EMPLOYMENT TRIBUNALS

Claimant:	**Dr R Poyser**		
Respondent:	**The Governing Body of Wyke College**		
Heard at:	**Hull**	**On:**	**5, 7, 8, 9, 12 and 13 (deliberations) June 2017**
Before:	**Employment Judge Davies**		
Members:	**Mr N Pearse** **Mr G Wareing**		
Representation			
Claimant:	**Mr O'Dair, counsel**		
Respondent:	**Mr Quickfall, counsel**		

RESERVED JUDGMENT

1. The Claimant's claim of less favourable treatment contrary to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 is dismissed on withdrawal by the Claimant.
2. The Claimant's claims of unfair dismissal and disability discrimination are not well-founded and are dismissed in full.

REASONS

1. Introduction

1.1 These were claims of unfair (constructive) dismissal, disability discrimination (unfavourable treatment because of something arising in consequence of disability, failure to make reasonable adjustments and indirect discrimination) and less favourable treatment contrary to the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ("the PTW Regulations") brought by the Claimant, Dr R Poyser, against her former employer, the Governing Body of Wyke College. The Claimant was represented by Mr R O'Dair of counsel and the Respondent by Mr Quickfall of counsel. The Tribunal was provided with an extremely lengthy agreed file of documents running to more than 1000 pages. A small number of additional documents were also admitted in evidence during the course of the hearing. The Tribunal heard evidence from the Claimant on her own behalf. Mr S Lloyd of the NASUWT had presented a witness statement on her behalf. We agreed that Mr Lloyd did not need to give oral evidence and be

cross-examined because the matters of dispute in his witness statement were not relevant to the issues to be determined by the Tribunal. For the Respondent the Tribunal heard evidence from Mrs J Anderson (HR Manager), Dr I Taylor (Deputy Principal at the relevant times), Mrs A Lamplough (Director of Finance), Mrs J Peaks (Vice Principal), Mr M Rothery (Vice Principal) and Mr J Trivedy (Principal).

1.2 The Tribunal discussed with the parties at the outset of the hearing the issues to be determined. The Tribunal raised with the Claimant during the course of that discussion the requirement under the PTW Regulations for an actual comparator. In this case none had been named and no evidence on that point had been provided. On the second day of the hearing the Claimant's representative indicated that the claim under the PTW Regulations was withdrawn. So far as the unfair dismissal claim was concerned, the Tribunal discussed with the parties at the outset of the hearing which terms of the contract the Claimant said had been breached and what the potentially fair reason for dismissal relied on by the Respondent was. The parties' positions on those matters were again confirmed at the start of the second day of the hearing and those positions are reflected in the list of issues set out below. When the Claimant gave her evidence the Tribunal discussed with her whether any adjustments were required and appropriate adjustments were made.

2. The issues

2.1 The issues to be determined were as follows.

Disability discrimination: preliminary

2.1.1 The Respondent conceded that the Claimant was at all relevant times a disabled person within the meaning of the Equality Act 2010 by virtue of the mental impairment of depression.

2.1.2 Were the claims of disability discrimination brought within the relevant time limits under the Equality Act and, if not, were they brought within such other period as the Tribunal considers just and equitable?

Discrimination arising from disability

2.1.3 Did the Respondent know or should the Respondent reasonably have been expected to know that the Claimant had the disability?

2.1.4 If so did the Respondent treat the Claimant unfavourably by:

- 2.1.4.1 Dr Taylor deciding on or about 9 November 2015 that she was required to attend Faculty briefing meetings on a Tuesday or Thursday morning at 8.45am and a total of five full staff meetings on a Tuesday afternoon between 4 and 5pm;
- 2.1.4.2 the bringing of disciplinary proceedings in respect of her failure to attend such meetings on 11 December 2015;
- 2.1.4.3 issuing a first written warning in respect of that failure on 27 January 2016;
- 2.1.4.4 rejecting the Claimant's appeal against the first written warning on 12 February 2016;
- 2.1.4.5 instituting further disciplinary proceedings in respect of the failure to attend further meetings on 26 May 2016;
- 2.1.4.6 issuing a final written warning on 16 June 2016;

2.1.4.7 dismissing the Claimant's appeal against a final written warning on 8 July 2016; and/or

2.1.4.8 constructively dismissing the Claimant by virtue of the above matters?

2.1.5 If the Respondent did treat the Claimant unfavourably was it because of something arising in consequence of her disability? The Claimant said that the something arising in consequence of her disability was her need not to attend the meetings in question so as to reduce her stress.

2.1.6 If so, can the Respondent show that the Claimant's treatment was proportionate means of achieving a legitimate aim? The legitimate aims relied on were securing compliance with reasonable management requests, promotion of collegiality and promoting consistency between full-time and part-time workers.

Failure to make reasonable adjustments

2.1.7 Did the Respondent apply a provision, criterion or practice (PCP) to the Claimant? The PCPs relied on by the Claimant were:

2.1.7.1 a practice of requiring part-time teachers to attend meetings even if they would not otherwise have been in school that day and/or;

2.1.7.2 a practice of requiring part-time teachers to attend meetings regardless of the gap between the end of the teacher's last lesson and the start of the meeting ("trapped time").

2.1.8 If so, did the PCP put the Claimant at a substantial disadvantage in relation to her employment in comparison with persons who are not disabled? The substantial disadvantage relied on by the Claimant was that the imposition of the PCP created trapped time which increased her stress levels and made it difficult for her to participate in therapeutic activities needed to overcome her illness.

2.1.9 If so, did the Respondent know or could it reasonably be expected to know that the Claimant had the disability and that she was likely to be placed at the disadvantage?

2.1.10 If so, what steps was it reasonable for the Respondent to have to take to avoid the disadvantage? The Claimant relied on:

2.1.10.1 permitting her not to attend the meetings and updating her by email on the outcomes;

2.1.10.2 adjusting her timetable so that meetings occurred proximate to her teaching times;

2.1.10.3 permitting her not to attend the meetings until the timetable could be adjusted so that meetings occurred proximate to her teaching times; and/or

2.1.10.4 permitting to attend by video link or Skype.

2.1.11 Did the Respondent fail to take those steps?

Indirect discrimination

2.1.12 Did the Respondent apply to the Claimant a PCP? The Claimant relies on the same PCPs as in the reasonable adjustments claim.

2.1.13 If so, did or would the Respondent apply that PCP to persons who did not share the Claimant's disability of depression?

2.1.14 If so, did or would that PCP put persons with whom the Claimant shared that protected characteristic at a particular disadvantage when compared with persons with whom she did not share it? The Claimant relied on the same disadvantage as in the reasonable adjustments claim.

2.1.15 Did or would the PCP put the Claimant at that disadvantage?

2.1.16 Can the Respondent show its treatment to be a proportionate means of achieving a legitimate aim? The Respondent relied on the same legitimate aims as in the unfavourable treatment claim.

Unfair dismissal

2.1.17 Was the Claimant dismissed, i.e.

2.1.17.1 Was the Respondent in fundamental breach of contract? The Claimant relies on:

- a breach of the implied term of mutual trust and confidence based on a failure to remove the requirement that the Claimant attend morning briefings on a Tuesday or Thursday morning and other meetings on a Tuesday afternoon coupled with the oppressive way in which that was addressed by the bringing of disciplinary proceedings;
- a breach of the implied term of mutual trust and confidence based on the removal of the Claimant's managerial allowance with effect from September 2016.
- a breach of the express term of her contract in respect of pay.

2.1.17.2 If the Respondent was in fundamental breach of contract did the Claimant resign in response and without affirming the contract?

2.1.18 If so, what was the reason for the Claimant's dismissal? The Respondent relies on conduct and/or some other substantial reason, namely that the Claimant had made her position untenable by refusing reasonable requests. So far as the management allowance was concerned the substantial reason relied was an economic one.

2.1.19 If the Claimant was dismissed for a potentially fair reason did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss her?

3. The Facts

3.1 The Respondent is a sixth form College with around 2000 students, 100 academic staff and 88 non-academic staff. At the relevant times the Principal was Mr Trivedy. The Deputy Principal was Dr Taylor. There were two Assistant Principals, Mrs Peaks and Mr Rothery. Ms Anderson was the HR Manager. She went on maternity leave with effect from 30 April 2016 and her role was covered by Ms Officer-Nash. Mrs Lamplough was the Financial Director. Collectively that group of individuals comprised the senior management team ("SMT"). The Claimant is a well-qualified teacher and musician. She has a Masters degree in education and two doctorates, one in education and one in music. A number of the witnesses who gave evidence were complimentary of the Claimant's teaching ability and qualities and there was no question before the Tribunal that she was regarded as an able teacher. The Tribunal was not dealing with general criticisms of the Claimant or her conduct. The Tribunal's focus was on the issues that were relied on in these proceedings.

3.2 The Claimant's terms and conditions of service were governed by her contract of employment together with the Staff in Sixth Form Colleges Conditions of Service

(the Red Book). The Claimant's contract made clear that she must carry out her duties under the reasonable direction of the College Principal or his delegate. She might be called upon to perform any of the duties set out in appendix 4 to the Red Book that might reasonably be assigned to her. Under the heading 'Working Time' the contract included the following provisions (as amended following a reduction in the Claimant's hours):

> 2.1. Your appointment is to work for 0.5 of the full-time commitment for teachers, which amounts to 632.5 hours a year. Details of this directed time will be provided by the Principal.
>
> …
>
> 2.3. In addition to the requirements in 2.1 above, you will work such additional hours as may be needed to enable you to discharge your duties effectively including, in particular, the marking of students' work, the writing of reports on students and the preparation of lessons, teaching material and teaching programmes.

3.3 The Red Book included the following in section two:

> Standard Working Time
>
> (20) Subject to the provisions in the other paragraphs of this section, a teacher may be required to work for 195 days in any year, of which 190 will be days on which the teacher may be required to teach in addition to carrying out other duties. Within this 195 days, up to 1265 hours a year will be allocated reasonably by the Principal. The balance between teaching and non-teaching duties and the length of the teaching day are all subject to the reasonable direction of the Principal.
>
> Part-Time Teachers Working Time
>
> (20A) Part-time teachers will be required to be available for work for the percentage of the maximum 1265 hours of directed time corresponding to the percentage of full-time pay they receive.
>
> …
>
> Undirected Time
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> (22) In addition to the requirements in paragraph 20 and 21 above a teacher will work such additional hours as may be needed to enable them to discharge their duties effectively including in particular the marking of students' work, the writing of reports on students and the preparation of lessons, teaching material and teaching programmes and such other duties as may reasonably be required. The amount of time required for this work and times outside the 1265 specified hours at which duties shall be performed, shall not be defined by the College but shall depend upon the work needed to discharge the teacher's duties.
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> …
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> Joint Guidance on Work Life Balance in Sixth Form Colleges
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> (31) Colleges are directed to the joint guidance which aims to set out the ways in which sixth form Colleges can balance a positive approach to working arrangements with the needs of Colleges as providers of education. Guidance is provided in the following areas:
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> …
>
> Working Times and Patterns.

3.4 Section 5 of the contract of employment dealt with miscellaneous matters. In paragraph 47, the contract made clear that a teacher's off duty hours were his or her personal concern but that they should not subordinate their duty to their private interests or put themselves in a position where duty and private interests conflicted. Paragraph 51 dealt with additional employment. It made clear that teachers should devote the whole of the time for which they were employed to the service of the College. If they wanted to take up additional employment the Principal or delegated alternate should be informed. Such employment must not conflict with or react detrimentally to the College's interests or in any way weaken public confidence in the conduct of the College's business.

3.5 There are a number of appendices to the Red Book. Appendix 4 deals with those duties that are deemed to be included in the professional duties a teacher employed in a sixth form College may be required to perform. Those duties include teaching; planning and preparing courses and lessons; and teaching students, including the setting and marking of work and assessing, recording and reporting on development, progress and attainment of students. The duties also include participating in meetings at the College which relate to the curriculum for the College or the administration or organisation of the College, including pastoral arrangements.

3.6 Appendix 9 to the Red Book is entitled 'Joint Guidance on Workload and Working Time for Teaching Staff.' Paragraph 2 of that Joint Guidance recognises the importance of ensuring that teachers are not required to work excessively long hours or subjected to excessive levels of workload. It makes clear that discussions on this issue must balance the needs of sixth form Colleges as employers and education providers with the work-life balance needs of teachers as employees and the paramount needs of learners within the agreed contractual framework. The guidance emphasises the importance of teachers being able to concentrate on their key duties and that time is not spent unnecessarily on non-teaching matters, including in meetings. Given that teachers undertake their duties under the reasonable direction of Principals, the guidance also points out the importance of Principals exercising reasonableness and flexibility in general in relation to the management and direction of staff, allowing teachers to achieve a satisfactory balance between working time and time to pursue their personal interests. The guidance is said to have the aim of assisting in discussions on this issue at College level with a view to helping to secure outcomes that operate in the interests of all concerned. It expresses the expectation that it will be discussed within Colleges and where appropriate applied in seeking practical solutions to the issues identified. The guidance refers to teachers' contractual working time arrangements and the requirement to be available for a specific number of days and a specific total of hours of directed time in the course of the year. It says that those constitute contractual requirements but also contractual limits on directed working time. Teachers are also subject to contractual requirements in respect of undirected time. The guidance records that this is a commitment to work such reasonable additional hours as may be needed. The use of the word reasonable was intended to reinforce the principle that Colleges should ensure that a proper balance is maintained between directed and undirected time. Paragraph 6 to the guidance refers to the fact that Colleges operate calendar arrangements for matters such as meetings, open evenings and so on, which require teachers' involvement and which therefore form part of their directed working time activities. The paragraph continues, "Under the

national agreement, any activities which are undertaken at the direction of the College Principal – whether these are teaching activities or other activities which are part of teachers' professional duties – must be defined as directed working time." The guidance indicates that it is difficult to provide an exhaustive list but that it would be inappropriate for any working time activities that were undertaken at the direction of the Principal to be excluded from the definition.

3.7 Appendix 10 to the Red Book contains joint guidance on part-time teachers' pay and working time. It refers to the fact that a part-time teacher is required to be available for work for the same percentage of the directed time hours as the percentage of full-time pay paid to the teacher. It suggests that in order to ensure the effective use of part-time teachers' working time, it will be helpful to establish an agreed statement of working time obligations at the start of the College year. Where the College operates a formal system of non-contact time for planning, preparation and assessment or for additional responsibilities, part-time teachers should receive such time on a pro rata basis. The guidance advises that care should be taken over the allocation of non-teaching duties to part-time teachers so as to avoid the risk of less favourable treatment or discrimination, and that care should be taken to minimise patterns of timetabling that create unpaid 'trapped' time. It makes clear that part-time teachers may be required to attend College to undertake non-teaching duties such as attending meetings on days when they normally teach. Principals should, however, bear in mind the general requirement for reasonable directions, for example when considering whether teachers who only work the morning session are asked to undertake non-teaching duties after the end of the afternoon session.

3.8 The Tribunal found that the guidance contained within appendices 9 and 10 of the Red Book did not contain terms of the Claimant's contract. It was, as the Red Book itself made clear, guidance. Accordingly, under her contract the Claimant was required to be available for work for 0.8 and subsequently 0.5 of the maximum 1265 hours of directed time and in addition was required to work such additional hours as might be needed to enable her to discharge her duties effectively. The latter was undirected time. Further, it was for the Principal to allocate reasonably the duties to be carried out in the directed working time.

3.9 The Claimant's position, based in particular on appendix 9, was that essentially anything she was asked to do as part of her job amounted to directed time. The Tribunal did not accept that proposition. We did not consider that it was consistent with the terms of the contract and contractual provisions of the Red Book. The documents make a clear distinction between directed and undirected time. Paragraph 22 of section two of the Red Book makes clear that undirected time is the additional hours teachers may need to work so as to enable them to discharge their duties effectively, and that this includes marking work, writing reports, and preparing lessons, teaching material and teaching programmes. The Claimant's interpretation would be inconsistent with those provisions. Appendices 9 and 10 contain guidance as to how the contractual provisions should be applied, but they do not alter the fundamental position that there is directed time, subject to the reasonable allocation of duties by the Principal, and undirected time. Of course, the reasonable allocation of duties by the Principal is informed by what the guidance says about taking into account part-time working patterns, the danger of creating trapped time and the need to have regard to work-life balance.

