). Indeed, on 20 January 2021, Ms Walker indicated that the Claimant had now reached Stage 2 of the Attendance and Wellbeing Policy with Ms Walker being under the mistaken belief that a Stage 1 formal warning or caution had been issued. Indeed, as stated above, the formal warning/caution had been issued in error because of a mistake made by Mr Fisher's Clerical Assistant when inputting the information on DigiGOV following the Claimant's absences in 2019 and 2020. However, it is clear from the email exchanges between Mr Fisher and Ms Walker that Mr Fisher was being guided in the correct process to follow even though it was on an incorrect premise. Furthermore, Mr Fisher asked whether it was appropriate to proceed taking account of the fact that the Claimant was shielding as a result of her serious asthma condition (page 500).
123. Having received confirmation to do so, on 20 January 2021, a letter which is a template provided by DigiGOV, was sent to the Claimant (page 501- 502) containing the standard terms under the Attendance and Wellbeing Policy regarding the issue of a formal written caution as a result of the Claimant's sickness absence. It was clearly in error in that the letter of 20 January 2021 refers to the Sickness Absence Formal Review attended by the Claimant on 24 February 2020, suggesting that it was only at this stage in January 2021 that a decision had been taken to issue the Claimant with a formal written caution and indicating the Claimant's right of appeal against this warning.
124. On 25 January 2021, a further letter is written by Mr Fisher's Clerical Assistant to the Claimant based on a template provided by DigiGov (page 504). The first two lines read as follows:
- "I refer to the Stage 1 interview which was held on 24th February 2020. As a result of this interview you were issued with a formal written caution on the 10th February 2020."*
125. This made no sense and, in any event, it had not been intended for the Claimant to be issued with a formal written caution as Mr Fisher had exercised his discretion to discount the absences of the Claimant from work.
126. The letter goes on to confirm that there would be a telephone meeting on 29 January 2021 and confirms that the purpose of the interview would be to discuss her attendance record and her failure to meet an agreed target, stating consideration would be given whether or not to issue a final formal written caution. The letter also states that unless there are specific reasons under the Equality Act 2010, a final formal written caution would be issued. (Page 504-505).
127. On 27 January 2021, the Claimant sent an email to Mr Fisher stating that she had received the letter of 25 January 2021 regarding the Stage 2 interview and expressed her shock at having received such a letter, indicating her understanding of the meeting in February 2020 that her absences were to be discounted entirely as a result of her medical condition. Whilst there is some dispute with regard to the basis on which the meeting on 24 February 2020 had been postponed to enable a referral to Occupational Health to be made, the fact remained that, following the Occupational Health Report, all absences to that point were discounted and therefore the Claimant

stated that a Stage 2 interview should never had been issued. The Claimant also complained that the letter of 25 January 2021 gave her inadequate notice of the meeting on 29 January 2021.

128. On 28 January 2021, Mr Fisher sent an email to the Claimant apologising for the short notice and confirmed that this was a mistake, suggesting that it should be rearranged, providing the Claimant with appropriate notice (page 509 to 510).
129. Mr Fisher confirmed in this email that even though there may have been a decision to discount an absence at Stage 1, if an employee goes on to trigger Stage 2, the meeting would still be arranged to, "*allow discussion to take place as per the Stage 1 meeting.*" Mr Fisher asked the Claimant to provide dates of availability and also confirmed that she was entitled to be accompanied by her trade union or work colleague.
130. The Claimant confirmed that she would consider his email and revert to him as soon as possible.
131. On 8 February 2021, Mr Fisher wrote to indicate that as he had not heard from the Claimant, he had set the date of 4 March 2021 for the meeting and that he reserved the right to proceed in the Claimant's absence (page 509).
132. On 8 February 2021, the Claimant responded to say that she was trying to secure representation from her trade union and would notify Mr Fisher when she had heard from them (page 507).
133. On 8 February 2021, Mr Fisher sent a letter via email to the Claimant in the exact same terms as the letter of 25 January 2021 save that it had the revised date of the meeting on 4 March 2021. It contained the same obvious error in the first paragraph (page 512).
134. Both Mr Fisher and Ms Walker recognised the error that had been made and that a Stage 2 meeting should not have been triggered due to Mr Fisher exercising his discretion in the Claimant's favour to discount her absences and this was brought to their attention by the Claimant's union representative. As soon as Mr Fisher and Ms Walker had recognised the error, Mr Fisher sent an email to the Claimant and her union representative, confirming that due to an administrative error, there was no need to hold the Stage 2 meeting. Indeed, the email states:

"It appears that following the Stage 1 meeting held 24/02/20, an error was made when the outcome of the meeting was inputted on DigiGOV. Therefore, [the Claimant] has not triggered the Stage 2.

Please accept my apologies for any inconvenience." (Pages 517-518).
135. The trade union representative responded to Mr Fisher thanking him for letting her know.
136. However, on 2 March 2021, the Claimant sent an email to Mr Fisher asking him to email her a copy of the Schools Grievance Procedure which Mr Fisher sent to her on the same day.

137. Even though the Claimant was absent from work, and even though the Claimant had given an indication of pursuing a grievance, on 10 March 2021, HR People Services sent an email to Mr Fisher indicating that the Claimant's contract as a Teaching Assistant was due to end on 31 March 2021. It states, *"if you have already taken action to either extend the contract or to initiate this person's exit, please disregard this email."*
138. A similar circumstance existed in relation to the Claimant's appointment as a Breakfast Club Supervisor. Nevertheless, the Claimant's contracts were both extended. Indeed, on 19 March 2021, Mr Fisher wrote to the Claimant in these terms:
- "Hi Steph*
- Lovely to speak with you earlier.*
- To confirm the contents of our conversation, I am able to confirm that your current contract for your Teaching Assistant and Breakfast Club roles are due to continue until 31.08.21 (please be aware that your Teaching Assistant role is dependent on funding for the pupil you work with).*
- Please can you reply to this email to confirm whether you wish for your contracts to be extended." (Page 523).*
139. There are exchanges of emails between the Claimant and Respondent in March 2021 as Mr Fisher had asked the Claimant to meet with him to discuss her return to work after the period of shielding.
140. On 22 March 2021, Mr Fisher sent an email to the Claimant which stated as follows:
- "Hi Steph*
- Hope you enjoyed your weekend.*
- Just to let you know that due to extra funding because of the Corona virus pandemic, we are able to increase your hours from 20 to 32.5 until the end of June half term (6.6.21).*
- The format would be similar to the Autumn term where after your usual four hours, you would support pupils in year 4 on catch up interventions.*
- Please can you let me know if you wish to increase your hours. We can be flexible so if you wish for a different amount in the increasing hours then I would be happy to accommodate this.*
- Many thanks."*
141. The Claimant replied, saying *"thank you Kim, yes I would like to increase my hours."* (Page 528).
142. The "Notification of Employee Changing Current Position" forms to reflect the increase in hours originally granted on 1 October 2020 and then further extended on 1 April 2021 have been signed by Mr Fisher (pages 529 to 530).

143. HR People Services reminded Mr Fisher that a contact meeting was required in relation to the Claimant's ongoing sickness absence.
144. On 6 April 2021, the Claimant provided a statement of fitness for work which confirmed that she was not fit for work due to anxiety and depression and this was for 28 days. The Claimant sent an email to Mr Fisher on 7 April 2021 informing him of the position. An exchange of emails followed between the Claimant and Mr Fisher (pages 532 to 533) and the Tribunal considered that it was appropriate to set out those emails in full.
145. On 10 April 2021, Mr Fisher sent an email saying as follows:

"Hi Steph

Thanks for your email.

I am so sorry to hear about your sickness as we were looking forward to welcoming you back. I wasn't aware that you had ongoing mental health issues.

I know you've been to your GP but as an employee of Cardiff Council you can access free support. Please let me know if you want this passed onto you and I'll be in touch during the week to see how you are.

If it is easier for you, please email me a photograph of your sick note rather than arranging for it to be sent to school.

I'll contact you in a few days to see how you are and to see if there's any support you need from us.

Hope you feel better soon and are able to return to work once you feel ready.

Take care."