3.10 Having dealt with the contractual position we turn to the facts giving rise to the claims before the Tribunal. The Claimant started working for the Respondent on a temporary basis in April 2012. In August 2012 she was appointed Director of Music on a 0.8 full-time equivalent ("FTE") contract. She had line management responsibility for one staff member, Ben Newton. She also taught private music lessons and tutorials. In about spring 2014 the Claimant says that there was a decline in working relationships. The Tribunal does not need to resolve the underlying matters that arose. What is relevant for present purposes is that the Claimant was off work with work related stress for around a month in November and December 2014. In November 2014 she put in a written grievance ("the first grievance"). She complained of harassment and bullying by her line manager, Ms Sally White, and by Mr Trivedy. She identified particular instances as well as making the more general complaint that her role as Director of Music was being undervalued. Her grievance was investigated by a member of the Respondent's Corporation, Ms Goodman. Ms Goodman did not uphold the Claimant's complaint of harassment or bullying but she did identify a number of issues to be addressed. Those included providing the Claimant with a mentor; holding minuted meetings as soon as possible to produce a definitive version of her timetable and to clarify intentions for the Music department; and holding a workshop or discussion session, initially with the senior leadership team and Corporation members, to explore methods of enhancing the culture of trust, personal and professional value and effective personal interaction at the Respondent. The Tribunal saw evidence about the events that followed and we found that Ms Goodman's report was taken seriously by the Respondent and that it did its best to implement her recommendations. It seemed to the Tribunal that there was a proper attempt to solve the problems perceived by the Claimant. The Claimant was signed fit to return to work in December 2014 with altered hours and amended duties. The doctor said that she should have student contact only. That was done for a temporary period.

3.11 In February 2015 the Claimant appealed against the outcome of the first grievance. Her appeal was considered by three of the Respondent's Corporation members. Her appeal was not upheld but the panel again highlighted areas for consideration by the Respondent. Those included the results of a staff survey, which indicated that a significant proportion of staff were unwilling to speak freely in the workplace. On the evidence before the Tribunal that too was in due course looked at by the personnel committee as recommended by the appeal panel.

3.12 In spring and summer 2015 discussions took place about the Claimant's working hours for the forthcoming academic year 2015/2016. The Respondent was concerned that the number of students in Music was declining and that they could not justify the number of teaching hours allocated for the course. It was suggested to the Claimant that she might teach singing to the performing art students on the BTEC course. Mr Trivedy explained that this was suggested because the Respondent felt that this was within the Claimant's skill set as a teacher of music who provided peripatetic singing lessons and led the choir. Further they were keen not to reduce her hours. They also explored the possibility of the Claimant helping out in other subjects, such as English. The Tribunal saw notes of a discussion about this with the Claimant on 16 June 2015. Mr Joice her Trade Union representative accompanied her and Dr Taylor and Ms

Anderson were present on behalf of the Respondent. There was discussion of whether the Claimant would agree to a 0.5 FTE contract and if she did what additional activities would be expected of her, for example in respect of choir and orchestra. There was discussion of what time she had and what time might be allocated for management activity and there was discussion of the possibility that the Claimant would carry out performance tutorials on a separate paid basis to mitigate some or all of the loss in income. It was agreed that the Claimant would consider her position and let the Respondent know what she wanted to do. On 23 June 2015 the Claimant confirmed by email to Dr Taylor that she would amend her contract to 0.5 FTE from the following September. She said that she had secured some other work that would allow her to make up some of the shortfall in her income. Therefore, from the start of the next academic year the Claimant was to move on to a 0.5 FTE contract as Director of Music. She would also carry out performance tutorials on a self-employed basis, for which she would be paid separately by the Respondent.

3.13 The other work to which the Claimant referred in her email to Dr Taylor was work as a typist. Her evidence to the Tribunal was that she secured typing work for 20 hours per week. She was obliged to provide 20 hours but it was her choice as to when those 20 hours took place. The arrangement was that on the Thursday of the preceding week she provided the employer with the hours on which she would carry out typing in the following week. She would then log in during those hours. If there was typing work available for her she would carry it out and she was paid only for the work she did. She was more likely to get work if she offered longer chunks of time rather than the odd hour here and there.

3.14 On 3 July 2015, shortly before the summer break, Ms Anderson sent the Claimant two stress risk assessment forms. This had been requested by her line manager after her most recent PDR meeting. The forms were for the Claimant to complete. Ms Anderson suggested that the Claimant might fill in one of the forms and then sit down with her or Ms White to discuss it. The second form, she suggested, might be for more personal use and if there were any actions the Claimant wanted to raise with the Respondent she could do so. Ms Anderson asked the Claimant to let her know what she thought. The Tribunal did not see any reply from the Claimant and there was no evidence that she had done anything with the forms.

3.15 For the academic year 2015/2016, the Claimant's timetable required her to be in school for part of every day. As well as her formal teaching requirements, the separate performance tutorials were also timetabled in. The version of the Claimant's timetable shown to the Tribunal indicated that at the start of the autumn term, on a Tuesday she was teaching period 3. She then had choir at lunchtime and she was teaching period 4. From 9am, the start of period 1, until the start of period 3, she was timetabled to give performance tutorials. She started at 9am on a Wednesday. On a Thursday, she was timetabled to teach from period 2 onwards and she had a performance tutorial scheduled at 9.40am. She had the whole of Thursday afternoon and the whole of Friday morning free.

3.16 There was a discussion between the Claimant, Ms Anderson and Ms White about the Claimant's working times on 23 September 2015. The Tribunal saw Ms Anderson's note of the discussion. Among other things, Ms Anderson recorded that it was confirmed that the Claimant would be in the briefing on Wednesday

mornings and maybe Monday mornings and that she would come to the Faculty briefings either on a Tuesday or a Thursday to be agreed with Ms White. It was agreed that her departmental meetings could take place on a Monday lunchtime. The Claimant indicated that she intended to leave straight after period 4 on Tuesday to complete her other work. There was a discussion about the Claimant's attendance at longer Faculty meetings. Ms White said that these were quite different from the Faculty briefings and that the Claimant could not attend an extra Faculty meeting instead of attending the longer Faculty meetings. The note records that there was a discussion about the Claimant's responsibilities as a 0.5 FTE member of staff and her other commitments and that she agreed to explore whether she could give dates to her other employer when she would be unavailable until after 5pm for half of the Faculty and full staff meetings. Ms Anderson's note records that the three were to meet again the following week. In her evidence to the Tribunal the Claimant agreed that some of the matters recorded by Ms Anderson were accurate. She said that she could not remember whether other matters had been discussed. The Tribunal accepted that Ms Anderson's note was a broadly accurate summary of the discussion.

3.17 We pause to note that the Respondent holds a variety of meetings during the week. Briefing meetings take place each weekday morning for between five and 10 minutes at 8.45am. Full-time staff are expected to attend all five morning meetings. Part-time staff are expected to attend a proportion of them. This was one type of meeting that was being discussed with the Claimant. The Respondent also holds weekly meetings at 4.10pm after the teaching day on a Tuesday afternoon. Those meetings last 50 minutes and are for a variety of different purposes. Full-time staff are expected to attend all those meetings.

3.18 In fact no meeting took place the following week between the Claimant, Ms Anderson and Ms White. Instead, the Tribunal saw an email from Mr Joice to Ms Anderson on 9 October 2015. Mr Joice said that he had been contacted by the Claimant about her part-time working pattern and he said that it was not acceptable to request that she attend meetings on Tuesdays when she was not on site having finished her contractual duties. She had had to reduce her hours at the Respondent's request and she had taken on additional employment to make up the financial shortfall in the full knowledge of the Respondent. Mr Joice said that this also applied to morning briefings when she was not on site until much later in the day for her core contractual role. The Claimant told the Tribunal that she telephoned the NASUWT member support advice service to clarify her contractual position with regard to the interplay between her employment at the Respondent and her additional employment. She said that she was advised that the Respondent would have no prior claim on her time and that Mr Joice told her that when she was working for her other employer the Respondent would not be able to oblige her to be present at the College.

3.19 Ms Anderson replied to Mr Joice the same day. She said that there was no problem with the Claimant undertaking another job but that the times had to fit with her duties at the College. Her contract was 0.5 of the whole role not just the direct contact times. She pointed out that the Claimant had a 0.5 FTE contract and a significant number of performance tutorials, so it would clearly be difficult to fit so many hours of her other role in too during a working week. She said that she had expressed concern to the Claimant about this and advised that it might

be something she needed to review. Ms Anderson said that the Claimant was timetabled for one lesson on a Tuesday afternoon just not last lesson and that she did not think it was unreasonable her to come to some of the Tuesday 4pm meetings. She said that they did not insist on it being half of them and had been accommodating in saying it could just be a small number throughout the year so that she was kept up to date on key developments. Regarding the morning briefings, the Claimant had been asked to attend two out of the five briefings, both on days when she was in College first thing anyway and she had been given the choice of which ones she would prefer. Ms Anderson said that she would view asking the Claimant to go to fewer than half of the morning briefings and approximately four to five of the Tuesday meetings over the year as not treating her any less favourably than a full-time worker. The Respondent's position by this stage was therefore that it wanted the Claimant to attend the Wednesday morning briefing and a further morning briefing on either a Tuesday or a Thursday when she was timetabled to be giving performance tutorials from 9am or 9.40am respectively. It wanted her to come to some but not half of the Tuesday afternoon meetings and the number suggested was around four to five.

3.20 By this stage the Claimant had attended one of the full staff meetings that took place at 4.10pm on a Tuesday. There were evidently further discussions that led to Dr Taylor sending an email to Mr Joice on 21 October 2015. He referred to a discussion between them earlier that day. He attached the Claimant's timetable and said that he hoped to catch her tomorrow to explain things from the Respondent's point of view. He said that he thought that Mr Joice understood that the Respondent's position was that a member of staff with a 0.5 FTE contract would be reasonably expected to attend approximately half of the usual College communications meetings. That was particularly so when the member of staff had a management B allowance. He suggested that the Claimant attended at least one College briefing, as she currently did, plus a Faculty briefing on either a Tuesday or Thursday morning, i.e. two out of five of the briefings. In addition there were staff meetings on some Tuesdays 4.10 to 5pm. There were only five of these from 38 available weeks so he did not consider that was an unreasonable expectation. He asked Mr Joice to let him know his view.

3.21 In her evidence the Claimant accepted that she was being asked to attend five full staff meetings. These included the full staff meeting on 13 October 2015. She knew she was being asked to attend that but she did not attend it. She said that that was because she was at her other employment, i.e. she was typing from home in accordance with the hours she had provided to her other employer on the previous Thursday. She was asked what was stopping her on that previous Thursday from telling her other employer that she was not available on the Tuesday afternoon. She said that this would have meant that she could not start typing 3.05pm. She would have had to leave at 5pm when the traffic would have been worse. Then she would have had to deal with her domestic duties and this would have made her more tired, anxious and stressed. It was then put to her that she could have done typing work on the Thursday afternoon instead that week. She said, "No I went for my singing lesson in Market Rasen." That was an hour's travelling each way and an hour's singing lesson. It was suggested to the Claimant that this was a question of priorities. She disagreed. She said she had a lot to do and that she struggled to balance three jobs and maintain her health. She was asked about attending the briefing meeting at 8.45am on a Tuesday. It was pointed out to her that she was giving a performance tutorial at 9am and it

was suggested that she could have arrived just a few minutes earlier. She said that she would have arrived just before 9am to give the tutorial. She said that she had other things she could do before 9am, for example take the children to school or do a bit of shopping. The Claimant referred more than once to the fact that her Trade Union had advised her that she did not have to attend the briefing meetings if they were in conflict with her other employment. It was suggested to her that if her Trade Union had told her she was contractually obliged to attend the meetings she would have found a way to do it. She said that she would have done but she thought it would have caused problems and stress.

3.22 The Claimant's case before the Tribunal was that the reasonable adjustments that should have been made included adjusting her timetable so that meetings occurred proximate to her teaching times. In the light of that, it was suggested to her that it was not the fact that she was being asked to do the hours themselves that caused the problem, it was how close they were to her contracted hours. She agreed and said that she went to the meetings on a Wednesday. It was put to her that if her core teaching had started at 9am on a Tuesday or Thursday she would have gone to the meetings and she agreed that she would have done. It was therefore put to her that her concern was not about whether she was contractually required to attend the briefings but about their timing. She agreed.

3.23 The Claimant emailed Dr Taylor on 9 November 2015 in response to his communications with Mr Joice. She said that over the half term holiday she had worked out what she believed her directed time involved and calculated that she was already working more hours than her proportional directed time suggested she should be. She said that she believed she was doing everything that was specified in her contract and had not found anything anywhere to back up what Dr Taylor said about the number of meetings she should be attending. Dr Taylor replied the same day. He reiterated the Respondent's position and pointed out that it had compromised in that it was not requiring her to carry out 0.5 of the activities of a full-time manager. It was only requesting her to attend two out of five morning briefings and a small proportion of the Tuesday afternoon meetings throughout the year. Dr Taylor said that it was the Respondent's expectation that the Claimant attend these meetings as requested from next week and that if she did not do so it would appear to be a case of misconduct. He added that he was happy to discuss how the 632.5 hours of directed time were allocated but did expect the Claimant to attend the briefings and meetings in the meantime. He said that it might be that they could find other areas of activity that could be delegated or reduced. Dr Taylor sent a further email on 12 November 2015 indicating that he had now arranged to meet with the Claimant on Friday. He resent his email and he said that he and Ms Anderson would look at the Claimant's calculation when they met. Mr Joice sent a further email on 13 November 2015 to Dr Taylor. He said that the Claimant's position was made more complex because the reduction in hours was not at her request and because she was employed by the Respondent to do additional individual music tuition separately, which was fitted in amongst the timetable teaching plan. He said that the Claimant was only on site at the start of one day – Wednesday - for her contractual employment and at the end of the day on Wednesday and Friday for her contractual employment. Mr Joice said that they had not seen a 1265 hours directed time budget. He said that it made mathematical sense to expect an employee to attend half of the meetings if they were employed for half of the time *if* those days were complete days and coincided with regular meetings. He

said that the NASUWT member support advice centre had advised the Claimant that it was not reasonable to request her to attend meetings when she was not normally at work. He suggested that Dr Taylor's reference to misconduct could be construed as guidance on the Respondent's position or as threatening. Dr Taylor replied the same day. He pointed out that the area of difference was that a teacher on a 0.5 contract would not just be on site at the time of their teaching sessions and nothing outside of that. He pointed out, by way of example, that the Claimant had an hour of management remission. He said that although technically a teacher on a 0.5 contract should attend 0.5 of meetings and briefings they were always reasonable about this and had never asked anyone to come to a meeting when they did not work at all on that day or even that half day. In both cases when the Claimant was being asked to attend a meeting she was working on the morning or afternoon in question, just not right at the end of the day. On the morning of the Faculty meetings she was in fact on the premises during the first lesson, albeit in her capacity as a peripatetic teacher. Dr Taylor suggested that the Claimant was not showing in return the flexibility the Respondent showed with staff. He said that he felt it was only fair to be open and clear about the consequences of not attending as required and he confirmed that this was still the Respondent's position. He said that he was still happy to discuss with the Claimant her concerns about the 632.5 hours and that he had arranged a meeting with her to do so that day.

3.24 A meeting did indeed take place between the Claimant, Dr Taylor and Ms Anderson. The Tribunal again saw a brief note of it. The note recorded that there was discussion of the reasonableness of the requirement to attend the morning briefings. The Claimant felt that it was not reasonable as she was not teaching under her College contract immediately prior to or after the briefings in question. As far as the afternoon meetings were concerned the Claimant pointed out that she had other employment after her teaching on a Tuesday, which she said she committed to. The notes record that the suggestion was made to the Claimant that this could be re-arranged with sufficient notice on four to five occasions across the year. The note then suggests that the 1265 hours of directed time were discussed. The Claimant explained that she had calculated her working hours as significantly over her contractual proportion of that. There was a discussion about what was and was not included. Ms Anderson and Dr Taylor explained that there had been discussions with the Unions about this in the past and that views differed. Ms Anderson said that in practice any issues in relation to working hours had been resolved on an individual basis in the past with both parties showing flexibility where they could. The Claimant felt that the 1265 budget should be published and that this would be something the Unions were raising. Dr Taylor suggested that that might be a better way of pursuing the issue rather than the Claimant refusing to attend the meetings discussed earlier. The Claimant asked whether the briefings and meetings were directed time and Dr Taylor confirmed that they were. Ms Anderson confirmed that the Claimant was expected to attend from the following week.

3.25 There was correspondence between Mr Joice, Dr Taylor and Ms Anderson on 26 November 2015. Ms Anderson sent an email with what she referred to as the 1265 budget attached. On 27 November 2015 Dr Taylor emailed the Claimant referring to a meeting that day. He said that the Claimant had indicated that she did not intend to attend future Faculty briefings. She said that the previous one covered items that had already been emailed and was unnecessary for her

management role. He said that he had told her that the content of meetings would vary and that regular attendance was necessary. He recorded that he had told her that refusal to attend was a conduct issue and that he would have to pursue process.

3.26 On 30 November 2015 Ms Anderson emailed the Claimant asking her to attend a disciplinary investigation meeting the following week. The purpose of the meeting was to investigate the allegation that she had failed to comply with a management direction to attend certain briefings and meetings. Mrs Lamplough would be conducting the investigation. The Claimant emailed Dr Taylor and Ms Anderson on 1 December 2015. She took issue with Dr Taylor's description of what had taken place on the previous Friday as a meeting and said that she would describe it as an "ambush." She said that Dr Taylor's summary ignored the fundamental point about the Tuesday briefing, which was that she maintained that it was at a time when she was not contracted to be in College and so all the other points were in fact irrelevant. She said that she was not refusing to attend. She disputed that she was contracted to attend. She said that that was something entirely different. She said that she had been to one meeting and discovered that she had been "bullied into something on a point of inflexible principle." She said that she elected not to go the following week on the basis that she had been pressed under false pretences into attending against her will. She went on to say that she had been caught unawares on the Friday when she was already in a state of anxiety because she was having a lesson observation with Ms White. She asked that her singing teaching not be disturbed. She said that she was in College for over 15 hours every week in her capacity as Director of Music and that queries could be addressed to her during those times or by email. If the Respondent was experiencing difficulties she suggested that it was a result of the cut in her contract, which the Respondent brought about.

3.27 The disciplinary investigation meeting took place on 9 December 2015. The Claimant attended with Mr Joice. Mrs Lamplough was present as investigating officer and Ms Anderson took notes. The Claimant presented a detailed written document in support of her non-attendance at Tuesday morning briefings. She began by saying that a substantial reduction in her contracted hours at the end of the last academic year had resulted in a significant change to her working pattern and given rise to a number of issues, which she had been working through. Attendance at Tuesday morning briefings was one of those issues. She said that she had been obliged to seek extra employment to make up the some of the shortfall in her contracted hours. She now worked 20 hours a week carrying out typing work for a TV company. She said that the implications of the new situation had had a huge impact on her personal and family financial situation, her non-working life and her personal and family life. She set out what she described as the key reasons why her actions did not constitute misconduct. She referred to the fact that an expectation for a 0.5 FTE teacher to attend 0.5 meetings had not been raised with her at the time her contract was reduced and she said that it was not documented. She referred again to the advice from her Union and she said that she was not now currently carrying out her peripatetic teaching before 11am on Tuesdays. She said that information disseminated at briefings was available to her from other sources and she said that in her view she was already doing far more hours of directed time than the budgeted amount, which she could demonstrate. She pointed out examples of what she said were flexibility on her

part. She provided two possible calculations, both of which she said demonstrated that she was doing substantially in excess of her directed hours.

3.28 It seemed to the Tribunal that the position the Claimant advanced in the document was primarily a contractual argument. There were references to what might be characterised as work-life balance but there was certainly no reference to ill health or mental ill health. The notes of the investigation meeting record that Mr Joice identified the question whether the request to attend meetings was reasonable as being the key issue. The discussion at the investigation meeting reflected the matters set out in the Claimant's written document. There was no mention of the Claimant's health or work-life balance.

3.29 The Tribunal noted the Claimant's calculations, which she said indicated she was doing more than her directed time allocation. This seemed to us to stem from a fundamental misconception on her part. It was not for her to say what activities fell within her directed time. This was something for the reasonable direction of the Principal. Furthermore, she was treating the briefing meetings and staff meetings as something that was to be added on after all the other duties she said she had to perform. It did not seem to the Tribunal that there was any basis for treating the meetings as something to be added on after everything else, or for saying that everything else came first and if there was time the Claimant could then add on meetings. It was for the Principal to direct, subject to the question of reasonableness, what the Claimant was to do within her directed time. As indicated above, Dr Taylor had suggested previously that they could look at the Claimant's directed time and that there might be other areas where activities could be delegated or reduced, but as far as meetings were concerned the Claimant was to attend those that were being required of her and those were to form part of her directed time.

3.30 Mrs Lamplough wrote an investigation report. She summarised the arguments put forward by the Claimant. By way of mitigating circumstances she referred to the fact that the Claimant had secondary employment outside of the College that required her to be available for work 20 hours a week. Mrs Lamplough's conclusions and recommendations were that the College had confirmed what activities they were directing teaching staff, including the Claimant, to undertake within their directed time. The status of other activities that the Claimant felt she was being directed to undertake should be discussed outside of the process. Dr Taylor had offered the opportunity to do this in one of the email exchanges. Mrs Lamplough's view was that the Claimant should be expected to attend at least one Faculty briefing a week and five of the Tuesday afternoon staff meetings. Mrs Lamplough expressed the view that the Claimant was contractually obliged to attend half of all meetings. She said that that requirement had been partly waived by only expecting attendance on two out of five briefings and five Tuesday meetings. The fact that the Claimant was in College on Tuesday and Thursday mornings for peripatetic music lessons as well as having timetabled lessons meant that this was considered a reasonable request. Mrs Lamplough's view was that the request to attend the meetings was not unreasonable and she recommended a formal disciplinary hearing.

3.31 On 11 December 2015 Ms Anderson wrote to the Claimant requesting that she attend a disciplinary hearing to consider the allegation that she had failed to comply with a management direction to attend certain briefings and meetings. Mr

Rothery was to hear the case. Ms Anderson emailed the Claimant as well as Mr Joice the same day. She recognised that this was a tricky time of year with the imminent Christmas break and she said that the options were to complete the hearing next week if the Claimant would prefer it was dealt with before the holidays or to arrange the hearing for the first week back in January. She asked for the Claimant's preference and said she would then circulate the formal invitation letter and documentation. The Claimant replied on 14 December 2015 saying that she had no time before the Christmas break and that it would have to be in the new term. There was further email correspondence with a view to listing the disciplinary hearing for 4 January 2016. On 21 December 2015 Mr Lloyd of the NASUWT emailed Ms Anderson to say that he had just been given the case and could not attend on 4 January. He asked for the meeting to be re-arranged.

3.32 The Claimant was then signed off work with anxiety and depression. In a fit note dated 5 January 2016 the doctor referred to "anxiety/depression major cause work stress" and signed the Claimant off for two weeks. Ms Anderson emailed Mr Lloyd on 6 January 2016 in response to his email of 21 December 2015. She said that the Claimant was now absent from work until 19 January 2016 and asked what Mr Lloyd's availability was for 21 and 22 January. Mr Lloyd replied to say that he was available on 22 January. There was further correspondence between Mr Lloyd and Ms Anderson on 7 January 2016. Mr Lloyd asked Ms Anderson for a copy of the invitation letter, the minutes of the investigation meeting and the full investigation report and Ms Anderson provided copies of those documents the same day. Mr Lloyd sent a separate email saying that he had spoken to the Claimant by telephone. He now understood that the fit note she had provided referred to a work-related cause for her absence. Having discussed this with the Claimant he requested that she be referred to occupational health for advice on how the College might support her and help reduce her symptoms and requested that they carry out an individual stress risk assessment to identify the issues and solutions. Ms Anderson replied the same day saying that it was not a problem to send a referral although normally she would meet with the Claimant to discuss it first. She said that if the Claimant was well enough to return on 19 January 2016 it might be best if Ms Anderson met with her informally to see if there were any immediate issues to be discussed and then they all met later that week or the following week when they hopefully would have the occupational health advice back and could discuss the risk assessment. Ms Anderson completed an occupational health referral letter and sent a copy of it to Mr Lloyd and the Claimant on 8 January 2016. The referral briefly summarised the background and asked for advice about whether the Claimant was fit to attend work and if not whether she was fit to attend a disciplinary hearing. Ms Anderson also asked whether there were any ways the Respondent could support the Claimant to maintain good health and wellbeing in relation to work and whether there was an underlying medical condition responsible for her current absence and, if so, for advice from a medical perspective on any adjustments that could be considered.

3.33 On 14 January 2016 Ms Anderson wrote formally to the Claimant to confirm that the disciplinary hearing that had been scheduled for 4 January 2016 had been re-arranged for 22 January 2016. At the same time Ms Anderson emailed the Claimant saying that she hoped she was feeling better and that she was just getting in touch to check whether the Claimant was still expecting to return to

work on Tuesday next week so she could give the person who was currently covering a bit of notice about whether she would be needed or not. She said that she would ask that person to cover the Claimant's lesson on Tuesday in view of the timing of her occupational health appointment and she told her that she had posted a hard copy of the confirmation of the disciplinary hearing being re-arranged for Friday afternoon of the following week. She now explained that Ms Peaks would be hearing the disciplinary hearing. The Claimant replied on 15 January 2016 to say that she was feeling much better and would be back at work on Monday 18 January. She did not raise any concern about the disciplinary hearing being scheduled for 22 January 2016. The Claimant sent a further email to Ms Anderson on 19 January 2016. She attached a copy of a fit note. She asked whether the hearing on Friday could be arranged for 4pm so as not to disturb her AS class. She also raised a number of queries about what had happened during her absence. These included questioning whether the supply teacher had been paid for running a performance seminar She queried why the supply teacher had been asked to cover individual tutorials despite her advising that no cover was necessary because she would catch up with the sessions during the course of the rest of the year. She asked for clarification of the basis on which the supply teacher had been paid and an assurance that she would be remunerated for the sessions that she would catch up and which were her responsibility as she made them up over the coming months. Ms Anderson replied the same day dealing with each of the points the Claimant had raised. She explained that it was not possible to move the disciplinary hearing to 4pm.

3.34 The occupational health report was sent to the Respondent on 22 January 2016. The occupational health nurse gave answers to Ms Anderson's questions. She said that the Claimant was fit to attend work at the present time and to attend the disciplinary hearing. To support the Claimant to maintain good health and well-being in relation to work she recommended that a stress risk assessment be undertaken as a priority. The nurse was unable to identify with the Claimant any underlying medical condition responsible for the current absence. An improvement in health and attendance was dependent upon the effective management of perceived stresses relating to work.

3.35 The disciplinary hearing took place on 22 January 2016. It does not appear that the occupational health advice had been received at that point and Mrs Peaks confirmed that she did not see it before conducting the disciplinary hearing. Mrs Lamplough attended as investigating officer. The Claimant was present with Mr Lloyd and Mrs Peaks was supported by Ms Anderson in her HR capacity. Mrs Lamplough summarised her report and her view that this was not the appropriate forum for the 1265 hours discussion to take place. Mr Lloyd queried that and Mrs Lamplough said that Dr Taylor had offered to discuss this with the Claimant in one of his emails and that she had not taken up the offer. The Claimant said that she had discussed it with Mr Taylor and that he had said that it was difficult to specify the 1265 hours and that this would not be done. Ms Anderson pointed out that a directed time budget had subsequently been produced and issued to the Claimant. The question was again asked why the 1265 hours budget was not relevant and the notes of the disciplinary hearing record that the response given was that refusing to attend one of the things that had clearly been stated as being directed time was not an appropriate way of acting, even if one had the view that working tasks required were over the appropriate amount of directed time. Mr Lloyd went through a detailed statement of case and then provided written

copies. Mrs Peaks confirmed that she would need time to read and consider the document. The Claimant clarified that she had moved her peripatetic teaching from a Tuesday morning to a Tuesday afternoon, 2-4pm. Mr Lloyd said that the Claimant could not attend meetings on Tuesday or Thursday mornings and Tuesday afternoons and that the College needed to consider what would happen if she was issued with a warning and continued not to attend due to her other employment. He asked whether this meant that the warnings would be escalated to a final written warning and then dismissal. He said that the Claimant was committed to staying in touch with what was happening in College through other means and expressed the view that disciplinary action would be inappropriate and unnecessary.

3.36 The Claimant's written statement of case made a number of points. In particular, it suggested that the 1265 hours budget provided by the Respondent was too simplistic and missed out many of the activities that staff carried out. The document suggested that there had been a discussion about the directed hours budget and that Dr Taylor and Ms Anderson had said that a directed time budget could not or would not be established. It was suggested that Mrs Lamplough's indication that the Claimant should have taken up Dr Taylor's offer of a conversation was misguided. The document said that if the Claimant were to attend a briefing on a Tuesday or Thursday morning the time between the briefing and the commencement of her salary time would have to be counted as directed time and that this was impossible. The statement of case said that the Claimant's personal commitments outside of her contract with the Respondent had changed and that she was no longer available to come into College on Tuesday or Thursday mornings prior to her timetabled teaching. The statement of case said specifically that the Claimant was engaged in work for her other employer in the periods of time before she commenced work at the College on Tuesday and Thursday. Reference was made to Appendices 9 and 10 of the Red Book. The statement of case said that the Claimant's other employment was essential to her overall income and family household and it fell within the description of work-life balance from the terms and conditions document. It also said that the requirement to attend a meeting on a Tuesday or Thursday created trapped time and suggested that any disciplinary sanction would amount to sex discrimination or less favourable treatment of a part-time employee. The statement of case suggested that the allegation relating to attendance at five out of 35 of the Tuesday afternoon meetings was unfair because it could not be said at that stage in the academic year that the Claimant was in breach of such a requirement.

3.37 It seemed to the Tribunal again that the Claimant's focus was on contractual arguments. To the extent that there was reference to work-life balance it related to her overall income and the family household. There was no reference to ill health or well-being in that sense.

3.38 Mrs Peaks emailed the Claimant on 27 January 2016 with the outcome of the disciplinary hearing. She rejected the suggestion that an allegation about the Tuesday afternoon meetings was unsustainable because the Claimant could still attend at least five meetings. Mrs Peaks pointed out that the Claimant had refused to attend the meetings and had not once alluded to the fact that she might do so if her circumstances changed. Mrs Peaks said that the 1265 hours document had now been shared with Union representatives. She said that at the

meeting on 13 November 2015 it had been suggested to the Claimant that she raise with her Union that what was being required of her was not manageable and that it was not considered appropriate that she just refuse something that was being asked of her and deemed reasonable by the College. Mrs Peaks said that the Claimant's contract was to undertake 0.5 of the full-time role and that this included all elements of the role not just the classroom teaching. Accommodations were made for part-time workers in relation to meeting and briefing attendance. They were not expected to attend their proportion of the meetings if they were not teaching on the half day in question. The College felt that this was sufficient and reasonable. The Claimant did work Tuesday afternoons and the Respondent felt they had compromised by asking her to attend fewer than half of staff meetings on a Tuesday throughout the year. Her refusal to attend any meetings or briefings is what was being investigated. Mrs Peaks said that the Respondent was not disciplining the Claimant in order to prevent her from having a work-life balance. The disciplinary was because of her refusal to comply with what was deemed to be a more than reasonable request. Any other work commitments outside of her College contract needed to fit around the requirements of her role at the Respondent. Therefore after considering all the documentation Mrs Peaks had decided that the Claimant's behaviour did warrant disciplinary action and was issuing a first written warning, which would be live for a period of six months. In view of Mr Lloyd's indication that any form of disciplinary action would not see a change in the Claimant's behaviour Mrs Peaks said that she felt it necessary to point out that the College would need to witness a sustained change in her behaviour, otherwise this could lead to the next stage of discipline.