146. The Claimant responded:

"Hello Kim,

Thank you for your concerns. I am not doing so well lately so if you wouldn't mind, could you make any contact via text or email for the time being.

Thank you for your understanding.

Stephanie"

147. On 14 April 2021, Mr Fisher sent an email saying:

"Hi Steph

Thanks for the email.

Totally understand that you may not be feeling like a contact over the phone etc.

I won't contact you until your contact meeting is due and we can then agree on a mutually convenient date to either have the meeting virtually or over the phone.

In the meantime, if there is anything you require please let me know.

Take care."

148. On 26 April 2021, Mr Fisher wrote to the Claimant inviting her to a long-term sickness absence meeting on 10 May 2021. The letter stated:

"The purpose of this meeting is to find out how you are getting on, ascertain whether you require any assistance, keep you in touch with any developments at work, and simply to maintain contact with you during your absence."

149. It was confirmed that Emma Walker would also be in attendance and that the Claimant had the right to be accompanied. This was following an exchange of emails in order to find a convenient date.

150. However, on 29 April 2021, the Claimant made a subject access request for information with regard to her absence management.

151. On 4 May 2021, the Claimant submitted a further statement of fitness for work saying that she was not fit for work as a result of anxiety with depression. This lasted for a further 28 days.

152. Whilst undated, the Claimant then submitted a formal Grievance against Mr Fisher. The grievance letter sets out the background and the circumstances of her grievance relating to the management of her absences in 2019 and 2020 and references to the return to work after her first period of shielding and second period of shielding and the circumstances around the letter notifying her of the Stage 2 interview.

153. Once the grievance proceedings had been commenced, Mr Fisher took no further part in the management of the Claimant's absences. Mr Fisher agreed to the Chair of Governors, Irene Humphreys, taking over the management of the Claimant's sickness absences. Miss Humphreys was supported in the Claimant's absence management by Ms Emma Walker.

154. Contact meetings were held between the Claimant and Miss Humphreys and Ms Walker on 10 May 2021, 8 June 2021, 12 July 2021, 17 September 2021 and 18 October 2021.

155. On 10 May 2021, the Claimant made reference to trauma that she had experienced in the past that had caused her to suffer from Post-Traumatic Stress Disorder ("PTSD"). This was the first occasion on which Ms Walker was aware that the Claimant had PTSD. A discussion was held with regard to the support that could be provided by the School and also how contact could be maintained between the Claimant and the School and members of staff.

156. On 27 May 2021, the grievance hearing took place (pages 555 to 560) and the issues raised in the Claimant's grievance letter were considered by the panel. At the conclusion of that grievance hearing, it was agreed that the grievance panel would need to meet again to determine whether any other witnesses and/or Mr Fisher would need to be interviewed and further grievance committee meetings took place in July 2021 (pages 585 to 598).

157. At the conclusion of this process, on 21 July 2021, the Chair of the grievance committee wrote to the Claimant with the grievance outcome which concluded that the grievance was not upheld even though it concluded that steps taken in the absence management in respect of the Claimant had not been properly followed and also found that certain information with regard to the Claimant's mental health issues had not been disclosed to Mr Fisher.
158. With regard to the Claimant's mental health issues, the Tribunal noted that, on 1 June 2021, a further statement of fitness for work was issued (page 570) confirming that the Claimant was not fit for work to 6 June 2021 as a result of, "*anxiety with depression*".
159. On 2 June 2021, a further Occupational Health report was issued (page 571-575) following a referral by Ms Walker. This stated that the Claimant had said that her sickness absence was triggered by a stressful situation at work which had started some 12 months before, on the appointment of Mr Fisher, and she also at this stage made reference to her diagnosis of post-traumatic stress disorder for which she was receiving treatment and also her underlying diagnosis of severe eosinophilic asthma.
160. The OH report made reference to the manner in which the Claimant felt that she was challenged by Mr Fisher regarding, for example, charity work and also the Stage 2 interview. It was concluded that it was difficult to predict when the Claimant would be capable of returning to work but it confirmed that when the Claimant was suitably recovered she would be capable of undertaking her duties as a Teaching Assistant.
161. On 7 June 2021, a further statement of fitness for work was issued for a period of 56 days (page 576). Again, the reason given for the Claimant not being fit for work was anxiety with depression but, in the comments section, it states "*PTSD being referred trauma pathway by MH. Had OH assessment also*".
162. The OH report of 2 June 2021 and the statement of fitness for work of 17 June 2021 were the first documents which made reference to the Claimant's PTSD.
163. On 8 June 2021, a further contact meeting was held between the Claimant, Miss Humphreys and Ms Watkins. Again further discussion was held about what sort of support the School could provide.
164. On 12 July 2021, a third contact meeting took place. At this meeting, the Claimant said that she could not see herself returning to work at the School whilst Mr Fisher remained in post and that she did not trust Mr Fisher's management. The Claimant appreciated that she knew the School could not keep her job open for her but that everything had been done correctly. Ms Watkins explained to the Claimant that her employment was at risk due to the length of her absence when there was a discussion about any barriers the Claimant may face in returning.
165. On 17 September 2021, the fourth contact meeting took place and again it was emphasised to the Claimant that her employment was at risk as the School could not sustain such an absence indefinitely.

166. By this time, the Claimant had lodged an appeal against the decision of the grievance panel (pages 615 to 616) and it was agreed that a further contact meeting would be arranged once the grievance appeal had been concluded.
167. The grievance appeal took place on 4 October 2021 (pages 622 to 628) and, following a further hearing on the basis on which the Claimant maintained that the grievance panel had reached the wrong conclusion and had been procedurally flawed, the Chair of the grievance appeal committee wrote to the Claimant on 8 October 2021 confirming that her appeal had been dismissed.
168. On 18 October 2021 a further contact meeting was held and the Claimant confirmed that she had started to receive counselling. The Claimant was asked when she thought she may be able to return and the Claimant indicated that she could not see any circumstances in which she would be able to return. Miss Humphreys stated that if that were the case, then her long-term absence would need to be referred to the governing body. Ms Watkins confirmed that any such meeting would be to consider the Claimant's long-term absence as opposed to revisiting the contents of the grievance as that process had now been exhausted following the appeal not being upheld.
169. It had been suggested by the Claimant that at no stage had she been informed in the course of the contact meetings that her job may be at risk as a result of her absence. The Tribunal had considered the written and oral evidence of Ms Watkins and the minutes of the contact meetings. The Tribunal was satisfied that such warnings were given at the contact meetings on 12 July 2021, 17 September 2021 and 18 October 2021.
170. On 18 November 2021, the Clerk to the Governors of the School wrote to the Claimant inviting her to a formal hearing (pages 638 to 640) which explained clearly the purpose of the hearing and the potential outcome.
171. At the Disciplinary and Dismissal Committee hearing on 30 November 2021, Irene Humphreys presented the report (pages 641 to 643) outlining the history of the Claimant's absences and the reasons for them and confirmed that the Claimant felt that it would not be possible for her to return to work as she could not work with Mr Fisher. The Claimant had also declined the opportunity to participate in mediation or medical redeployment.
172. Initially, the Claimant questioned the fact that two of the governors on the Disciplinary and Dismissal Committee had also been involved in the grievance process but she accepted the position in that there were a limited number of governors on the governing body and the issues to be resolved at the Disciplinary and Dismissal Committee were different to those to be considered as a grievance.
173. At the hearing on 30 November 2021 it was confirmed by the Chair that whatever decision was reached would be based on her long-term sickness absence and nothing else.
174. The panel decided to dismiss the Claimant on the grounds of her long-term ill health and this was confirmed in a letter dated 3 December 2021 (pages 652 to 654). The Claimant did not appeal against that decision.