3.39 On 28 January 2016 Ms Anderson emailed the Claimant and Ms White to say that she had received the occupational health report the previous day and suggested that they met to discuss it. She asked the Claimant when she could be available next week. The Claimant suggested doing it in the normal slot that she met Ms White on a Friday afternoon but that was not suitable for Ms Anderson and she asked for other options. Ms White suggested that they arrange a date in their meeting tomorrow. The following morning, 29 January 2016, Ms Anderson also copied a stress risk assessment template to the Claimant for use in the discussion suggesting that the Claimant might look at it before the meeting. The Claimant's evidence was that the three of them met briefly between the close of lessons at 4pm and the start of parents' evening at 4.30pm on Wednesday 3 February 2016 to discuss the report and its implications. She said that the timing of the meeting was at Ms White's suggestion and that she found it startling that a manager could imagine that less than half an hour squeezed between the intense sessions of teaching and meeting parents would be sufficient. Ms Anderson wrote a letter on 4 February 2016 following up the discussion. Ms Anderson recorded that they had considered the stress risk assessment template and that the Claimant felt that all of the factors within that template contributed to her recent period of illness. Key factors were identified as being the disciplinary process in which the Claimant was currently involved, as well as a redundancy consultation relating to her management role (see further below). Ms Anderson noted that the Claimant had confirmed that a heavy workload in itself was something she had demonstrated throughout her life that she was able to manage very well. It was the conflict that was more of a concern. Ms Anderson reminded the Claimant that the College counsellor was available to staff and the Claimant indicated that she accessing

treatment out of work. There was a discussion of relationships and the strategy of compartmentalising areas of conflict with management and the day job. The Claimant and Ms White confirmed that their relationship was now good and that keeping Ms White out of the areas of conflict had been a positive step. Ms Anderson recorded that the meeting then had to be closed as the Claimant and Ms White had other commitments and that Ms Anderson suggested that any other concerns could be discussed during their meetings together in the first instance.

3.40 On 3 February 2016 Mr Lloyd emailed Ms Anderson sending the Claimant's appeal against the imposition of a first written warning. The Claimant again began by referring to the reduction in her contract hours and said that she had to replace her lost income by carrying out peripatetic music teaching at the College and obtaining 20 hours' work per week outside the College for another employer. She wrote, "In addition to my work commitments I have two children and a husband. I assert that I have a right to a work-life balance that includes the ability to have time with my family, have time to meet my own personal needs through a variety of activities necessary to my well-being and be able to fulfil my various work commitments at reasonable times and without fear of unfair disciplinary action." The Claimant said that the disciplinary sanction was discriminatory and in breach of the Respondent's equality statement. She said that the sanction prevented her from enjoying a work-life balance and that the instruction from Mrs Peaks was that she must put the College job first and attend meetings. If she did so she would have to carry out her other work commitments during evenings and weekends separately and in addition to the work she already carried out for the College. She also suggested that there was a breach of the PTW Regulations. She said that the disciplinary finding was flawed because it had not been specified which of the 35 staff meetings she had failed to attend. She said that the warning was in breach of contract and in particular the terms of Appendix 10 and she said again that she already met her contractual part-time directed time obligations through her other activities for the College.

3.41 Ms Anderson emailed the Claimant, Mr Lloyd, Mr Trivedy (who was to hear the appeal) and Mrs Peaks to try and arrange a date for the appeal hearing. Mr Lloyd was not available on the first date suggested and Ms Anderson suggested 11 February as an alternative. She noted that the Claimant was timetabled to teach at that time and suggested that Ben or Sarah might be brought in to provide some cover if they were free. The Claimant replied reiterating that it was her preference not to be taken away from her A level teaching but it was the College's decision. She said that she would set some work and suggested that someone from senior management be asked to cover her lesson. Dr Taylor emailed the Claimant the same day, 5 February 2016, to say that Ms Anderson had asked him to look at the cover arrangements for next week's meeting. He said that where they had sufficient notice they usually did seek to have some supervision when staff could not attend a lesson and on this occasion the best solution would seem to be to have a specialist available if possible. He said that he was going to approach the person who had covered in the Claimant's recent absence who had skills and knew the students. The Claimant replied as follows:

> Ok if that's what you think is best. I still think organising a meeting when I'm meant to be teaching is detrimental to my students.

> Could I also ask in that case what is happening with Ben Newton's classes next week while he is away in sunny Florence. Since you are keen to get a specialist in to cover what amounts to probably half an hour of AS Music I trust that you are also intending to put suitable arrangements in place for Ben's three days (14 classes or 16.3 hours) of teaching, especially since he must have notified management weeks if not months ago to say that he would be going on this trip. The Music technology students ought not to be disadvantaged through Ben's absence.

3.42 Dr Taylor replied to the Claimant the same day. He said:

> Thought you must already have sorted Ben's classes as this was as you say known well in advance. The normal approach is for those in charge of courses to raise cover issues and look at approaches to sort it in discussion with Head of Faculty and management etc. Have you spoken with Ben about his thoughts? He may well have a plan. Things can normally be resolved.
>
> As for your class I misunderstood. I assumed your concern reflected your worry that they were in need of more particular guidance. If they just need a quick check to start them on the work you are setting them that is fine and we can arrange for a member of staff to go in to the start, middle and end or similar as needed.

3.43 The following morning Saturday 6 February 2016 Dr Taylor forwarded this email thread to Mrs Peaks, Mr Trivedy, Ms Anderson and Mr Rothery, writing:

> Hello all this is the thread I referred to in previous email. Cheers Ian.

3.44 That afternoon Mrs Peaks sent a reply copied to all the recipients saying:

> Ahhh this woman infuriates me – who does she think she is?

3.45 Dr Taylor replied:

> Mmm she does not seem to understand her role as manager of music provision. Our role as always is to educate …

3.46 Ms Anderson then replied:

> And why doesn't she see that by rejecting every time suggested (and her rep only offering Thursday) we have v little choice on dates!! The emails are bordering inappropriate in tone I think but let's not think about this on a Sat night!

3.47 Mrs Peaks replied:

> Totally agree. She's deliberately being obnoxious! But agree Jen it's Saturday night.

3.48 Dr Taylor responded:

> Ah yes sometimes we condemn ourselves in the words we use. Here Rachel does show her failings and does it in writing which adds to list of course. But for the weekend at least we can treat this simply with disdain [sic] and I hope chuckle at the foolishness of others.

3.49 The following morning Saturday 7 February 2016 Mr Trivedy replied:

> In your wise words you sound like a younger version of Yoda Ian.

3.50 Dr Taylor responded:

> Smile much it makes me!

3.51 This was a group of emails between the members of the SMT over the course of a weekend. The Tribunal considered that what Mrs Peaks wrote was personally derogatory about the Claimant and was inappropriate in tone for a member of the SMT. The other members of the SMT made comments that were either expressly or implicitly critical of the Claimant or expressing agreement with the comments made by others. No one during the course of the emails pointed out

that this was an inappropriate exchange to be having about a colleague. The Tribunal considered that this was an inappropriate exchange for the SMT to conduct over the course of a weekend. Each of the witnesses who gave evidence was asked about it. Dr Taylor did not accept that the way he had described the Claimant's emails was unfair and disrespectful. He said that the Claimant was a very strong teacher and he had the greatest of respect for her but it was very hard to arrange meetings with her. Her email illustrated a tendency on her part to make demands on the Respondent. Dr Taylor said she had so many strong qualities but that she became progressively difficult to work with. He said that his email was an expression of sadness and frustration not anger. He said that the Claimant had a tendency to send emails that were somewhat crisp in tone and uncompromising. His particular issue was with the second part of the Claimant's email dealing with Mr Newton's absence. That, he said, was a matter for the Claimant as Mr Newton's line manager to have sorted out. He said that the emails he had sent over the course of the weekend were not meant to be offensive about the Claimant. Staff were frustrated and saddened about what was happening. He acknowledged that his emails were poorly expressed and he apologised for that but he said that it was not meant with ill intent. He said, "We were trying to arrange a meeting that was all. It's just a shared common frustration about arranging meetings."

3.52 Mrs Peaks was asked about her two contributions to the thread. She was asked whether this was an accurate picture of how she felt about the Claimant and she said that it was an accurate picture of the "continuous barrage day in day out" of emails that the Respondent was subjected to. She said that it was not how she dealt with the Claimant. It was how she felt that Saturday afternoon. She said that this also affected her work-life balance. She said that she had been on the periphery of events concerning the Claimant until the recent disciplinary hearing on 22 January 2016. It was pointed out to her that this email exchange was sent only a short time after that and she said that the Claimant's refusal to attend meetings during that period had led her to the view she had expressed.

3.53 When he was asked about the email exchange Mr Rothery said that he did not know what the first part of the Claimant's email referred to. He thought that the comments from the SMT related to the second paragraph and his understanding of that paragraph was that the Claimant as line manager was seemingly expressing surprise about her staff member being away and asking the SMT to arrange cover for that. He thought that this was what the email exchange was about and he said that the Claimant's approach "beggared belief." He was asked whether he agreed with the sentiments expressed by Dr Taylor. He said that his feeling was that it beggared belief that as Director of Music the Claimant had not made arrangements for Mr Newton's absence. He acknowledged that he had not stepped in and said that this was wrong. It was put to him that nobody had come to him to say that, and he said that Ms Anderson had done so. She popped into his office after the weekend and pointed out that he had been party to this email exchange and said that they should not engage in such exchanges. His understanding was that she was going to pop into the office of each person involved.

3.54 When Mr Trivedy was asked about the emails he did not agree that the SMT were creating a climate of disrespect towards the Claimant. He said that he was aware that the SMT were exasperated. He too thought that what was being

referred to was what the Claimant had said about Mr Newton and he said that this was a simple thing. It should have been possible to arrange cover for Mr Newton. The context for the emails therefore was people's exasperation. He acknowledged when cross-examined that he should have not suggested that Dr Taylor's words were "wise." He apologised for that and said that it was not what he intended. It was suggested to him that no member of the SMT spoke up and he said that Ms Anderson did. He said that that was absolutely the right thing for her to do and that he thought that the email exchange was regrettable. It was put to him that this exchange took place a few days before he was to hear the Claimant's disciplinary appeal and was suggested to him that given the level of exasperation he felt there was no way that the appeal could be conducted fairly. He did not accept that.

3.55 Ms Anderson said that she did not think that she had said anything inappropriate or disrespectful in her email. She did feel that the Claimant's response to Dr Taylor was inappropriate. She said that the next day they were in work she went to everybody and told them to calm down and not to get frustrated. It was pointed out to her that there was no reference to that in her witness statement and she said that she barely had any time to draft a witness statement. She had been on maternity leave for a full year and had been back at work for three days at the point at which she was required to draft a witness statement for these proceedings. She was being asked now and she now recalled calling into each person's office. The Tribunal found Ms Anderson to be a straightforward and credible witness. We were impressed with her as someone who was trying to assist the Claimant throughout. We had no hesitation in accepting her evidence that she did indeed go into work after the weekend and call into see the other members of the SMT to encourage them to calm down and to point out that they should not engage in an email exchange like that.

3.56 As we have indicated the tone of the emails exchanges between the SMT was inappropriate. That was so regardless that the context was a degree of frustration about trying to arrange meetings with the Claimant and regardless of what was perhaps a surprising comment from the Claimant about Mr Newton's absence. However, the Claimant was unaware of the exchange at the time and for the Tribunal's purposes the relevant point was whether the content of the emails or the sentiments that underlay them affected individuals' dealings with the Claimant when it came to the disciplinary process and other matters that form the subject of these proceedings. It seemed to the Tribunal that such an exchange must reflect a degree of discussion between the SMT about the Claimant and at least a degree of communal frustration about their dealings with her. However, the exchange was in the Tribunal's view reactive and "letting off steam" rather than driving the Respondent's approach to the Claimant. The Tribunal found that the frustration suggested by the emails was not reflected in the correspondence or the approach to the various processes in which the Claimant was involved thereafter. Nonetheless, we kept in mind the exchange and the indication that there was a degree of discussion about the Claimant within the SMT in assessing individuals' involvement with her subsequently.

3.57 The appeal against the Claimant's disciplinary warning took place on 11 February 2016. She was present with Mr Lloyd. Mr Trivedy conducted the hearing and Mrs Peaks was there to present the management case. There was a separate note taker present and a Ms Cooper was there as an HR consultant. Ms

Anderson explained in her oral evidence that she was not involved in the appeal because she had asked not to be involved. Although she had received the Claimant's appeal document and had probably read it she forwarded it on because she was snowed under trying to complete things before she went on maternity leave. The notes of the appeal hearing indicate that Mr Lloyd went through the points made in the Claimant's appeal document in turn. During the course of the discussion Mr Lloyd said that this was not a question of choice. If the Claimant attended the meetings they would have a dramatic effect on her home life and work-life balance and that she was "unable" to attend the meetings. During the course of the hearing the Claimant stated that her time was her own apart from "contracted time on the timetable" and that it was for her to arrange to fulfil all her family and job responsibilities. Ms Cooper asked whether it was clear to the Claimant that she had been asked to attend five out of 35 staff meetings. She said that nobody had specified on which dates she should attend and that the calendar dates changed and she was working somewhere else at the time. Mr Trivedy said that the calendar dates of College meetings never changed. The Claimant then said that she could not attend the meetings so she did not look at the calendar. Fundamentally, Mr Trivedy expressed the view that the requirement on the Claimant to attend a Tuesday or Thursday morning 15 minute briefing and five of the Tuesday afternoon meetings was reasonable and the Claimant expressed the view that it was unreasonable. She said that she did not "refuse" to attend the meetings, she did not come. Towards the end of the discussion the Claimant is recorded as saying that on medical advice she had been advised to do some things for herself. Until about a year ago her focus had been on the job. Her GP had advised her to do more for herself because of stress and because of focusing too much on the job. She tried to redress her work-life balance. Mrs Peaks said that nobody was saying that the Claimant should not do those things but that a 0.5 FTE contract was in place before her other jobs and that she still had a commitment to the Respondent. Mrs Peaks said that the SMT could direct and it was not for the Claimant to choose not to attend meetings. That was the reason for the disciplinary meeting. The Claimant should speak to her line manager if she could not manage her workload in her 0.5FTE role rather than just refuse to do it. At the end the Claimant asked what they were trying to achieve on behalf of the College. Mrs Peaks said that staff had an obligation to their contract and they were trying to get the Claimant "to conform to her contract".

3.58 The Claimant placed significant weight on that last comment of Mrs Peaks and the suggestion that the Respondent wanted her to conform. The Tribunal did not consider the language used to be a particular concern. Mrs Peaks was not making a general comment that the Claimant had to conform, rather she was explaining that what lay behind these disciplinary proceedings was the Claimant's contractual obligation to do those activities that she was directed to do within her directed time and the need for her to conform or comply with her contractual obligations.