175. On 17 December 2021, the Claimant lodged her claim from with the Tribunal.
176. With regard to the relationship between the Claimant and Mr Fisher, it was accepted by the Claimant in her written and oral evidence, as well as at the grievance hearing, that she considered Mr Fisher to be a good Head Teacher and not a bad person. However, the Claimant maintained that Mr Fisher sought to create a hostile environment towards her.
177. The Tribunal also accepted Ms Walker's evidence and found that in every meeting she attended at which Mr Fisher and the Claimant were present, they were conducted in a pleasant way nor had she witnessed Mr Fisher treating the Claimant unreasonably or in an unkind way in any of those meetings.
178. The Tribunal had also taken account of the text exchanges and email exchanges which have been set out in some detail above. The Tribunal concluded that they represented an approach by Mr Fisher towards the Claimant which was friendly in tone and supportive.
179. Other evidence of the relationship between Mr Fisher and the Claimant which contradicts the portrayal of the Claimant is: the preparedness of Mr Fisher to resolve the fact that the Claimant, along with other Teaching Assistants, was being underpaid; his encouragement with regard to the Claimant applying for, and being appointed as, a Breakfast Club Supervisor, and his approach to offer the Claimant an additional 12.5 hours a week which was then extended the following year even though, at that stage, the Claimant was absent from work. At all times in his evidence, Mr Fisher confirmed that he held the Claimant in high esteem as a competent Teaching Assistant
180. The Tribunal did not consider that the evidence was in anyway consistent with the Claimant's portrayal at paragraph 10 of her Particulars of Claim or in her statement or indeed in her oral evidence regarding the approach of Mr Fisher.
181. The Tribunal also found, on the balance of probabilities, that, until June 2021, the Respondents were not aware of the Claimant suffering from PTSD. Furthermore, from the documentation that was available to the Respondents, it would not be reasonable for them to have known of the fact that the Claimant suffered from PTSD.
182. As for the Claimant's asthmatic condition, again, taking account of the documentary evidence, the Tribunal found that the Respondent's were not aware of the seriousness of her condition or that it would amount to a disability in accordance with section 6 of the Equality Act until the Occupational Health report of 18 March 2020.

The Law

183. **Unfair dismissal**
184. The respondent bears the burden of proving, on the balance of probabilities, that the claimant was dismissed on the ground of capability through long-term absence due to ill-health, which is a potentially fair reason set out in section 98(2) of the ERA, or for some other substantial reason.

185. The respondent must establish that, at the time of the dismissal, it held a genuine belief in the grounds alleged.
186. It is further established that there is a requirement to assess the general reasonableness of the dismissal under section 98(4) ERA. This section provides that the determination of the question of whether the dismissal was fair or unfair depends upon whether, in the circumstances (given the respondent's size and administrative resources), the respondent acted reasonably or unreasonably in treating capability as a sufficient reason for dismissal. This is determined in accordance with equity and the substantial merits of the case. It is an objective test and the burden of proof is neutral.
187. When considering section 98(4) ERA and the question of reasonableness in a case where the genuineness of the respondent's belief has been established, the Tribunal should focus its enquiry on whether there was a reasonable basis for that belief and test the reasonableness of the investigation.
188. However, it is important that the Tribunal does not put itself in the position of the respondent and tests the reasonableness of its actions by reference to what the Tribunal would have done in the same or similar circumstances. It is not for the Tribunal to weigh up the evidence that was before the respondent at the time of its decision to dismiss and substitute its own conclusion as if it were conducting the process itself. Employers have at their disposal a range of reasonable responses and it is, instead, the Tribunal's function to determine whether, in the circumstances, this respondent's decision to dismiss this claimant fell within that range of reasonable responses;
189. The range of reasonable responses applies not only to the decision to dismiss but also to the procedure by which that decision is reached, including the scope of the investigation.
190. **Disability – s.6 EqA**
191. (1) A person (P) has a disability if –
- (a) P has a physical or mental impairment, and
 - (b) The impairment has a substantial and long term adverse effect on P's ability to carry out normal day-to-day activities.
192. **Direct discrimination – s.13 EqA**
193. Disability is a protected characteristic for the purposes of the Equality Act 2010 ("EqA").
194. The Employment Appeal Tribunal in the **Law Society v Bahl** [2003] IRLR 640, made this simple point, at paragraph 91:
- "It is trite but true that the starting point of all tribunals is that they must remember that they are concerned with the rooting out certain forms of discriminatory treatment. If they forget that fundamental fact, then they are likely to slip into error".

195. The provisions are designed to combat discrimination. It is not possible to infer unlawful discrimination merely from the fact that an employer has acted unreasonably: see **Glasgow City Council v Zafar** [1998] ICR 120. Tribunals should not reach findings of discrimination as a form of punishment because they consider that the employer's procedures or practices are unsatisfactory; or that their commitment to equality is poor; see **Seldon v Clarkson, Wright & Jakes** [2009] IRLR 267.

196. Direct discrimination is defined by Section 13 EQA:

13 Direct discrimination

197. (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

198. Section 23 EQA provides that a comparison for the purposes of Section 13 must be such that there are no material differences between the circumstances in each case. In **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 Lord Scott noted that this means, in most cases, the Tribunal should consider how the Claimant would have been treated if she had not had the protected characteristic. This is often referred to as relying upon a hypothetical comparator.

199. Since exact comparators within the meaning of section 23 EQA are rare, it may be appropriate for a Tribunal to draw inferences from the actual treatment of a near-comparator to decide how an employer would have treated a hypothetical comparator: see **CP Regents Park Two Ltd v Ilyas** [2015] All ER (D) 196 (Jul).

200. The Courts have long been aware of the difficulties that face Claimants in bringing discrimination claims and of the importance of drawing inferences: **King v The Great Britain-China Centre** [1992] ICR 516.

201. Statutory provision is now made by Section 136 EQA:

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

202. But subsection (2) does not apply if A shows that A did not contravene the provision.

203. Guidance on the reversal of the burden of proof was given in **Igen v Wong** [2005] IRLR 258. It has repeatedly been approved thereafter: see **Madarassy v Nomura International Plc** [2007] ICR 867. The guidance may be summarised in two stages: (a) the Claimant must establish on the totality of the evidence, on the balance of probabilities, facts from which the Tribunal 'could conclude in the absence of an adequate explanation' that the Respondent had discriminated against her. This means that there must be a 'prima facie case' of discrimination including less favourable treatment than a comparator (actual or hypothetical) with circumstances materially the same as the Claimant's, and facts from which the Tribunal could infer that this less favourable treatment was because of the protected characteristic; (b) if this is

established, the Respondent must prove that the less favourable treatment was in no sense whatsoever because of the protected characteristic.

204. It was also said by Mummery LJ in *Madarassy*:

“The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case.”

205. To establish discrimination, the discriminatory reason for the conduct need not be the sole or even the principal reason for the discrimination; it is enough that it is a contributing cause in the sense of a significant influence: **Nagarajan v London Regional Transport** [1999] IRLR 572

206. The tribunal’s focus “must at all times be the question whether or not they can properly and fairly infer... discrimination.”: **Laing v Manchester City Council**, EAT at paragraph 75.

207. In considering what inferences can be drawn, tribunals must adopt a holistic approach, by stepping back and looking at all the facts in the round, and not focusing only on the detail of the various individual acts of discrimination. We must “see both the wood and the trees”: **Fraser v University of Leicester** UKEAT/0155/13 at paragraph 79.

208. **Indirect discrimination – s.19 EqA**

(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 relevant 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, it 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.

209. What amounts to “*disadvantage*” is not purely objective. Regard should be had to what is reasonably seen as unfavourable by the person affected: *Williams v Trustees of Swansea University Pension and Assurance Scheme* [2018] UKSC 65. An unjustified sense of grievance does not fit the definition.

210. In respect of group disadvantage, s.6(3) EqA clarifies that the “*particular disadvantage*” resulting from the PCP must be suffered by those who share C’s particular disability.