3.59 Mr Trivedy wrote to the Claimant on 12 February 2016 with the outcome of her appeal. He did not uphold it. He expressed the view that what was being asked of the Claimant as a 0.5FTE teacher and manager was wholly reasonable and did not contravene any equality or part-time workers legislation. He said that she was contractually obliged to attend half the number of meetings as directed by the Principal and in his opinion the College had been extremely reasonable in

agreeing a reduced number. He said that the Claimant failed to understand that directed meetings were those deemed to be essential by the Principal and the College. These had been identified on a schedule to remove any ambiguity following discussions with her. They were not subject to interpretation and could not be substituted at the Claimant's discretion for other activities. This applied to all staff. Mr Trivedy referred to paragraphs 6, 20A and 22 of the Red Book. He said that the Claimant had refused to attend specific meetings that were clearly identified by managers. She had had a full discretion over when her peripatetic teaching took place. The timings of that could have been used to minimise trapped time caused by attendance at the meetings discussed. The College had no wish to prevent her from having a work-life balance and did not question her commitment to Music and the success of the students. The purpose of the hearing was to ensure that she fulfilled the requirements of her contract and that meant attending at the time directed by Principal. Therefore the disciplinary warning would remain live from the date it was issued for a period of six months. They anticipated an immediate sustained change in the Claimant's behaviour and Mr Trivedy said that the dates and times of meetings would be specified to the Claimant in writing. If she failed to attend they might have no alternative but to take further disciplinary action.

3.60 On 19 February 2016 Mr Lloyd wrote to Mr Trivedy on the Claimant's behalf. This was a detailed letter about directed time. Mr Lloyd asked 40 separate questions, seeking agreement about precise details of different aspects of the Claimant's workload and to a significant extent sought to repeat the arguments that had been advanced at the appeal hearing in question form.

3.61 On 22 February 2016 Dr Taylor emailed the Claimant to confirm the dates of the Respondent's staff meetings at which the Claimant was expected to attend. He said that the staff meeting dates on the calendar were 13 October, 24 November, 1 March, 26 April and 7 June. Those were the dates the Claimant was expected to attend. Regarding Faculty meetings they took place weekly on Tuesdays and Thursdays. The Thursday session was probably the most useful for the Claimant. The Claimant was asked to confirm with Ms White which ones she would be attending. The Claimant replied on 25 February 2016. She said that the situation remained as follows. She was now working for two different employers. Her working week, which included a large part of the weekend, had to be organised in such a way as to meet the needs of the two jobs whilst allowing her to maintain her work-life balance and to remain mentally and physically fit to work. The pattern of her week required that she allocated her work at home around her timetabled lessons at the Respondent. She was already working more than a 0.5 proportion of the 1265 annual hours stipulated for teachers. Any extra hours of directed time would send her total further past the contractual limit. These two factors meant that she was not attending further meetings and she said that she was supported in this by local, regional and national Union advice and by written evidence in the form of College policies, Sixth Form Colleges Conditions of Service and national legislation. She would like to think that it might be thought appropriate for this business to stop now to avoid further conflict in working relationships. Dr Taylor replied pointing out that the Claimant was well aware that the Respondent believed that the meetings aided communication and that her absence prevented her active participation. She knew that her attendance at the meetings was considered reasonable by the College and he hoped that she could find a way to manage her time to enable

her to attend at the next scheduled meeting. If she did not it was hard to see how further action by the College could be avoided.

3.62 Meanwhile, on 22 February 2016 another issue had arisen. The Claimant had a meeting with Ms White during the course of which she became distressed and left work. The context was that Ms White was providing feedback to the Claimant following an assessment and feedback review. Ms White was raising with the Claimant the need to carry out tracking, which she said had not been done in the last couple of months, and was raising with her a proposal that Mr Newton offer composition support to the Claimant's students. This proposal had been discussed with Mr Newton, Ms White and Dr Taylor but not with the Claimant. Ms White was also letting the Claimant know that students had raised concerns about her. The Tribunal noted that the Claimant subsequently raised a grievance on 24 February 2016 about those events ("the second grievance"). Her grievance was that she had not been consulted about the proposal for Mr Newton to provide composition support teaching and she believed that Ms White's and Dr Taylor's actions were in breach of the College's policy for the maintenance of mutual respect. She said that the policy defined excluding or ignoring people and deliberate isolation as examples of bullying behaviour. Jumping ahead, the Tribunal notes that the grievance was investigated by Mr Noddings, the vice chair of the Respondent's Corporation. The Claimant's grievance was partially upheld. After reviewing the evidence, Mr Noddings concluded that the Claimant was not being consulted about the suggestion that Mr Newton provide teaching composition. Rather, a decision had been taken that he was to do so and it was the logistics that remained to be finalised. That part of the grievance was therefore upheld. However, Mr Noddings did not uphold the complaint that there had been a breach of the policy for the maintenance of mutual respect. He took the view that Ms White's and Dr Taylor's actions were appropriate as senior managers and that there was no evidence that they had not been respectful in the way they dealt with the Claimant. Mr Noddings said that the opportunity arose informally between Ms White and Mr Newton to consider a possible solution to support composition. It would have been helpful if the Claimant had been consulted at that stage but he did not believe that there was a deliberate intention to exclude her from the discussion. Mr Noddings went on to say that he did not wish to increase the Claimant's stress levels but the reality was that an informal meeting should have resolved these issues. He expressed the view that addressing this matter through a grievance was not in the interests of the Claimant, the Music department or the students and he believed that there was a risk of the Claimant "self-destructing" and that it was not helping her own stress levels.

3.63 Returning to the chronology, the Claimant emailed Ms Anderson the morning after her meeting with Ms White, i.e. 23 February 2016. She said that she was going to come back to work later that morning but needed to speak to Ms Anderson fairly soon about what happened. She said that she was also advised to ask for a proper stress risk assessment meeting. The 20 minutes previously had been insufficient to address all the concerns. She asked that Ms White stay away from her at least until she had spoken to Ms Anderson and she asked that managers take into consideration that she was under a huge amount of pressure and doing her best to stay on an even keel. Ms Anderson replied to say that she could meet for a chat the next day. She said that holding a longer stress risk assessment meeting was also fine. That had been her intention last time but she

thought the Claimant's availability restricted the time they had and as the Claimant said she had reservations about the usefulness. They could hold the meeting without Ms White present and feedback any outcomes to her but she thought Dr Taylor should be present instead to provide some teaching management input. She asked when they could fix the meeting. She said that she could ask Ms White not to come and see the Claimant until they had spoken but she did not think they could have the situation of Ms White not being able to speak to her for any longer than that. She suggested that the two of them meet, with either Dr Taylor or Ms Anderson present, later in the day tomorrow.

3.64 Ms Anderson kept notes of an informal discussion she had with the Claimant on 24 February 2016. The Claimant said that the negatives Ms White had fed back to her, compounded by her recent depression and difficulties at work, had led to her feeling unable to stay on site. This had thrown her back to the previous problems she had felt with her relationship with Ms White. She outlined what the issues raised by Ms White had been. The Claimant told Ms Anderson that she had never had student complaints or negative feedback before. She said the students were aware of her recent illness and should be understanding. Ms Anderson told the Claimant that these things were always hard to hear and indeed hard to say. She said that she hoped this was something that could be resolved at a low level. Ms Anderson said that this did not have to affect the Claimant's relationship with Ms White. Ms White had to pass the information on. The Claimant agreed that it would be better for her to see Ms White alone and that she would send Ms White an email or call her that day. As we have indicated, in fact the Claimant lodged a formal grievance that day.

3.65 Ms Anderson forwarded the grievance to Mr Trivedy on 25 February 2016 and the Tribunal was shown an exchange of emails that then followed. Mr Trivedy forwarded the email to a Ms Bagchi who was by then providing some HR advice. He noted that he apparently could not investigate the grievance because it was against another senior post holder but he wanted it investigating as a matter of urgency and suggested Mr Noddings. He added, "This member of staff is occupying nearly 90% of our time/energy and I am of the opinion that we should dismiss her. If possible I would like the investigation to take place next week and not to drag on like the last one." Before Ms Bagchi had the chance to reply, Mr Trivedy sent a further email referring to Ms Anderson's view that it might be possible for Mr Trivedy to be nominated to deal with the grievance as he was a member of the Corporation. Ms Bagchi provided careful advice on 26 February 2016 having reviewed the grievance procedure. She went on to give some advice about email correspondence concerning staff members generally and reminded recipients that staff members could make subject access requests for copies of emails that contained their personal data. She said that given the possibility of a subject access request Ms Anderson would be able to advise whether Mr Trivedy's earlier reference concerning dismissal of the staff member raising the grievance would be considered to constitute a disqualification from hearing the grievance on the grounds of independence. Mr Trivedy replied the same day simply saying, "I'm so sorry that I made that comment. It was complete exasperation with the situation."

3.66 Mr Trivedy was asked about these emails in cross-examination. He accepted that he had been very keen to deal with the grievance but that he had been told that this was not the right thing to do and he accepted that. It was put to him that

his view now was that the Claimant should be dismissed. He said that his email expressed the exasperation he felt. That week Ms Anderson had been to see him to say that she was not coping. He had had Ms White in his office in tears saying that she wanted to take out a grievance against the Claimant. He pointed out that he had apologised for making the comment. He did not accept that what he said was triggered by the fact the Claimant had raised a grievance. He was referring to that week when he had two managers coming to him at their wits' end saying that they were not coping. He said that he was genuinely sorry and that he should not have made the comment. We return to this below because Mr Trivedy had a further involvement in disciplinary proceedings against the Claimant.

3.67 A number of the witnesses described difficulties in arranging meetings with the Claimant. One example in the evidence before the Tribunal arose from the events of 22 February 2016. The Tribunal saw an email from Ms White to the Claimant saying that she was sorry the Claimant had felt that she had to leave and reminding her that the usual absence procedures would apply. The Claimant replied outlining her concerns and saying that she wanted to get this sorted out as soon as possible. Ms White replied the same day saying that she too was keen to sort things out swiftly and suggesting that they meet to discuss the issues the next day or later in the week. The Claimant did not reply. Ms White sent a further email on 25 February 2016 saying that she was planning on popping over to chat to the Claimant that day. The Tribunal did not see any reply from the Claimant but there was an email from Ms White to the Claimant sent that lunchtime saying that she did not realise the Claimant was in a meeting and asking whether a different time was any good. The Claimant replied simply saying, "I would very much appreciate a written response to the email I sent to you on Monday." Ms White replied to her saying that she thought that it was best to talk about issues face to face. She suggested that they met on Monday lunchtime and that she would try and book a room. She sent an email later in the day to say that she had not managed to book a room but that she would come over on Monday lunchtime and they could find some space somewhere. The Claimant replied on the Sunday saying that it was not possible for them to meet on Monday lunchtime because it was the time of her department meeting with Mr Newton and a time when she gave a private singing lesson to a student. She would see her on Friday at their normal time. Ms White replied that Sunday evening. She said that the Claimant needed to prioritise their meeting at lunchtime. She realised she had a private lesson and they should finish in time for that. She would come over to the Claimant to maximise the time they had together. On Monday 29 February 2016 Ms White sent an email to Dr Taylor copied to the Claimant. She said that she was going to meet the Claimant at lunchtime to discuss the issues she has raised in her email last week. The Claimant had just told her, because she went to see her, that she was refusing to meet her about this at lunchtime and suggested Friday instead. The Claimant forwarded the email to Ms Anderson copied to Mr Lloyd. She said she was not prepared to tolerate this, it was bullying. She had already put in a grievance against these two people for bullying her which she was waiting to be investigated. She said, "I suggest you speak to Ian and Sally and advise them not to go any further with this matter or another grievance will be on your desk by tomorrow morning." Ms Anderson replied the same day. She said that there were clearly issues that it was felt needed to be progressed sooner than the end of the week. She asked what would be a better time for the Claimant over the

next couple of days. She said as the Claimant felt uncomfortable discussing these things with Ms White or Dr Taylor she could ask that Mrs Peaks, Mr Rothery or Mr Trivedy be briefed on them and meet with her instead. She said she had not forgotten about doing a stress risk assessment, she was just waiting to hear from the Claimant when she could do it. She said that she did not mind coming in extra early and doing it before College one day if that would be better and she could ask Mr Rothery, Mrs Peaks or Mr Trivedy to join them instead of Dr Taylor if the Claimant preferred. The Claimant replied asking if she could avoid having anything to do with Ms White or Dr Taylor for the time being. She said that she had described to Ms Anderson when they had met the previous Wednesday what had been said in the upsetting meeting with Ms White on the Monday and that Ms Anderson had advised her not to make too much of it. She said, "I really cannot see what is so urgent that it cannot wait." If it was to do with the composition, she had put in a grievance about that. If it was about the complaining students, Ms Anderson herself had said that this had been dealt with as far as the students were concerned. She said she had been teaching quite normally for the last week and yet this morning was again subjected to bullying behaviour, which could well have sent her home upset yet again if she had not felt she had a witness in the room for moral support. She said that she felt the policy for the maintenance of mutual respect was being flouted in her regard. She had noted down what had happened and was keeping it "in reserve" in case anything else happened. She referred to a "persistently aggressive" approach being taken towards her and said that in the current situation with the amount of stress she was under and her recent medical condition this was surely ill advised. She identified times when she could meet with Ms Anderson. Ms Anderson replied the following day to say that Mr Rothery would meet the Claimant on 2 March to address the matters that had been raised with Ms White and that needed addressing.

3.68 At this point in the chronology, the Claimant had failed to attend a Faculty meeting on 22 February 2016 and a staff meeting on 1 March 2016. In consequence Ms Anderson emailed her on 2 March 2016 inviting her to a disciplinary investigation meeting to investigate allegations that she had failed to comply with a management direction to attend those two meetings. Ms Anderson provided three options for investigation meeting times and asked for the Claimant's confirmation of which time she would be attending.

3.69 There was a further exchange of emails about the meeting with Mr Rothery. It started on 2 March 2016 with Ms Anderson emailing the Claimant to say that she had not come to meet with Ms Anderson and Mr Rothery that afternoon, after Ms Anderson had confirmed that that was the slot they could make of those the Claimant had offered. Ms Anderson said that she hoped everything was alright. By way of alternative, they now wanted to meet at 3pm on Friday 4 March and would arrange cover for the Claimant's group. The Claimant did not reply and Ms Anderson sent a further email at 5pm on 3 March 2016. She said that the Claimant had not responded to her email and that it was important that she attend the next day. In the interests of transparency, she said that she must let the Claimant know that a failure to do so might be something that was considered a disciplinary issue alongside the one the Claimant had been notified about yesterday. Ms Anderson said that whilst using a lesson time was clearly not ideal it did mean that it did not clash with the Claimant's other commitments outside of the contract. The Claimant replied saying that she had just replied to Ms

Anderson's earlier email. If she must genuinely leave her students and there was no alternative she asked to meet at 3.30pm. Ms Anderson replied to say that that was fine. The Claimant then sent a further reply saying for the record that she had always said she could meet at 4pm on Fridays and would much prefer to do that than be taken out of a lesson. She asked precisely what would be discussed in the meeting so she had a chance to prepare anything she might need. Mr Rothery replied to say that it would be the normal line management meeting she usually had with Ms White. He could see that they needed to discuss work scrutiny, tracking and the student concerns about her teaching style that had been raised. She was welcome to bring up any other business. Mr Lloyd, who had been copied into the exchange by the Claimant, sent an email on 4 March 2016 raising a number of questions. Those included whether an individual stress risk assessment had yet been put in place; if not, why not; and whether the Respondent acknowledged that the Claimant had a history of suffering depression and/or work related illness. Ms Anderson replied the same day. She said that she had chased the date for a further stress risk assessment meeting with the Claimant twice as Mr Lloyd would see if he referred to previous emails. In the line management meeting she had just joined a suggested time had been given and Ms Anderson confirmed that this would now take place on Wednesday 9 March 2016. One of Mr Lloyd's questions was about why a threat of disciplinary action was justified in respect of the management meeting. He said that the Claimant's position was not that she refused to attend but would prefer to meet at 4pm. Ms Anderson said that the Claimant had not previously mentioned the meeting being held at 4pm. Rather, she had suggested some times, Ms Anderson had replied confirming one of them and the Claimant had not attended. Ms Anderson had then contacted her to give another time and had had no response. The concern therefore was that this was a further refusal to attend meetings, hence the email explaining what the consequences would be. The meeting had now been held. Mr Lloyd had also asked why Mr Rothery was now considered an appropriate person to conduct the meeting with the Claimant and Ms Anderson explained that he was an available member of senior management and that this accommodation had been made at the request of the Claimant to avoid meeting with Ms White or Dr Taylor whilst the grievance was being investigated. Mr Lloyd sent a reply. He said that the mention of disciplinary action was threatening and said that his question about the Claimant's health had not been answered. Ms Anderson sent a further reply on 5 March 2016. She said that there had only been one strand of disciplinary action and she emphasised again that she had not intended what she said to be threatening rather being fair about the potential consequences. She did not doubt that the Claimant was very busy and her explanation that she had not seen the message about the meeting had been accepted. The meeting had now been held and this was no longer an issue. She was not sure about the purpose of Mr Lloyd's question about the Respondent's understanding of the Claimant's health. She said that they had received a sick note from the GP in the past confirming the reason for absence, had sought occupational health advice and arranged a meeting for a stress risk assessment. On three occasions they had then sought to arrange a further meeting to complete it after the Claimant's other commitments meant the first discussion was cut short. As confirmed in her previous email a time had now been arranged for the Claimant to meet Ms Anderson the next week.