211. The burden is on the Respondent to prove justification, and it is for the tribunal to undertake a “*fair and detailed analysis of the working practices and business considerations involved*” so as to reach its own decision as to whether the treatment was justified. Tribunals should not allow a Respondent a “*margin of discretion*” or apply a “*band of reasonable responses*” test similar to that found in unfair dismissal cases: *Hardys & Hansons plc v Lax* [2005] EWCA Civ 846. However, there is not a general duty on a Respondent to put forward evidence that it had considered less discriminatory or less onerous alternatives to the PCP, or a duty on the tribunal to consider any alternatives to the PCP even if the employer did not do so: *Magoulas v Queen Mary University of London* UKEAT/0244/15.
212. **Discrimination arising from disability – s.15 EqA**
- (1) A person (A) discriminates against a disabled person (B) if—
- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
213. Discrimination contrary to s.15 EqA occurs where the Respondent treats the Claimant unfavourably because of something arising in consequence of the Claimant's disability, and the Respondent cannot show that the treatment is a proportionate means of achieving a legitimate aim. In accordance with guidance from Langstaff J in *Basildon & Thurrock NHS Foundation Trust v Weerasinghe* UEAT/0397/14, there are two distinct steps to the test:
- a. did the Claimant's disability cause, have the consequence of, or result in “something”?
- b. did the Respondent treat the Claimant unfavourably because of that “something”?
214. The principles in relation to unfavourable treatment and justification in claims under section 19 EqA apply to claims under section 15.
215. The Respondent is not able to simply turn a blind eye to evidence of disability. While the Equality Act does not impose an explicit duty to enquire about a person's possible or suspected disability, the EHRC Employment Code states that an employer must do all it reasonably be expected to do to find out whether a person has a disability. At paragraph 5.14, the Code states “employers should consider whether a worker has a disability even where one has not been formally disclosed as, for example, not all workers who meet the definition of disability may think of themselves as a “disabled person””.
216. For discrimination under s.15(1) to be established, the Respondent must have the requisite knowledge of disability at the time it is alleged that the Respondent treats the employee unfavourably.

217. Failure to enquire into a possible disability is not by itself sufficient to invest an employer with constructive knowledge. It is also necessary to establish what the employer might reasonably been expected to know had it made such an enquiry (A Limited v Z 2020 ICR199, EAT).
218. **Failure to make reasonable adjustments – ss.20 & 21 EqA**
219. Section 20 EqA imposes a duty on employers to make reasonable adjustments for employees (and others) in circumstances where a disabled person is placed at a substantial disadvantage by (amongst other things) a PCP.
220. Whether adjustments are reasonable is a fact-sensitive question. The test of reasonableness is objective and to be determined by the tribunal: Smith v Churchill's Stairlifts plc [2006] IRLR 41.
221. There is no objective justification defence available under this head of claim. The proposed adjustments were either reasonable or they were not. The EHRC Code states at para. 6.28 that the following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:
- a. whether taking any particular steps would be effective in preventing the substantial disadvantage;
 - b. the practicability of the step;
 - c. the financial and other costs of making the adjustment and the extent of any disruption caused;
 - d. the extent of the employer's financial or other resources;
 - e. the availability to the employer of financial or other assistance to help make the adjustment; and
 - f. the type and size of the employer.
222. The Code goes on at para. 6.29 to state that “*ultimately the test of the 'reasonableness' of any step an employer may have to take is an objective one and will depend on the circumstances of the case*”.
223. **Victimisation – s.27 EqA**
- (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.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

224. **Jurisdiction – s.123(1) EqA**

225. The time limit in which complaints of discrimination should be brought is set out in Section 123 of the EqA:

“(1) ... proceedings on a complaint ... may not be brought after the end of—

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or
- (b) such other period as the employment tribunal thinks just and equitable.

...

(3) For the purposes of this section—

- (a) conduct extending over a period is to be treated as done at the end of the period;
- (b) failure to do something is to be treated as occurring when the person in question decided on it.

Analysis and Conclusions

226. Addressing each issue in turn, the Tribunal has carried out an analysis of the facts and, applying the legal framework, has reached the following conclusions.

227. In order to do so, the Tribunal has considered in turn the events or acts which are alleged to be discriminatory as set out in the document prepared on behalf of the Claimant entitled "Schedule of Allegations", together with its findings in respect of the claim of unfair dismissal.

228. Before doing so, the Tribunal draws the following conclusions from its findings of fact in respect of the Claimant having a disability within the meaning of section 6 of the Equality Act and the Respondent's knowledge of the Claimant's disabilities.

Eosinophilic asthma

229. It had been conceded by the Respondents, and the Tribunal had found, that the Claimant had suffered from eosinophilic asthma since childhood and that this amounted to a disability in accordance with s.6 of the Equality Act 2010.
230. However, the first reference to the Claimant suffering from eosinophilic asthma was following the production of the Occupational Health report dated 18 March 2020.
231. Prior to the production of the Occupational Health report, whilst there was reference in the fitness for work statement in September 2019 to absence being as a result of an acute exacerbation of asthma, by that time, the Claimant had completed a number of documents in which she answered a series of questions regarding whether she suffered from a disability, such documents containing the legal definition of a disability.
232. Such documents included those the Claimant completed on the following occasions: on making her application for the position of Teaching Assistant in March 2019; in her application for registration with EWC; in the document Cardiff Council asked her to complete and return relating to a pre-work placement health declaration and medical examination; in the return to work interview form on 9 October 2019, and in the application made by the Claimant in November 2019 to become a Breakfast Club Supervisor.
233. There are also exchanges of text messages between Mr Fisher and the Claimant in January 2020, and then in February 2020, there is the referral to Occupational Health leading to the report of 18 March 2020.
234. The Tribunal concluded that, from March 2020 and the production of the OH report, the Respondents were aware of the Claimant suffering from eosinophilic asthma and that this was a disability under the EqA but that, before that time, they were not so aware, nor was it reasonable to have expected them to know. The Tribunal also concluded that it would not be reasonable to have expected the Respondents to carry out further enquiries prior to February and March 2020, taking account of the numerous occasions on which the Claimant had completed the documentation in relation to her employment and answered questions in the way that she had. This was particularly so when those documents related specifically to the definition of a disability under the EqA and which also contained examples of such conditions which would amount to a disability.
235. The Tribunal also took into consideration the Claimant stating that she was desperate to work, that she loved her job, had applied to take on an additional role, and had agreed to work more hours.
236. The Tribunal had not accepted the Claimant's assertion that she did not know that she was disabled. The Tribunal recognised that there may be occasions when a person who is disabled within the definition of the EqA may not recognise that fact. In this case, however, the Tribunal reiterated that the Claimant did not present as a person who would not have been so aware and had been provided with considerable information in the documentation she had completed in the course of her employment regarding the criteria that must be met to amount to a disability under the EqA.

PTSD

237. The Tribunal repeats its conclusion in respect of the Respondent's knowledge of the Claimant's overall condition up to, and including, March 2020. It is worth noting that, even though there was a reference to Occupational Health in February 2020 which led to the report dated 18 March 2020, there is no reference in that report to any concerns regarding the Claimant suffering from PTSD or indeed any type of mental illness.
238. Whilst there is certain medical evidence that predates the Claimant pursuing her claim, the Tribunal considers that the absence of any contemporaneous GP notes or medical records is significant, the production of those documents having been ordered by the Tribunal at the case management hearing. The advantage of having sight of GP notes and other medical records which may be relevant is that the Tribunal can review what was being said in real time by the GP or other medical practitioner regarding their assessment and also what was being said to them by the Claimant, hence the Judge's direction at the CMH. It was not open to the Claimant to decide that compliance with that direction was unnecessary.
239. For example, the Claimant stated that she suffered PTSD as a result of what the Tribunal accepts must have been traumatic events in 2014. However, the earliest reference to PTSD is in the report of Dr Bagshaw of 16 May 2022 when Dr Bagshaw stated that this condition was first noted in the Claimant's notes in 2016.
240. In the absence of the Claimant's GP notes and medical records and any medical evidence specifically dealing with the Claimant's PTSD, and having to rely solely on the Claimant's disability impact statement, the Tribunal concluded that, whilst it accepted that the Claimant suffered from PTSD, it had insufficient information on which to base conclusions that the Claimant suffered from PTSD such that it satisfied the criteria stipulated within section 6 of the Equality Act 2010..
241. This is particularly so as, in terms of medical documents, it was not until June 2021 that there is reference to PTSD. This was in the form of a further Occupational Health report of 2 June 2021 and a statement of fitness for work dated 17 June 2021 that make initial reference to the Claimant's PTSD. By this time, the Claimant had been absent from work for some months and she did not return prior to her dismissal in December 2021.
242. Furthermore, whilst there was reference to anxiety and depression in two previous statements of fitness for work, by the time there was reference to PTSD, the management of the Claimant's absence had been transferred from Mr Fisher to the Chair of Governors, Miss Humphreys, and Ms Walker of Cardiff Council.
243. The first reference to PTSD was made by the Claimant verbally to Miss Humphreys and Ms Walker at the contact meeting on 10 May 2021 when she outlined the trauma that she had experienced in the past and a discussion was then held with regard to the support that could be provided by the School.
244. The Tribunal had considered carefully what had been said by the Claimant in her disability impact statement. The Tribunal had also taken account of the Claimant's desire to work, and her willingness to take on additional roles and additional hours in the course of her employment with the School. As stated, the Tribunal had found that the first mention of PTSD was made in a contact meeting in May 2021 and then in

medical documents in June 2021, by which time, she was absent from work and did not return.