3.70 Ms Anderson did indeed meet the Claimant on 9 March 2016 to carry out an individual stress risk assessment. The Tribunal saw the form that was completed. It went through six general work-related stress factors, identified hazards, action already taken and action to be taken. In the first section, which related to demands including workload, the hazard identified by the Claimant was "qualitative i.e. range of different things to keep track of." The form recorded a discussion about the different roles the Claimant held - 0.5 teaching, performance tutorials, private lessons and external role. It recorded that student numbers were high this year and might reduce next year. If not, the Claimant was to reconsider the amount of work she was taking on outside of her 0.5 role. The Tribunal noted that Ms Anderson's evidence, which was not disputed, was that the Claimant's work at the College taking into account her core 0.5 FTE role, peripatetic and private work amounted to 0.92 FTE. On top of that, she was undertaking 20 hours a week outside of the Respondent. In another section of the stress risk assessment form dealing with relationships the Claimant said that she felt constantly criticised by her line manager, referring to the content and delivery of communications. She said that there had been some improvements but the relationship had never been easy. Action to be taken included exploring mediation. The stress risk assessment form included other comments and issues. However, no mention was made anywhere within it of any difficulty in attending meetings nor was this identified as a cause of work-related stress.

3.71 The second disciplinary investigation meeting took place on 14 March 2016. Mr Rothery conducted it, with Mrs Lamplough present as a witness. The Claimant was there with Mr Lloyd and there was a note taker. Mr Rothery started by asking the Claimant whether anything had changed since the last written warning and appeal. He said that the College saw it as reasonable for staff to attend certain meetings and that the Claimant had not attended. The Claimant replied that she had informed Dr Taylor that she had not refused to attend but that she was employed elsewhere at the time and that to try to shuffle everything around in order to attend the meetings would have an effect on her work-life balance. There was a discussion about precisely which meetings the Claimant was expected to attend. Mr Lloyd said that the Claimant was willing to attend the staff meetings in the remainder of the year although the maximum she could now attend would be three. With regard to the Faculty meetings Mr Lloyd suggested two compromise options. One was that instead of the Claimant attending the Faculty meeting, her one to one meeting on a Friday at 4pm be used as an exchange of information about all Faculty matters instead. Mr Rothery said that the Claimant was missing the point of the meetings. They were not simply there for information to be disseminated. The Claimant had a management role within the Faculty and should be present and part of the team and play a role in it. Mr Lloyd's second proposal for consideration was that the Claimant re-organise her commitments so as to attend a Tuesday or Thursday Faculty meeting and not meet the head of Faculty in the week. Mr Rothery then identified a third possibility. This was that the Claimant should attend the remaining two full staff meetings in that academic year, attend one Faculty meeting per week and find a time that was convenient for one to one meetings with her line manager but that those meetings could take place once a fortnight rather than weekly. The Claimant replied that she did not see the need for a one to one with her line manager in addition to the Faculty briefing. The Claimant then said that the other issue was with directed time and there was a discussion about that. Mr Lloyd then raised the question of work-life balance. He said that the Claimant would be

forced to work weekends. There had been recommendations by her GP and in turn this could make her ill again. This was identified as an area to explore. It was left that the Claimant would consider whether she would attend the staff meetings, one Faculty meeting per week and meet fortnightly rather than weekly with her line manager. Mr Lloyd then asked if Music could be moved to a different Faculty because of the difficulties in relation to the Claimant working with the head of Faculty. Mr Rothery said that the College's view was that they worked through things together as professionals and found a coherent way of working together. Mr Rothery said that they would not countenance moving the Claimant to a different Faculty and then not trying to mend the relationship. During the course of the discussion Mr Rothery asked the Claimant who determined what her job was and who said what her priorities were. She said that it was management but that did not mean that that was appropriate. She felt that she attended enough meetings to do her job successfully. The Claimant raised with Mr Rothery what Mrs Peaks had said at the previous disciplinary hearing about making her "conform" with her contract. Mr Rothery said that he had not been there, but that it was about the employer's right to expect a degree of compliance. Concerns about discrimination and reasonable adjustments were raised by Mr Lloyd. Mr Rothery reiterated that if the Claimant accepted the compromise he had identified he would regard the matter as being drawn to a close. Mr Lloyd said that they needed to consider some of the things the Claimant's doctor had mentioned. Mr Rothery said that the meeting would be suspended for the Claimant and Mr Lloyd to discuss the third proposal about a positive way forward and if there was no agreement there would be a further meeting to discuss the medical issues. Mr Rothery asked for a response by 18 March 2016.

3.72 After the meeting, Mr Rothery carried out further investigations. On 18 March 2016 he met Ms Anderson. He started by asking if health might be a reason for the Claimant not attending College meetings. Ms Anderson replied that during all her meetings with the Claimant the primary reason had always been about the Claimant's contractual position and her availability to attend meetings as she had taken another job outside the College. Ms Anderson said that the Claimant had suffered from work-related stress over a year or so in specific periods that were dealt with and that this was because of her relationship with her line manager and conflict rather than because of her workload. Ms Anderson referred to the recent occupational health advice and stress risk assessment meetings and she explained that the Claimant had said that the conflict and all the processes in which she was involved were the key causes of the stress. Ms Anderson felt that the stress risk assessment meeting on 9 March had been constructive but that the relationship between the Claimant and Ms White was now strained. It had been agreed to put in temporary arrangements for the Claimant to be managed by Mr Rothery and then by Mr Martinson. Ms Anderson said that she had told the Claimant that she had found someone to do mediation but that the Claimant had not replied. Mr Rothery asked Ms Anderson if she had heard any other health details from the Claimant. She said that she had not and that the Claimant was very busy with demands on her. They had discussed the number of hours the Claimant was working. She had referred to her need to do other activities as recommended by her GP but that was felt to be difficult because of the amount of work she was doing that year. Ms Anderson said that she had not had any other discussions with the Claimant about her inability to attend meetings in relation to health. In their numerous conversations the Claimant had not raised health as a

key reason for not attending. It was about her commitments elsewhere. Mr Rothery also met Ms White and asked her whether the Claimant had disclosed any health information that might have mitigated against her non-attendance at meetings. Ms White said that she had not.

3.73 The Tribunal did not see any indication from the Claimant by 18 March 2016 that she agreed to Mr Rothery's proposed third way forward. Instead, on 24 March 2016 Mr Lloyd sent Mr Rothery a detailed statement from the Claimant about her health. Mr Lloyd said that they believed the Claimant was disabled within the meaning of the Equality Act and that reasonable adjustments should be made with reference to meetings. The adjustments should include removing the requirement to attend a Faculty briefing on Tuesdays or Thursdays. Mr Lloyd also suggested that an occupational health report should be obtained, asking questions about disability and adjustments, and that formal action should be stayed pending medical reports. The written statement provided with Mr Lloyd's email was a detailed account from the Claimant relating to her mental health. She referred to suffering from a mental breakdown in 2004 and being diagnosed at that time with clinical depression. She explained the impact of that on her and then went on to talk about starting her job at the Respondent. She said that the first 18 months were wonderful but her perception was that something had changed in February 2014. She then set out an account of the stress and pressure that she was under and the ill health she had suffered from. She said that her GP and the College counsellor had urged her to take a step back and think of herself. She had been advised to take up some physical activity and had joined a dance class. She had also joined an orchestra playing her cello. She referred to the fact that she had sunk into depression in the Christmas holiday 2015. She described physical and mental symptoms and uncontrollable crying. She said she had visited her GP and told her how she was feeling including suicidal ideation and had been diagnosed with anxiety and depression and prescribed with anti-depressants. She had been signed off for a fortnight and she began to feel a little better. She said she had not felt this low since 2004 but she recognised the signs of depression in herself and once she had some help she could see what she needed to do. She described the impact of some of the processes and events at work on her.

3.74 Ms Anderson promptly made a further referral to occupational health. She specifically noted that the Claimant was requesting an adjustment so that she did not have to attend certain meetings and briefings as well as for a move to a different Faculty. Ms Anderson noted that the Claimant had previously been seen by occupational health in January at which time no underlying medical condition was identified. She said that her stress risk assessment had been conducted as advised. One suggested outcome of that was mediation. That had been offered and they were awaiting confirmation that the Claimant agreed to participate. Ms Anderson asked whether the Claimant was currently fit to be at work, whether there was an underlying medical condition and if so was it covered by the Equality Act and from a medical perspective were there any reasonable adjustments that could be made.

3.75 The occupational health report was sent on 28 April 2016. The occupational health nurse said that the Claimant had told her that she continued to experience symptoms of stress and anxiety due to work-related stress. She had a new line manager, which had helped. She did not wish to participate in mediation. In

answer to Ms Anderson's specific questions, the nurse indicated that the Claimant was attending work and was fit to do so. She said that there was no underlying medical condition responsible for the Claimant's current difficulties, although she told her she had experienced symptoms of stress and anxiety for over a year on a daily basis due to unresolved work place stressors and in this respect it was likely that her health status would require consideration within the disability provisions of the Equality Act. Regarding reasonable adjustments that could be made from a medical perspective, the nurse said that specific adjustments should be identified from the stress risk assessment. The Claimant had told her that the allocation of the new line manager had alleviated a great deal of the stress associated with work and said that it would be beneficial if that arrangement continued. The letter then continued in a separate paragraph: "It is difficult for [the Claimant] to attend meetings when she is working in her other employment. Could consideration be given to planning and arranging meetings whereby Rachel could attend within her agreed contractual hours arrangement?"

3.76 The Tribunal considered the occupational health report carefully. Plainly the nurse was indicating that the Claimant might be disabled within the meaning of the Equality Act and that the Respondent ought to give consideration to that. The Tribunal did not consider that the nurse was recommending as a reasonable adjustment the removal of the requirement to attend meetings or their re-arrangement. The occupational health report was carefully structured. Ms Anderson had asked three numbered questions and three numbered replies were given. The last of those dealt with reasonable adjustments. The request for meetings to be planned and arranged at different times was, it seemed to the Tribunal, deliberately separated from that. The request was not linked to the Claimant's health or stress and anxiety. Rather, it was explicitly linked to the difficulty for her in attending meetings when she was working in her other employment.

3.77 Once he had received the occupational health report Mr Rothery completed his disciplinary investigation report. Mr Rothery appears to have interpreted the occupational health report recommendation about making an adjustment to required meeting attendance as being a suggestion of a reasonable adjustment in relation to the Claimant's health. However, he expressed the view that in seeking the Claimant's attendance at 36% of meetings rather than the 50% she was contractually obliged to attend the College had made a reasonable adjustment to make allowance for her medical state. His view was that the request to attend the meetings was not unreasonable and he recommended formal disciplinary action. The Claimant was therefore invited to a further disciplinary hearing. By this time Ms Anderson was on maternity leave and Ms Officer-Nash was dealing with matters.

3.78 The next event in the chronology related to the second grievance. The Claimant had appealed against the outcome of that grievance. The appeal was dealt with by three members of the Respondent's Corporation and on 19 May 2016 the outcome was sent to the Claimant. The appeal panel upheld the finding that there had not been a breach of the College's policy for the maintenance of mutual respect. In particular, there had not been bullying but, as Mr Noddings had recommended, they expected the Claimant to be consulted about the question of composition teaching support. They would also seek an assurance

from the College that any recommendations in the occupational health report would be appropriately addressed.

3.79 The Tribunal saw a series of exchanges seeking to fix a date for the disciplinary hearing. On more than one occasion Mr Lloyd sent brief emails stating that he was not available on proposed days or in proposed weeks. He did not offer any suggestion of when he was available. In the end Ms Officer-Nash asked that he indicate a date when he would be available so that diaries could be co-ordinated.

3.80 The hearing eventually took place on 10 June 2016. The decision maker was Mrs Lamplough. Mr Rothery was present as investigating officer and Ms Officer-Nash as HR advisor. The Claimant attended with Mr Lloyd. Mr Rothery summarised the Respondent's position. He expressed the view that the Claimant was being required to attend less than her contractual obligation in terms of meetings. He noted that the Claimant did not believe the College approach was reasonable and said that her health condition was covered by the Equality Act and that a reasonable adjustment should be made to the requirement to attend meetings. Mr Rothery said that occupational health advice had been sought but that this did not indicate that there was any health reason why the Claimant could not attend meetings. Rather, the difficulty was around fitting them with her other employment. Further, the stress risk assessment did not identify meetings as an issue for adjustments to be considered. Among the points made by Mr Lloyd and the Claimant were that the Claimant could get the information from the meetings through other means, such as her one to one meetings with the head of Faculty, downloading documents and presentations. It was said that it was not necessary for her to attend the meetings. Mr Rothery said that the meetings were about more than just information provision. They were about bringing colleagues together to facilitate professional and collegiate team working. Mr Lloyd said that in expecting the Claimant to attend the meetings the Respondent had not followed the advice from occupational health and had failed to make reasonable adjustments under the Equality Act. Mr Rothery said that there had been no recommendation by occupational health for changes to meetings for health reasons. Mr Lloyd asked why the stress risk assessment was not in the pack of information for the disciplinary hearing and whether Mr Rothery had read it. Mr Rothery said that he had seen it but not read it in depth. The Claimant referred to her detailed written statement about her health and described the impact on her work-life balance of having to attend the meetings and the negative effect this was having on her life and family life. She said that the disciplinary and grievance processes were causing additional stress and anxiety, which was impacting upon her health. In summary, Mr Lloyd said that the Claimant suffered from depression, a disability under the Equality Act, and that the Respondent was failing to make reasonable adjustments for that by requiring her to attend the meetings. Use of the disciplinary process was also causing stress and anxiety. Mr Lloyd said that the College had ignored the occupational health advice to make reasonable adjustments to the meetings the Claimant was required to attend. Mr Lloyd suggested a further referral to occupational health.

3.81 No further occupational health referral was made. Mrs Lamplough's evidence to the Tribunal was that the stress risk assessment had not been included in the pack for the disciplinary hearing, but she asked to see it afterwards and read it. On 16 June 2016 Mrs Lamplough wrote to the Claimant with the outcome of the disciplinary hearing. Mrs Lamplough issued a final written warning.

Mrs Lamplough addressed the point about making reasonable adjustments for disability. She said that she did not believe that requiring the Claimant to attend the meetings placed her at a substantial disadvantage compared with people who were not disabled. The basis for that conclusion was not set out in the letter. She went on to say that she further believed that the College had discharged its duty under the Equality Act to make reasonable adjustments by adjusting the proportion of meetings the Claimant was required to attend to less than 50%. We pause there to comment that, of course, the making of reasonable adjustments for disability is not addressed in a purely mathematical way. The question is whether the person is put at a substantial disadvantage and, if they are, what steps are reasonable to avoid it. Mrs Lamplough's letter did not contain an explanation of those points. Having rejected the Claimant's contention that a reasonable adjustment for disability was required, Mrs Lamplough went on to say that her continued failure to comply with the reasonable management instruction to attend meetings was a further incident of misconduct during the currency of a prior written warning and that it was therefore appropriate to give her a final written warning.

3.82 On 21 June 2016 the Claimant was signed off work with "anxiety/depression related to work" for a period of one month. She appealed against the final written warning by email from Mr Lloyd to Mr Trivedy on 29 June 2016. The grounds of appeal were that the imposition of the warning amounted to discrimination arising from disability and that the College had failed to make reasonable adjustments for disability and that the warning was also discriminatory on the grounds of sex. The appeal was in fact made outside the five day time limit but the Respondent extended the time for appealing.

3.83 On 30 June 2016 Ms Officer-Nash sent a letter with hearing details. Mr Lloyd replied the same day. He said that the Claimant had confirmed that she would not be able to attend the appeal hearing due to ill health. They therefore suggested that the appeal hearing be deferred until September when the Claimant was well enough to attend. He referred to this request as being a reasonable adjustment. Secondly, Mr Lloyd requested that Mr Trivedy not hear the appeal asking for it to be dealt with by a member of the Corporation. Ms Officer-Nash replied on 1 July 2016. She said that she was sorry to hear that the Claimant was too unwell to attend but the Respondent's concern was to resolve the appeal in a timely way so that she could take the summer to get strong again and start the new term afresh. If the appeal was upheld she would be reassured. If it was not, the College would have the chance to provide clear guidance about the expectations for the new term and give her time to think about how she could respond to that in September. They had already extended the deadline for the appeal to be submitted and Ms Officer-Nash did not think these constant delays were helpful to either party. If Mr Lloyd was unable to attend, she suggested that the Claimant provide written submissions and that another Union representative attend on her behalf or that Mr Trivedy consider the points made without further submission and respond to them in writing. She said that they proposed to go ahead on the original date of 7 July 2016. Mr Lloyd replied the same day. He asked what the "constant delays" were and said that both his requests were for reasonable adjustments based on the Claimant's health. He repeated a contention that occupational health had said that the Claimant should be considered as disabled within the Equality Act (which was not quite what the occupational health report said). He said that the Respondent did not know what

was best for the Claimant. She and her doctor were best placed to judge what was best for her, including when the appeal should be heard. He said that he was not confident that Mr Trivedy would uphold the appeal if he heard it and that this could only exacerbate the Claimant's symptoms. He did not think it appropriate for the Claimant to provide written submissions or for another representative to attend on her behalf. Ms Officer-Nash replied on 5 July 2016. She said that the College had already made reasonable adjustments by offering an alternative date and time for the meeting and a range of options for presenting the appeal. They had sought legal advice about Mr Trivedy hearing the appeal and believed that this was in line with their disciplinary procedure and policy and that it was not reasonable or practicable to involve Corporation members at that stage. She asked Mr Lloyd to advise if anyone would be attending or if any written submissions would be made.

3.84 Mr Trivedy was asked in cross-examination about the difficulties of getting a Corporation member to handle the appeal instead of him. He said that that was proving incredibly difficult. There were 20 Corporation members. Four were not able to deal with these matters because they were either student or staff members of the Corporation. Ten had by now been involved in grievances or disciplinary matters involving the Claimant. That left six. They were full-time employees and the Respondent simply could not get them to come along. Mr Trivedy said that he believed that he was able to be objective in hearing the Claimant's appeal. We have referred above to Mr Trivedy's comment in an email in February expressing a view that the Claimant should be dismissed and his explanation that he had said it out of exasperation and was genuinely sorry when it was drawn to his attention. There was plainly some level of frustration with the Claimant. However, it did not seem to the Tribunal unreasonable that Mr Trivedy should deal with the appeal in circumstances where it was very difficult to identify a Corporation member who might do it instead and where he was the College Principal and was in receipt of HR support and advice throughout.

3.85 The appeal meeting took place on 7 July 2016. It was conducted by Mr Trivedy with HR assistance from Ms Cooper. Mrs Lamplough presented the management case and there was a note taker present. The notes indicate that Mr Trivedy went through Mr Lloyd's email of 29 June 2016 and the grounds of appeal identified. Mr Trivedy asked Mrs Lamplough for her responses to the grounds of appeal and for her to explain why she had come to the conclusions she did despite the fact that the Claimant had said that this amounted to discrimination arising from disability. Mrs Lamplough expressed her view that by requiring the Claimant to attend fewer than half of the meetings and by changing her manager the Respondent had made a reasonable adjustment to accommodate her disability. Mr Trivedy asked whether Mrs Lamplough thought it was possible for the College to reduce the Claimant's attendance meetings even further or to no attendance at all. Mrs Lamplough expressed the view as previously stated by Mr Rothery that it was important that staff met to converse with each other, act as a team and exchange views. Mrs Lamplough made the point that the stress risk assessment did not say that attending meetings would cause the Claimant stress and that it was not clear that meeting attendance itself was a stressor for the Claimant. She noted that the occupational health report did not say that. The notes of the meeting indicate Ms Cooper raising questions such as whether management had done as much as they could to resolve the difficulties and whether things could have been dealt with in a different way. Mrs

Lamplough expressed her understanding that the Claimant did have flexibility to do her other non-College work at a different time. There was also clarification of the fact that the Claimant had control over the timing of her peripatetic lessons and that she had indeed altered the timing of those lessons herself during the course of the academic year. Ms Cooper asked whether the Respondent could offer to accommodate the Claimant for her to do her typing work at the College using her own laptop so as to address the concern about trapped time and Mr Trivedy confirmed that that could be explored with the Claimant. The notes of the appeal meeting suggested to the Tribunal a genuine attempt at exploring the grounds of appeal and considering them carefully despite the Claimant's absence. The questions posed by Ms Cooper indicated that she was seeking to ensure that the Claimant's perspective was properly considered and addressed.

3.86 Mr Trivedy wrote to the Claimant the following day 8 July 2016 with the outcome of the appeal. He did not uphold it. He summarised the main points stated by Mrs Lamplough at the appeal hearing. Those included that there had been no discrimination on the grounds of disability on the basis that requiring the Claimant to attend only 36% of the relevant meetings was a reasonable adjustment and that bearing that in mind the Claimant had been treated the same as anyone with a disability. Again the Tribunal notes that that is not a correct approach to the issues raised when dealing with the question of reasonable adjustments. Mr Trivedy also noted that Mrs Lamplough had reported the occupational health view that there was no underlying medical condition responsible for the Claimant's stress and had indicated that it was the unresolved workplace stresses and conflict that was causing the stress. In the stress risk assessment the Claimant had not made reference to any anxiety or stress arising from attending meetings. Mr Trivedy explained that they had explored the value of the various meetings the Claimant was required to attend. He was of the view that this should not be reduced further because meetings were an important part of College life, not only to exchange information but also to build the collegiate team and provide support. He did offer the suggestion of the Claimant carrying out her work for her other employer using her own equipment on the Respondent's premises and invited her to discuss that with Ms Officer-Nash if it would be helpful. Mr Trivedy attached a timetable of the meetings the Claimant was required to attend in the following year and expressed the hope that during the six week summer break she would be able to re-arrange her other commitments to make sure she could attend those meetings. Mr Trivedy also attached the draft timetable for the Claimant for the following academic year. That did not require her to be in College at all on a Monday, Tuesday morning, a Thursday afternoon or a Friday morning. The Claimant's evidence to the Tribunal was that the revised timetable largely addressed the issues about meeting attendance.

3.87 The Tribunal records at this stage that in cross-examination, Mrs Peaks and Mrs Lamplough accepted that excusing the Claimant from attending the meetings in question would not have had a significant detrimental impact on the running of the College. We also noted that the evidence suggested that the SMT, including those who handled the disciplinary and appeal hearings, had not been trained in disability discrimination matters.

3.88 Before coming on to deal with the Claimant's resignation we deal with a separate strand of events that was running alongside the disciplinary and grievance matters outlined above. We deal with those separately for ease of

understanding, but it is important to remember that these events were happening at the same time as the disciplinary and grievance processes and were intertwined with them. The separate strand concerned the management allowance that the Claimant was paid. Management allowances were paid to heads of department and were overseen by Mr Rothery. His evidence to the Tribunal was that the allocation of management allowances was based primarily on student taught hours within the relevant curriculum area on funded courses. Management allowances were reviewed every two to three years in November/December to see whether any changes were needed and if they were they would come into force in the new academic year. Mr Rothery's evidence was that he carried out such a review of management allowances in November/December 2015. As a consequence the Claimant's management allowance and the management allowance for Visual Arts were identified as being in need of change. The suggestion was that the Claimant's management allowance should be removed and the management allowance for the Visual Arts head of department should be reduced. Mr Rothery explained that the previous management allowance review had led to changes in the allowances for History, Travel and Tourism and IT. In the light of Mr Rothery's review Mr Trivedy drew up a document entitled 'Rationale for the allocation of management allowances' dated 17 December 2015. That referred to the recent focus on re-aligning management allowances to ensure consistency across curriculum areas. It said that as a rule the allocation of curriculum management allowances within the constraints of affordability was that for up to 600 student hours there was no management allowance. For 600 to 1700 student hours there was an allowance at Grade A and for various bands above that there were higher levels of management allowance. The document said that there were currently two significant anomalies and that the proposal was to reduce those so that they better fitted the structure. The two anomalies were Music and Art. For Music there were 354 student hours. The current management allowance was a B allowance and the proposal was that there should be no management allowance. For Art the number of students was 1235. The allowance was currently a C and the proposal was that it should be reduced to an A. The document said that whilst the number of student hours was the primary measure it was acknowledged that complexity was added by running a number of courses, line managing many members of staff and offering significant enrichment. Those factors had also been considered here and were not deemed to add sufficient weight to the roles in comparison to other areas to justify the current management range. The paper was said to be the beginning of a consultation process under which the post holders were being invited to accept the reduction in management allowance, failing which the proposal was for their posts to be made redundant. They would be offered alternative roles at the revised responsibility level as an alternative to redundancy.

3.89 On 20 January 2016 Mr Trivedy wrote to the Claimant inviting her to a meeting to discuss her current management allowance. He said that at the meeting a paper would be presented outlining proposed changes in the allowance, which the Claimant would then have the opportunity to consider and discuss. The Claimant emailed Mr Trivedy on 25 January 2016. She said that she was working for her other employer at the time of the proposed meeting and would not be able to attend. However, she was sure it would be sufficient to let her have the paper he had described and she would make an appointment to see him in due course if she felt it was necessary. Ms Anderson forwarded the paper to the Claimant on

26 January 2016. At the same time she proposed dates for a second consultation meeting to discuss it. The Claimant replied the following day asking to see the calculation for the number of student hours in Music and to understand the basis for it before she could make any comments. She said that she was available to discuss it on one of the offered dates. Ms Anderson replied the following day, 28 January 2016, providing details of the calculation of student hours and the anonymised list of student hours and management allowances for other subjects as requested by Union representatives in a previous meeting. She confirmed the consultation meeting time and date. Mr Joice then emailed Ms Anderson with a number of questions about how the criteria had been agreed, how the Claimant's 354 hours had been arrived at and where the proposals had been approved by governors. Ms Anderson replied on 29 January 2016.

3.90 A consultation meeting took place on 4 February 2016. The Claimant did not attend but Mr Joice attended on her behalf. Mr Trivedy, Dr Taylor and Ms Anderson were all present. Among the points made on the Claimant's behalf were that she had responsibility for choir, orchestra, jazz ensemble, performance seminars, performance tutorials and management of peripatetic lessons, which added to a significant number of student hours. She queried why 600 student hours had been alighted upon as the threshold and raised questions about what the practical implications were for her management duties. The responses to some of the queries were recorded in the notes of the meeting after the event. They made clear that for all management responsibilities only the hours for formal qualifications were included in the calculation. In many areas formal and informal enrichments were also offered. Where an area was near a boundary between allowances, the level of enrichment was one of the other factors referred to that was considered, along with the number of people line managed and the number of courses managed.

3.91 On 29 February 2016 the Claimant emailed Ms Anderson attaching a detailed document responding to Mr Trivedy's paper. She asked numerous, detailed questions about the consultation document, for example asking what was "significant" about the anomalies (Music and Art), were there "insignificant anomalies", how was "fairly" defined and so on. The Claimant suggested in her document that the total number of student hours for which she was responsible was 464 rather than the 354 quoted. She said that the original consultation document had not said that only the hours for formal qualifications were included, and this meant that there was a lack of transparency and clarity. The Claimant queried why only hours for formal qualifications were included. She raised questions about how the Music department would be managed if the proposal were implemented and about the handling of the consultation process.

3.92 Mr Trivedy sent a reply on 2 March 2016 answering each point in turn. He made clear that 600 student hours was the amount that he considered reasonable for a management allowance. It could equally be 650 or 700. They had a set amount of money for staffing that was distributed as management deemed appropriate. The decision was for the Principal when an area was close to the band. Where a significant level of enrichment was provided managerial judgment was necessary. In the Claimant's case her contract hours were taken into account. She had a separate contract for peripatetic music and that could be outsourced if necessary. In terms of management the Claimant line managed one member of staff. The peripatetic teaching staff were not the Respondent's employees and

were not subject to any of its management procedures. The Respondent was offering to allow the Claimant to keep her one hour management remission time for managing the peripatetic teaching provision so as to avoid a further reduction in her full-time equivalent as well as the loss of the management allowance but if the Claimant did not wish to do that the Respondent was quite happy to outsource the peripatetic provision. Mr Trivedy offered the opportunity of a further consultation meeting. The Claimant did not respond and on 11 March 2016 Mr Trivedy wrote to her to confirm the outcome of the consultation. He wrote that the role of teacher of music was being offered to the Claimant and set out the salary it would attract. He repeated the offer for the Claimant to retain one hour of management remission within her 0.5FTE contract so as to organise the peripatetic music lessons. He recorded that Ms Anderson had proposed that it might be possible to offer the Claimant some administrative support for that. He made clear that the alternative to accepting the role would be redundancy.

3.93 Mr Lloyd emailed Mr Trivedy on 23 March 2016. He said that the Claimant should be offered a 0.5FTE management allowance based on her current entitlement and that it would be in breach of the PTW Regulations not to make such an offer. Mr Trivedy replied the following day. He said that even though the deadline for the consultation process had passed the points made would be considered. He emphasised that the proposal was not linked to the Claimant's part-time status, rather that the curriculum area did not warrant a management allowance. Mr Trivedy sent a further email later in the day saying that Mr Lloyd's email had been considered at the SMT meeting but that they intended to proceed with the re-structuring. The issue of management allowance was related to the size of the curriculum area and had no relationship to whether someone worked part-time or not. The deadline for the Claimant to indicate her preference had been extended to 11 April 2016 and if they did not hear from her they would assume that she wished to be made redundant. Mr Lloyd emailed on 18 April 2016 to say that the Claimant "under protest" agreed to accept the alternative post. That meant that with effect from September 2016 her post was not that of Director of Music but music teacher at the lower rate of pay.

3.94 The Tribunal accepted Mr Rothery's account of how the Claimant's management allowance came to be reviewed, and that this was a process he carried out every two to three years. There was no suggestion that she was unfairly singled out. Her main criticism appeared to be that she was being unfavourably treated as a part-time worker. However, the Tribunal accepted the Respondent's evidence that this related to the size of the curriculum area not the part-time nature of the Claimant's work. There were part-time staff who had management allowances, where the curriculum area warranted that.