245. The Tribunal concluded that the Claimant had provided insufficient evidence to enable the Tribunal to find that her PTSD amounted to a disability within the meaning of section 6 of the EqA. In doing so, the Claimant had failed to satisfy the Tribunal that her PTSD led to a substantial adverse impact on her day-to-day activities.

246. Even had the Tribunal made such a finding, it was satisfied that it was not reasonable for the Respondents to have had knowledge of her PTSD prior to May 2021.

247. The Tribunal reached the following conclusions by reference to the Schedule of Allegations

1. The Claimant being told to remove her facemask and to wear a full-sized facemask.

248. The Tribunal relied on its findings of fact and that, in relation to the wearing of a mask, the Tribunal had preferred the evidence of Mr Fisher.

Direct discrimination

249. The Claimant had relied on a hypothetical comparator but the Tribunal found that the rule to wear a standard medical IIR mask applied to all members of staff. Therefore, it must follow that the Claimant was not treated less favourably by being asked to do the same.

Discrimination arising from a disability

250. It is alleged in the Claimant's claim form that "something arising" from her disability is the requirement for her to wear a smaller child's facemask due to breathing difficulties caused by the full sized medical IIR mask. Again, the Tribunal relied on the findings of fact when it preferred the evidence of Mr Fisher with regard to his conversation with the Claimant when he observed her wearing the smaller child's mask and the reason for her doing so.

251. Secondly, the Tribunal had not been persuaded by the demonstration given by the Claimant at the outset of the hearing. Thirdly, the guidance from Public Health Wales is very clear that wearing a surgical mask did not lead to oxygen deficiency (page 302).

252. Finally, the Tribunal had accepted Mr Fisher's evidence that had the Claimant produced a letter from her GP or some other medical evidence confirming that she was not able to wear a surgical mask in accordance with the official guidance, as others had done, he would have certainly acted upon it. No medical evidence was produced at the time, nor did the Claimant produce any medical evidence before the Tribunal to support her claim.

253. Even had the Tribunal found that the Claimant had been treated unfavourably, taking account of the circumstances that prevailed at the time in terms of the pandemic and the measures required to keep staff and pupils safe, the Tribunal found that the

requirement for the Claimant to wear an IIR mask was a proportionate means of achieving a legitimate aim, namely taking steps to protect the safety of staff and pupils.

Harassment

254. The allegation that the requirement for the Claimant to wear a surgical IIR mask in accordance with Public Health Guidance amounts to harassment is not well-founded. The Tribunal does not consider that such a requirement amounts to unwanted conduct and, even if it did, it would not have had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. This takes into account the Tribunal's assessment of the perception of the Claimant, and the other circumstances of the case as outlined in the Tribunal's findings of fact, to include the unique circumstances of protecting the health and safety and wellbeing of not only the Claimant but also the pupils and other staff. The Tribunal was not satisfied that it would be considered reasonable for the Respondent's conduct to have had the effect claimed by the Claimant.

2. Mr Kim Fisher's conduct during a meeting with the Claimant in June 2019.

255. In the claim form and the Schedule of Allegations, it is alleged that Mr Fisher's conduct towards the Claimant in their first meeting in June 2019 amounted to direct disability discrimination, discrimination arising from a disability, and harassment.
256. However, at the commencement of the hearing, it was confirmed that this no longer formed part of the Claimant's claim.

3. Subjecting the Claimant to a sickness absence capability procedure, starting with an absence review meeting on 9 October 2019, and Mr Fisher's conduct.

257. In the Schedule of Allegations, the disability relied on is stated as PTSD. However, the absence from work related to the Claimant's asthmatic condition. As at October 2019, there were no documents or other evidence that related to the Claimant suffering from PTSD.
258. Furthermore, the Tribunal had found that, as at October 2019, the Respondents were not aware of the nature of the Claimant's asthmatic condition, nor that it amounted to a disability.
259. Even had the Tribunal found that the Respondents were, or should have been, aware of the Claimant's disability, it reached the following conclusions based on its findings.

Direct discrimination

260. By reference to a hypothetical comparator, the Tribunal did not consider that the Claimant was treated differently to any other employee who had experienced two periods of sickness absence within the previous six months. All employees were subject to the Attendance and Wellbeing Policy and it was HR People Services from the Cardiff Council who had sent an email to the School informing it that there was a need to interview the Claimant and record the interview on DigiGov.

261. The Tribunal relied on its findings of fact in relation to what took place at the meeting on 9 October 2019 and also the development in the following month when, supported by Mr Fisher, the Claimant applied for, and was appointed to, the position of Breakfast Club Supervisor.
262. The Tribunal concluded that the Claimant was not subjected to less favourable treatment.

Discrimination arising from a disability

263. It was understood that the, "something arising" as a consequence of the Claimant's disability was her sickness absence.
264. For the same reasons, the Tribunal did not consider that the Claimant was treated unfavourably by being asked to attend the return to work interview on 9 October 2019.
265. Even if the Tribunal had concluded that this amounted to unfavourable treatment, it did not arise as a result of her disability as all employees who had been absent from work were required to attend such an interview.
266. Furthermore, the requirement to attend a return to work interview was a proportionate means of achieving a legitimate aim, namely the management of an employee's absence from work.

Harassment

267. The Tribunal could not find any basis on which to conclude that the process that was followed, at the behest of Cardiff Council, in undertaking the return to work interview on 9 October 2019 in accordance with the Attendance and Wellbeing Policy could be considered unwanted conduct related to the Claimant's disability.
268. The Tribunal did not consider there was any evidence which supported a finding that such conduct had the purpose or effect of violating the Claimant's dignity or creating an intimidating hostile, degrading, humiliating or offensive environment. As stated, this was a meeting which took place in accordance with the Attendance and Wellbeing Policy and was a requirement for all employees who had two periods of absences within a six-month period; there was nothing to suggest that the way in which Mr Fisher conducted that interview amounted to conduct which was unwanted.

4. Failing to provide the Claimant with a return to work meeting in February 2020 following a period of sickness absence.

269. Once again, the disability relied on is PTSD although the reason for the Claimant's absence was her asthmatic condition.
270. The Claimant claims that the failure to hold a return to work meeting in February 2020 amounted to direct disability, discrimination arising from a disability, and harassment.
271. The Tribunal had found that, as at February 2020, the Respondents were not aware of the nature of the Claimant's asthmatic condition, nor that it amounted to a disability.

272. Even had the Tribunal found that the Respondents were, or should have been, aware of the Claimant's disability, based on its findings of fact, the Tribunal had found that a return to work interview was held with the Claimant on 11 February 2020 (pages 438 to 442). Consequently, there was no failure on the part of the Respondents to hold such a meeting.

5. Subjecting the Claimant to a Stage 1 absence review meeting in February 2020.

273. The Tribunal relies on its findings of fact in relation to the meeting which took place on 24 February 2020 between Mr Fisher, Ms Walker and the Claimant.

274. The Tribunal had found that, as at February 2020, the Respondents were not aware of the nature of the Claimant's asthmatic condition, nor that it amounted to a disability.

275. Even had the Tribunal found that the Respondents were, or should have been, aware of the Claimant's disability, it reached the following conclusions based on its findings.

276. The Tribunal had accepted the evidence of Ms Walker in relation to what took place at the Stage 1 absence review meeting.

Direct discrimination

277. When considering a hypothetical comparator, the Tribunal was satisfied that, requesting the Claimant to attend the Stage 1 absence review meeting did not amount to less favourable treatment when compared with someone who does not have a disability. The Tribunal was satisfied that a hypothetical comparator would have been treated in the same way and the same process would have been followed. Indeed, it was in the course of that meeting that the referral to Occupational Health was confirmed, such referral having been considered at the return to work meeting earlier on 11 February 2020.

278. There was therefore no evidence to suggest that the Claimant was treated less favourably than a person without a disability.

Discrimination arising from a disability

279. The Claimant claims that she was treated unfavourably due to something arising from her disability, namely her sickness absence.

280. For the same reasons, the Tribunal concluded that the Claimant had not been treated unfavourably as a result of a disability by her participation in the Stage 1 absence review meeting. As stated, it led to a referral to Occupational Health.

281. Even if the Tribunal had concluded that this amounted to unfavourable treatment, it did not arise as a result of her disability as all employees who had been absent from work were required to attend such an interview.

282. Furthermore, the requirement for the Claimant to attend the Stage 1 absence review meeting was a proportionate means of achieving a legitimate aim, namely the management of an employee's absence from work.

Harassment

283. The Tribunal could find no basis on which to conclude that requiring the Claimant to attend a Stage 1 absence review meeting amounted to unwanted conduct, let alone that such conduct would have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.
284. In reaching that conclusion, the Tribunal had taken account of the perception of the Claimant and the other circumstances of the case, to include the operation of the Attendance and Wellbeing Policy which related to all employees, whether or not an employee had a disability, and whether it was reasonable for the conduct to have that effect.

6. Preventing the Claimant from attending an autism awareness training course in the 2020 Autumn term.

285. The Tribunal had found that, far from preventing the Claimant from attending an autism course, Mr Fisher, and thereby the School, had facilitated it, and there is reference in documents completed by the Claimant that confirm that she had attended the course. Mr Fisher had stated that this was the only autism course which was being run, and that it was being run remotely as a result of the pandemic.
286. Consequently, any suggestion of direct disability discrimination, or discrimination arising from a disability, or harassment does not arise.

7. The Claimant being prevented from undertaking her annual fundraising initiative in December 2020.

287. The Tribunal was not satisfied that this issue was connected in any way to the Claimant's disability.
288. The Tribunal had found that there was no evidence to support the Claimant's assertion that Mr Fisher had *"continuously and repeatedly sought to create a hostile environment for the Claimant."*
289. It had been alleged by the Claimant that Mr Fisher, *"would also be unreasonably disruptive to the work that the Claimant did, including interfering with her fundraising activities, . . ."*(paragraph 10 page 17)
290. As stated, the Tribunal did not find that Mr Fisher's *"interference"* with the Claimant's fundraising activities was related in any way to her disability. Further, as the fundraising activities were directly related to the School, the Tribunal concluded that it was entirely within Mr Fisher's remit to review those fundraising activities. Finally, the Tribunal had found that there was no intention on Mr Fisher's part to preclude the fundraising activities by the Claimant. The issue that he had raised was the use to which those funds should be put.

291. For these reasons, the Tribunal did not consider that this gave rise to direct disability discrimination, discrimination arising from a disability, or harassment.

8. Subjecting the Claimant to a sickness absence management process by initiating a Stage 2 absence review meeting in January 2021.

292. The Tribunal relied on its findings of fact in relation to the circumstances which gave rise to the Claimant being subjected to the sickness absence management process and the requirement for the Claimant to attend a Stage 2 absence review meeting.

293. It was not in dispute that the invitation had been issued in error. This was the first occasion on which Mr Fisher had conducted such a process. Further, the initiation of the Stage 2 absence review in the letter of 27 January 2021 was based on a template from DigiGOV and sent out by Mr Fisher's Clerical Assistant who had made the initial error in 2019 in submitting a document where the default position was the issue of a caution. This occurred when in fact Mr Fisher had decided to discount the Claimant's absences.

294. What was of concern was that the error was compounded by the email of 8 February 2021 stating that the meeting must go ahead and that Mr Fisher reserved the right to proceed in the Claimant's absence. This is despite the email dated 27 January 2021 from the Claimant reminding Mr Fisher that her absences had been discounted and that she was shocked to have received the Stage 2 interview letter. Indeed, on the following day, Mr Fisher replied by email (pages 509 to 510) stating that the Stage 2 process would continue.

295. Nevertheless, the Tribunal had accepted that this process arose out of administrative error.

Direct discrimination

296. By reference to a hypothetical comparator, whilst the Claimant had presented evidence from which an inference could be drawn that the Claimant had been treated less favourably due to her disability, the Tribunal was not satisfied that, due to an error, the Claimant was treated less favourably than others would have been treated. The Tribunal concluded that the Respondents had established that this process could have been commenced in error in relation to any employee whether or not an employee with a disability.

Discrimination arising from a disability

297. The Claimant had claimed that she was treated unfavourably due to something arising from her disability, namely due to her sickness absence or, in the alternative, due to her need to shield as she was shielding from 22 December 2020..

298. For the same reason, the Tribunal found that, whilst the Claimant had been treated unfavourably as a result of the administrative error, the Respondents did not treat the Claimant unfavourably because of something arising from her disability, whether due to her sickness absence or the requirement for her to shield.

299. The chain of events flowing from the administrative error which led to the unforeseen consequences did not arise from the Claimant's disability. Such consequences flowing from the same administrative error could equally have occurred in relation to an employee without a disability, but whose absences from work were due to sickness.

Harassment

300. The Tribunal approached its analysis recognising the high threshold which must be met for such a claim to be substantiated.
301. The Tribunal concluded that the sending of the two letters and the email correspondence did amount to conduct which could be described as unwanted. The Tribunal was satisfied that, whilst this may not have violated the Claimant's dignity, the effect, as opposed to the purpose, of the unwanted conduct led to the Claimant feeling intimidated. In reaching this conclusion, the Tribunal had considered in particular the contents of the Claimant's email of 27 January 2021 and her expression of shock at having received the letter from Mr Fisher. Again, this was compounded by the subsequent correspondence from Mr Fisher before Mr Fisher's email of 26 February 2021 cancelling the Stage 2 meeting (pages 517 to 518).
302. For these reasons, the Tribunal upheld the Claimant's claim of harassment as against the School and Mr Fisher. In doing so, the Tribunal had taken account of the perception of the Claimant in receiving such correspondence together with all the history and surrounding circumstances, and concluded that it was reasonable for the conduct to have that effect.
303. The Tribunal found that, at the time the error was made, the absence and need to shield had been caused by the Claimant's asthmatic condition (pages 481 to 482) as opposed to PTSD which in turn led to the error being made in January 2021 when the Stage 2 absence review was initiated.

9. Persistently seeking to conduct a sickness absence review meeting with the Claimant in March and April 2021, despite her absences being due to her disability.

304. The Tribunal relied on its findings of fact in relation to the exchanges of emails between the Claimant and Mr Fisher in March and April 2021. In the email exchanges during this period, Mr Fisher had written to the Claimant asking her to attend a contact meeting, whether virtually or over the phone, and this request was made at the instigation of a prompt from Cardiff Council. The Tribunal did not consider there was any basis on which to conclude that the exchanges of emails could be described as "persistent". They are entirely sympathetic to the Claimant's reasons for being absent. By way of illustration, the Tribunal referred to the emails from Mr Fisher of 18 March 2021 (page 524) and 26 April 2021 (page 538)

"The purpose of this meeting is to find out how you are getting on, ascertain whether you require any assistance, keep you in touch with any developments at work, and simply to maintain contact with you during your absence."

305. The exchange of emails illustrated a sympathetic approach by Mr Fisher and this was acknowledged by the Claimant in her response on 10 April 2021 which is set out in

full in the Tribunal's findings of fact in which the Claimant starts her email by saying "*Hello Kim, thank you for your concerns.*"

306. The Tribunal also considered that it was relevant that during the same period, Mr Fisher was asking the Claimant to confirm that she wished to continue to work an additional 12.5 hours per week, which the Claimant readily accepted, even though she was absent from work during that time but in the expectation of her return.