3.95 Returning to the events of the summer, on 30 August 2016 the Claimant tendered her resignation. She said that relationships between management and herself had become so broken that they were impossible to mend. She said that managers had displayed disregard for the work-related stress, anxiety and depression she had suffered and indeed had caused harm to her mental health by pursuing processes and behaviours that had increased her anxiety and led her to a very low point. She had come to the conclusion that to continue at the Respondent would be to subject her mental health to further serious risk. The issuing of two formal warnings over a matter that had not affected her ability to teach or the effective functioning of the College and disciplinary proceedings

which she described as insensitive and/or careless were said to be the last straw. She said that she could not live and work under the strain of what she perceived to be a real and imminent threat posed by a final written warning. She said that she had gone backwards in terms of status and salary during her time at the Respondent. The new contract for teacher of music meant that come September her salary would be less than the salary she was on at the school she left to come to the Respondent and this was not something she found helpful to her personal or professional identity. Mr Trivedy replied on 2 September 2016. He offered the Claimant the opportunity to reconsider her decision. The Claimant did not withdraw her resignation and it was accepted. However, she remained signed off work sick throughout the autumn term. Her effective date of termination was 31 December 2016. In the autumn term she was paid at the lower rate of pay for a teacher of music.

3.96 Having dealt with the chronology, we turn to the Claimant's evidence to the Tribunal about her health and about attendance at the meetings. We have referred to the fit notes and occupational health reports that were obtained during the course of the Claimant's employment and also to her own detailed statement describing her mental ill health. The Tribunal also had available to it a letter dated 2 February 2017 from the Claimant's doctor. Among other things the doctor explained that when she saw the Claimant in November 2014 she advised her to try to make time for herself to relieve some of her stress. She suggested any enjoyable activity such as physical exercise, dance classes etc. The Claimant took the advice and at that time joined an orchestra and a dance class. The doctor said that she saw the Claimant again in December 2015, by which time her stress had become all-consuming with low mood and anxiety. At that point the doctor advised that she was now suffering from anxiety/depression and suggested referral to the Community Psychiatric Team for assessment and counselling. The doctor saw the Claimant again in January 2016 by which point she was increasingly anxious and depressed and was experiencing suicidal thoughts. She started medication at that point and was signed away from work for two weeks. At the end of that time she felt a little stronger and decided on a return to work. The doctor felt that that was a little early and that the improvement was likely to be due to her removal from the major factor causing her stress i.e. the workplace. The Claimant had returned to the doctor in June 2016 with anxiety, low mood and stress as well as physical symptoms and she was signed off with anxiety and depression at that stage. The Tribunal also saw a report from the cognitive behavioural psychotherapist who had treated the Claimant. That report was dated 18 January 2016, but it appeared that it should have been 18 January 2017. The therapist reported that the Claimant had been first seen in April 2016 at which point her scores were indicative of severe depression and anxiety. Those scores had peaked in July 2016. The Claimant had been treated for depression using CBT. She reported that her low mood was caused by work stress rather than personal issues. The therapy had concluded in September 2016.

3.97 None of the medical evidence before the Tribunal suggested any link between attendance at meetings and the Claimant's mental ill health. Her GP did confirm that she had advised the Claimant to do some activities for herself. The Claimant was asked in her oral evidence about her health and about her attendance at meetings. She was asked in supplementary questions at the very outset of her evidence whether anything had caused her to focus in her discussions with Ms

Anderson about meeting attendance on trapped time. She said that the original issue she had was that she was working for another employer and that her Union told her that the Respondent did not have the right to make her attend to stop her from doing her other job. We have referred above to her evidence about why she was unable to attend a meeting at 4pm on 13 October 2015. She spoke about not being able to start her typing at 3.05pm, about having to drive through the 5pm traffic and deal with her domestic chores and the suggestion that the overall effect would have been to make her more tired, anxious and stressed. We have also referred to her evidence about when her singing lesson in Market Rasen took place. She gave evidence that she had moved her peripatetic teaching because her singing teacher wanted to move her singing lesson to a Friday morning and she had done that. We have referred to her evidence in response to the suggestion that this was a question of priorities, that she had "a lot to do" and that she "struggled to balance three jobs and maintain her health." For the 8.45am meetings on a Tuesday when she was teaching at 9am, we have referred to her evidence that she had other things she could do before 9am, such as taking the children to school or doing a bit of shopping. She said more than once in response to questions about this that attending these meetings would have made her more tired and anxious and that it was a question of keeping well. It seemed to the Tribunal that this was very much an argument being presented after the event. At the time she was being asked to attend meetings in the autumn term of 2015, the Claimant did not say that attendance 15 minutes early on a Tuesday or for an additional hour on five Tuesday afternoons in total would impact on her health or wellbeing. She said, first, that she could not attend the meetings because of her employment outside the Respondent and, secondly, that she was not required to attend them and that her Union had advised her of that. As we have indicated she acknowledged that if her Trade Union had given different advice she would have gone to the meetings. Later in her evidence it was suggested to the Claimant that it was reasonable for her to be asked to attend the 8.45am briefing for 5-10 minutes on a Tuesday when she was due to be at the College at 9am to hold private lessons. Her answer was that the Union said that her contractual hours did not start until 11.30am. It was put to her that the contractual position was a question of what was reasonable and she said that that was a problematic word. It was then put to her that there was nothing unreasonable about asking her to come in a few minutes early on a Tuesday. She then said, "So we have to come back to the question of directed time." That led to a discussion about directed time, which the Tribunal does not need to resolve. At some point during the autumn term, as indicated the Claimant moved her peripatetic teaching to a Thursday afternoon 2pm-4pm. She was also teaching peripatetic students from 9.40am. It was suggested to her that once she moved her peripatetic teaching from a Tuesday morning, it was not unreasonable to ask her to come to the 8.45am briefing on a Thursday morning. She said, "I could have done a couple of hours of typing work". It was suggested to her that she could have done that on a Friday morning and she said that that was when her singing lesson was, adding, "What I do is my choice." It was suggested to her that that was correct, that she had choices and the Respondent was not asking her to do anything unreasonable. She said that she had two teenagers, something was being blown out of proportion, she was becoming more anxious about juggling and tiredness and that that was the fundamental point of the case. She was asked again whether the Respondent was doing anything unreasonable in asking her to attend the 8.45am briefing and she said that reasonableness was subjective. It was put to the Claimant that she had not

said to the Respondent that attending the meetings would add to her stress levels. She said that she had "gone down a contractual argument" supported by her Union. Eventually, she accepted that at that point she had not said that attending the meetings would add to her stress levels. That was right for the whole of the autumn term. It was suggested to the Claimant that she had initially been arguing that she should not have to attend the meetings on a contractual basis before raising the argument that this was discrimination against part-time workers. She accepted that. It was put to her that she then used an argument that this was sex discrimination, and she said that that was her Union's argument. It was put to her that it was not until the second disciplinary hearing that any suggestion was made that there was a health reason for her non-attendance at meetings. She disagreed. She was asked whether she ever said that the reason she was unable to attend the meetings was because of mental health difficulties. She said that she believed the Respondent was aware of her mental health difficulties and that the processes were causing her problems. She believed she had a reasoned argument. It was the conflict that resulted from this that was the problem. Her health suffered as a result of the conflict. She said, "It wasn't the attendance at meetings that caused me to be ill it was the conflict, being pursued by the Respondent over time that caused me to become unwell." She said that at the time she was trying to use the contractual argument. Counsel asked the Claimant, in view of her evidence that it was not her attendance at the meetings that made her ill but the conflict that arose, why she had not therefore simply attended the meetings. She said, "I had lots to juggle, it helped me enormously not to do those."

3.98 The Tribunal considered carefully the medical evidence before it, the evidence of what the Claimant said at the time and her evidence to the Tribunal. Neither the medical evidence nor the occupational health reports nor what she said at the time (prior to the second disciplinary hearing) provided support for the contention that attending the 8.45am briefing for 5-10 minutes on a Tuesday or a Thursday depending when the peripatetic teaching took place, and attending the 4pm meeting on five occasions over the course of the academic year would exacerbate the Claimant's mental health or be detrimental to it. The Claimant did indeed have a lot to juggle. She was carrying out 0.92 FTE worth of work at the Respondent and 20 hours' paid work in addition to that. She had family responsibilities, she attended a singing lesson that took three hours of her time, dance classes and an orchestra. That was a significant amount to juggle. It seemed to the Tribunal on the evidence that the position really was as the Claimant acknowledged it to be towards the end of her evidence. She had a lot to juggle and it helped her not to attend these additional meetings, but attendance at the meetings per se did not cause her mental ill health. It was the conflict that surrounded it that caused her mental ill health, and that was so even taking into account the Claimant's position that it was the knock-on effect of attending meetings that led to the difficulties. The evidence before the Tribunal did not support a finding that the Claimant's mental ill health was a cause of her refusal to attend these meetings, was a reason for her not attending the meetings or was exacerbated by attendance at these meetings.

4. Law

Unfair Dismissal

4.1 So far as unfair dismissal is concerned, the right not to be unfairly dismissed is set out in s 94 of the Employment Rights Act 1996. By virtue of s 95 dismissal includes constructive dismissal. It is well-established (see *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221) that in considering whether an employee has been constructively dismissed, the issues for a Tribunal are:

4.1.1 Was there a breach of the contract of employment?

4.1.2 Was it a fundamental breach going to the root of the contract, i.e. such as to entitle the employee to terminate the contract without notice?

4.1.3 Did the employee resign in response and without affirming the contract?

4.2 The parties to an employment contract may agree to incorporate into it terms from other sources, such as a staff handbook. Even where a staff handbook is expressly incorporated, the Tribunal must still consider whether the particular term at issue is apt to be a term of the contract. That may exclude, for example, declarations of aspiration or policy falling short of a contractual undertaking: see e.g. *Keeley v Fosroc International Ltd* [2006] IRLR 961 CA.

4.3 It is an implied term of the contract of employment that the employer will not, without reasonable cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee: *Malik v BCCI* [1997] IRLR 462. This is a demanding test. The employer must demonstrate objectively by its behaviour that it is abandoning and altogether refusing to perform the contract: see *Frenkel Topping Ltd v King* UKEAT/0106/15/LA at paragraphs 12-15. Individual actions taken by an employer that do not by themselves constitute fundamental breaches of any contractual term may have the cumulative effect of undermining trust and confidence, thereby entitling the employee to resign and claim unfair dismissal. The final act in such a series need not be of the same character as the earlier acts but it must contribute to the breach of the implied term: see *Omilaju v Waltham Forest BC* [2005] IRLR 35 CA. An act of discrimination will usually amount to a breach of the implied term of mutual trust and confidence: see *Ahmed v Amnesty International* [2009] IR 1450.

4.4 The essence of constructive dismissal is repudiation by the employer, which is accepted by the employee. The employee's resignation must be in response (at least in part) to the repudiation, which must be the effective cause of it: see *Nottinghamshire County Council v Meikle* [2005] ICR 1, CA. Mere delay in resigning does not, of itself, amount to an affirmation of the contract. The question is whether the employee has made the choice to affirm the contract or to accept the employer's repudiation and resign: see *Chindove v William Morrisons Supermarket plc* UKEAT/0201/13; *Bournemouth University Higher Education Corporation v Buckland* [2010] ICR 908.

4.5 Once dismissal is established, s 98 of the Employment Rights Act 1996 requires the employer to show that the reason for the dismissal was a potentially fair one. In a case of constructive dismissal, that is the reason for which the employer breached the contract of employment: see *Berriman v Delabole Slate Ltd* [1985] ICR 526 CA. If it does so, the Tribunal must then consider whether the employer acted reasonably in all the circumstances in treating that as a sufficient reason for dismissing the employee.

4.6 Discrimination in employment is prohibited by s 39 of the Equality Act 2010, which also applies the duty to make reasonable adjustments to an employer. The Tribunal had regard to s 15 (discrimination arising from disability), s 19 (indirect discrimination) and s 20, 21 and schedule 8 (failure to make reasonable adjustments).

4.7 The time limit is governed by s 123. Under s 123(3)(a), conduct extending over a period is treated as being done at the end of the period. A distinction is drawn between a continuing act and an act that has continuing consequences. Where an employer operates a discriminatory regime, rule, practice or principle, such a practice will amount to an act extending over a period. Where there is no such regime, rule, practice or principle, an act that affects an employee will not be treated as continuing, even though it has consequences that extend over a period of time: see *Barclays Bank plc* v *Kapur* [1991] ICR 208, HL. However, the focus of the inquiry is not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but on whether there was an ongoing situation or continuing state of affairs in which the group discriminated against, including the claimant, was treated less favourably: see *Hendricks v Metropolitan Police Commissioner* [2003] ICR 530, CA.

4.8 A failure to make reasonable adjustments is to be regarded as an omission rather than an act: see *Matuszowicz v Kingston upon Hull City Council* [2009] IRLR 1170, CA. In cases where the employer was not deliberately failing to comply with the duty, it is to be treated as having decided upon the omission at an "artificial" date. Under s 123(4)(b), the Tribunal must decide when, if the employer had been acting reasonably, it would have made the adjustments. It is to be noted that an omission can be continuing, as the Court of Appeal found was the case in *Matuszowicz.*

4.9 As regards extending time, the tribunal has a wide discretion under s 123(1)(b) to do what it thinks is just and equitable in the circumstances, but bearing in mind that time limits are exercised strictly in employment cases, and that there is no presumption that a tribunal should exercise its discretion to extend time. In the case of failure to make reasonable adjustments, Tribunals are expected to have sympathetic regard to the difficulty that may arise by the application of s 123(4)(b): see *Matuszowicz*.

4.10 The burden of proof is dealt with by s 136 of the Equality Act 2010, and guidance on how to apply it was set out by the Court of Appeal in *Igen Ltd v Wong* [2005] ICR 931.

4.11 Under s 19, a provision, criterion or practice ("PCP") covers a broad range of conduct, including formal and informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions: see Equality and Human Rights Commission: Code of Practice on Employment (2011) (paragraph 4.5). Once it has been established that a PCP is applied to the Claimant and to persons with whom he or she does not share the protected characteristic, it is necessary to consider whether the PCP puts or would put both the Claimant and the group who share the protected characteristic at a particular disadvantage compared with persons who do not share the protected characteristic. The concept of "putting" someone at a disadvantage connotes causation – the essential element is a causal connection between the PCP and the disadvantage

suffered, not only by the group but also by the individual. However, it is not necessary to identify *why* the PCP disadvantages the group and the individual: see *Essop v Home Office; Naeem v Secretary of State for Justice* [2017] 1 WLR 1343.

4.12 Having regard to the burden of proof provisions, it is then open to the Respondent to prove that the particular Claimant was not put at a disadvantage by the PCP, i.e. that there was no causal link between the PCP and the disadvantage suffered by the individual.

4.13 The usual (but not the only) way of establishing whether a PCP puts persons with whom the employee shares the protected characteristic at a particular disadvantage compared with persons with whom he or she does not share it, has been to identify a "pool" of all those potentially affected by the PCP and to compare its effect on the group within the pool who share the characteristic and the group who do not. Where the "pool" approach is used, the pool identified must be one that suitably tests the particular discrimination complained of. In general, all workers affected by the PCP in question should be considered: see *Essop and Naeem* paragraphs 40-41.

4.14 If the requisite disadvantage is shown, it is a defence for the employer to show that the PCP is a proportionate means of achieving a legitimate aim. The employer must show that it has a legitimate aim, and that the means of achieving it are both appropriate and reasonably necessary. Consideration should be given to whether there is non-discriminatory alternative. A balance must be struck between the discriminatory effect and the need for the PCP: see *Homer v Chief Constable of West Yorkshire Police* [2012] UKSC 15, SC.

4.15 Neither the duty to make reasonable adjustments nor s 15 applies where the employer shows that it did not know and could not reasonably be expected to know that the person had the disability (and, in the case of reasonable adjustments, that it was likely to put the person at the relevant disadvantage). Knowledge of disadvantage is a separate requirement: the employer must show that it did not have actual or constructive knowledge that the individual was disadvantaged by the disability in the way set out in the legislation.

4.16 If s 15 applies, the first element is 'unfavourable' treatment of the employee. The EHRC Employment Code advises that this means that the disabled person "must have been put at a disadvantage". The EAT has held that unfavourable treatment is distinct from "detriment" or "less favourable treatment." The Tribunal must measure the treatment against an objective sense of that which is adverse compared with that which is beneficial: see *Trustees of Swansea University Pension & Assurance Scheme v