Direct disability discrimination

307. By reference to a hypothetical comparator, the Tribunal does not consider that there was any evidence to support a conclusion that the Claimant has been subjected in any way to less favourable treatment as a result of her disability. The Tribunal found that, had a person without a disability been absent from work for ill health, Cardiff Council would have sent a prompt to Mr Fisher and the School indicating that a contact meeting needed to take place; again, the purpose of the contact meeting was entirely supportive. Further, the Tribunal found that Mr Fisher was sympathetic to the Claimant's circumstances and the Claimant's indication that she was not able to attend a contact meeting.

Discrimination arising from a disability.

308. The Tribunal approached the, "something arising" as the Claimant's sickness absence.
309. For the same reasons, the Tribunal did not consider that the Respondents had discriminated against the Claimant in any way for reasons arising from her disability and the Claimant had not been put to a particular disadvantage as a result of her disability.
310. Even if the Tribunal had concluded that this amounted to unfavourable treatment, it did not arise as a result of her disability as all employees who had been absent from work were required to attend such a meeting.
311. Furthermore, the requirement for the Claimant to attend the meeting was a proportionate means of achieving a legitimate aim, namely the management of an employee's absence from work.

Harassment

312. The Tribunal did not consider that the Respondents had engaged in unwanted conduct relating to the Claimant's disability, let alone that such conduct would violate the Claimant's dignity or create an intimidating, hostile, degrading or humiliating or offensive environment for the Claimant. As stated, the Cardiff Council had prompted Mr Fisher to write to the Claimant to arrange a contact meeting in the same way as it would in respect of any other employee who had been absent from work for a particular period of time. The content of the correspondence from Mr Fisher to the Claimant was respectful and supportive and was sensitive to the Claimant's requests.

10. The requirement for all staff to wear surgical face coverings in the workplace amounts to a Provision, Criterion, or Practice which indirectly discriminated against those with the Claimant's disability.

313. The Tribunal refers to its findings under sub-heading 1 above, together with its findings of fact in relation to the requirement for the Claimant, along with all other staff, to wear masks in accordance with public health guidance.

Indirect disability discrimination

314. The Tribunal had found that, in the absence of any other evidence, the Claimant had stated to Mr Fisher that she was wearing the child's mask to raise money for a charity. Further, there was no evidence produced to suggest that wearing a surgical IIR mask caused breathing difficulties. Indeed, the guidance was very clear that wearing a surgical IIR mask did not result in oxygen deprivation. The guidance indicated that a cloth mask such as the one being worn by the Claimant was not recognised PPE when compared with the surgical mask. The Tribunal repeated its conclusion that, in the absence of any medical evidence, it was not satisfied that the PCP, namely the requirement to wear a surgical IIR mask, put the Claimant at a particular disadvantage.
315. Even had the Claimant established that the PCP, namely the need for employees to wear a surgical IIR mask, put her at such a disadvantage, the Tribunal was satisfied that such a requirement was a proportionate means of achieving a legitimate aim, namely taking the requisite steps to ensure the safety of staff and pupils during the pandemic.

Failure to make reasonable adjustments

316. The Tribunal had accepted the evidence of Mr Fisher that, if the Claimant had produced a letter from her GP to confirm that she was not able to wear a surgical mask, he would have readily accepted the position and exempted her from doing so. He had adopted such an approach in relation to another member of staff.
317. Reference is made in the Schedule of Allegations to the use of a visor but this was raised for the first time in the course of the hearing and the Claimant made no mention of it in her particulars of claim or statement.
318. In any event, the Tribunal had accepted Mr Fisher's evidence that wearing a visor indoors was not sufficient.

11. The Respondents' Sickness Absence Policy and the Sickness Absence Review Policy/Procedure amounts to a PCP which indirectly discriminated against those with the Claimant's disability because it did not disregard sickness absences related to the Claimant's disability, causing the absences to trigger an absence and management procedure. Such a failure also amounts to a failure to make reasonable adjustments.

Indirect discrimination

319. The decision whether or not to discount absences was within the discretion of Mr Fisher and this applied equally to those who have a disability and to those who have not. As Ms Walker stated, it was normal procedure to organise a Stage 1 meeting when it was due so that the issues relating to an employee's absence can be discussed regardless of whether or not, *"there are potential Equality Act issues."*
320. Ms Walker also confirmed that, once the Occupational Health report was available which indicated that the Claimant would likely fall within the Equality Act, and even if Mr Fisher had exercised his discretion to discount the Claimant's absence, as he did, they would normally have reconvened the meeting to confirm the decision but this had not been possible due to the pandemic.
321. Consequently, the Tribunal found that the Respondents' Sickness Absence Policy and the Sickness Absence Review Policy/Procedure did not put the Claimant at a particular disadvantage.
322. Even had the Claimant established that the PCP put the Claimant at such a disadvantage, the Tribunal was satisfied that the Sickness Absence Policy and Sickness Absence Review Policy, which was subject to a discretion to discount absences in appropriate circumstances, was a proportionate means of achieving a legitimate aim, namely the management of employees' absence from work.

Failure to make reasonable adjustments

323. The Tribunal was satisfied that Mr Fisher had in fact made a reasonable adjustment by exercising his discretion in favour of the Claimant by discounting her absences up until that point in March 2020.

12. The Requirement for all staff to carry out yard duties during colder weather amounts to a PCP which indirectly discriminated against those with the Claimant's disability.

324. The Tribunal relied on its findings of fact and concluded that the Occupational Health report had recommended that the Claimant refrain from carrying out yard duties at morning break and lunchtime, *"during the winter months"*. A discussion had been held between the Claimant and Mr Fisher and it was agreed in October 2020 that the Claimant would continue carrying out yard duties during the morning break but not during lunchtime but that this would be reviewed when the weather turned colder.
325. The Tribunal concluded that the PCP for all staff to carry out yard duties during colder weather may have put persons with a disability such as the Claimant's at a particular

disadvantage but, nevertheless, in October 2020, Mr Fisher, with the agreement of the Claimant, made a reasonable adjustment by reducing her yard duties to the morning break and agreed to keep the matter under review during the later winter months. This adjustment was made with the agreement of the Claimant. The PCP was therefore not applied to the Claimant, nor was it established that it was applied to others with a disability.

13. The failure of the grievance and grievance appeal committees to assess the Claimant's grievance and subsequent appeal fairly by considering all relevant issues and raising new allegations against the Claimant which were not a subject of the Claimant's grievance. The protected act was the Claimant submitting a grievance.

326. In the Schedule of Allegations, the allegation is restricted to one of victimisation. In the list of issues, it is also alleged that this amounted to indirect discrimination (page 78).

Indirect Discrimination

327. The PCP as outlined in the list of issues (page 78) is more akin to an allegation. However, the Tribunal has based its decision on a PCP which required the Grievance Committee and Grievance Appeal Committee to assess the Claimant's grievance and appeal fairly by considering all relevant matters.

328. It was important to bear in mind that the grievance proceedings were instigated by the Claimant and the school had to respond. The basis on which the claim is made in paragraph 50(d) of the Particulars of Claim (page 22) would suggest that any adverse decision of the panels would have been discriminatory.

329. The Tribunal found that the PCP was not discriminatory. Whilst the school would apply it to persons who did not have a disability, it did not put persons with a disability such as that of the Claimant's at a particular disadvantage when compared with those who do not have a disability.

330. The Governors appointed to the Panel to consider the Claimant's grievance devoted a considerable amount of time to assess the grievances submitted by the Claimant, to include hearing from the Claimant and then carrying out further investigations.

331. It was accepted that the Grievance Committee had erroneously considered additional allegations as against the Claimant in the course of its deliberations. To that extent, the Tribunal concluded that the hearing before the Grievance Committee had not been conducted fairly.

332. However, this was rectified at the hearing of the Claimant's grievance appeal although the conclusion of the Grievance Appeal Committee was ultimately to uphold the decision of the Grievance Committee.

333. The Tribunal did not find that the reason why the Grievance Panel had adopted a fair approach was related in any way to her disability. More particularly, the Tribunal did not find that the Grievance Panel had sought to make allegations against the Claimant

in order to detract from the allegations she had made against the Respondents, as alleged at paragraph 63 of the Particulars of Claim (page 23).

Victimisation

334. The Tribunal was satisfied that the allegations which formed the grievance pursued by the Claimant were thoroughly investigated. The Claimant clearly did not agree with the outcome both in terms of the conclusions reached by the Grievance Committee and thereafter the Grievance Appeal Committee. Whilst errors were made by the Grievance Committee in respect of the allegations it considered, which were then addressed by the Grievance Appeal Committee, the Tribunal concluded that, in reaching their decisions, the Grievance Committee and the Grievance Appeal Committee did not subject the Claimant to a detriment as a consequence of her pursuing a grievance based on an allegation of disability discrimination.
335. In reaching its decision, the Tribunal found that the Claimant had failed to establish that the motive behind the decision of the grievance panel and the grievance appeal panel was to detract from the allegations she had made, nor was there sufficient evidence for the Claimant to have reasonably formed the perception that this was the motive such that it amounted to victimisation.

14. The process the Respondents followed leading up to and including the Claimant's dismissal on 30 November 2021.

336. The Tribunal relied on its findings of fact particularly with regard to the contact meetings which had taken place on 10 May 2021, 8 June 2021, 12 July 2021, 17 September 2021 and 18 October 2021. Such contact meetings were held between the Claimant, the Chair of Governors, Miss Humphreys, and Ms Walker. Whilst denied by the Claimant, the Tribunal had found that during the contact meetings on 12 July 2021, 17 September 2021 and 18 October 2021, the Claimant had been informed that her job may be at risk as a result of her continued absence. This was clear from the notes made of those meetings which had not been challenged.
337. In the course of various contact meetings and in answer to questions from Miss Fender, the Claimant had also stated that she was not prepared to return to work whilst Mr Fisher continued as Head Teacher, nor was she prepared to consider mediation or medical redeployment.

Direct discrimination

338. The Tribunal was satisfied that the Claimant had failed to establish that she was treated less favourably than the Respondents would have treated others without a disability but who were also absent from work for the same amount of time as the Claimant. This was particularly so in circumstances where it had been indicated that there was no prospect of a return to work whilst the Headteacher was in post and a refusal to engage in mediation or redeployment.

Discrimination arising from a disability

339. The Tribunal understood the, "something arising" related to the Claimant's sickness absence.

340. It was stated in various contact meetings and also during the dismissal hearing that the Claimant was not prepared to return to work whilst Mr Fisher remained in post and there was a refusal to engage with mediation or medical redeployment. Consequently, the reason to dismiss the Claimant, whilst based on her long-term absence, was also as a result of the reasons she gave and the conditions she stipulated as a prerequisite to any return.
341. In any event, on the basis that the Claimant was refusing to return for the reasons outlined, and taking account of the Respondent's legitimate aim of safeguarding the other members of staff and its duty to safeguard public funds, the Tribunal found that the Claimant's dismissal was a proportionate means of achieving those legitimate aims.

Harassment

342. The Tribunal did not consider there were any findings based on which it could conclude that the process followed by the Respondents leading to the Claimant's dismissal could be considered as harassment.
343. The Claimant had accepted that Ms Humphreys and Ms Walker had been very supportive towards her during the contact meetings and had at all times attempted to discuss with her a satisfactory outcome which could result in her return to work.
344. Whilst the Claimant had been inconsistent in her evidence and had denied that Ms Humphreys and Ms Walker warned her that her continued absence was putting her job at risk, the Tribunal had found that such warnings had been given and that to issue such warnings was appropriate.
345. Furthermore, the way in which the hearing was conducted which led to the Claimant's dismissal was also appropriate and fair, with the Claimant having every opportunity to put her case and the outline by Ms Humphreys on behalf of the school and Cardiff Council was also fair.
346. The Tribunal did not consider that, in the course of the contact meetings and the meeting leading to the Claimant's dismissal, the Respondents had engaged in unwanted conduct relating to the Claimant's disability, let alone that such conduct would violate the Claimant's dignity or create an intimidating, hostile, degrading or humiliating or offensive environment for the Claimant.

Victimisation

347. The Tribunal had concluded that the School and Cardiff Council had decided that, due to the Claimant's long-term absence from work, it was appropriate for contact meetings to take place, which were designed to be supportive and with the aim of the Claimant returning to work. As a consequence of the Claimant's continuing absence, and following warnings having been given to the Claimant in the course of those contact meetings, the Claimant was invited to a hearing and she was informed that one possible outcome was her dismissal.

348. At the meeting before the Disciplinary and Dismissal Committee, it was made clear that the purpose of the hearing was to consider the long-term absence of the Claimant in accordance with the Attendance and Wellbeing Policy.
349. For the reasons set out below, the Tribunal found that the process followed by the School and Cardiff Council was fair. The Tribunal therefore considered there was no basis on which it could conclude that the Claimant had been subjected to a detriment, nor was there any evidence to suggest that the reason for her dismissal was as a result of the Claimant making allegations against Mr Fisher and the school.
350. Indeed, taking account of the approach adopted by the school and Cardiff Council, the Tribunal found that there was no basis on which it was reasonable for the Claimant to have formed the perception that this represented conduct that amounted to victimisation.

Unfair dismissal

351. In the particulars of claim and her statement, the Claimant suggested that she had not received any warning prior to her being invited to the dismissal hearing that her job was at risk. This was not consistent with either the documentary evidence or the oral evidence of Ms Walker. The Tribunal had found that in the contact meetings in July, September and October 2021, the Claimant was given a clear warning that her job may be at risk and this was confirmed in the letter inviting her to the dismissal hearing. The accuracy of those notes had not been challenged.
352. As stated, it was suggested that any decision to dismiss should be deferred until the outcome of counselling sessions attended by the Claimant but Miss Fender confirmed that, even though the minutes of the dismissal hearing do not reflect this, the Claimant said that she would not return whilst Mr Fisher was Head Teacher. This is consistent with what the Claimant had said in the contact meetings with Miss Humphreys and Ms Walker, the notes confirming that the Claimant had said that she could not see any circumstances in which she would return to work.
353. Finally, again, the Claimant refused mediation and medical redeployment.
354. The Tribunal was satisfied that the decision to dismiss was consistent with those factors the Panel was required to consider as set out in the Attendance and Wellbeing Policy and also as a result of the Claimant's precondition that she would only return if Mr Fisher was no longer Head Teacher.
355. The Tribunal concluded that the Respondents had carried out a reasonable investigation and consultation in the form of the contact meetings and their decision to dismiss the Claimant was based on a genuine belief that there was no real prospect of the Claimant returning to work at the School.
356. The Disciplinary and Dismissal Panel had taken into account the need to safeguard other members of staff who were required to cover for the Claimant and also the School's responsibilities with regard to public funds.
357. For that reason, the Tribunal was satisfied that the decision to dismiss fell within the reasonable band of responses.

Jurisdiction

358. It had been maintained by the Respondents that the claims of discrimination against Mr Fisher were out of time and that, even if a course of conduct was established, the last allegation would be the allegation that Mr Fisher persistently sought to conduct a sickness absence review meeting with the Claimant in March and April 2021.
359. The Tribunal was satisfied that the conduct alleged against the Respondents extended over a period which culminated with the Claimant's dismissal in December 2021.
360. Whilst no submissions were made in respect of time limits either in writing or orally on behalf of the Claimant, the Tribunal noted that, at paragraph 71, the Claimant alleged that she had been subjected to a continuing course of discriminatory conduct.
361. Whilst the Tribunal took into consideration the fact that certain un-minuted meetings took place some three years prior to the hearing, the chronology was generally very well documented and Mr Fisher had been able to provide a detailed witness statement as had Ms Walker.
362. The Tribunal concluded that the allegations of conduct extended over a period culminating with the Claimant's dismissal and that it would be just and equitable to extend time. Even if the Tribunal had not concluded that such conduct extended over a period leading to the dismissal, the Tribunal was satisfied that it would be just and equitable to extend the period in which the Claimant was entitled to pursue her claims of discrimination.

Employment Judge R Havard

Dated: 22 November 2022

JUDGMENT SENT TO THE PARTIES ON 23 November 2022

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche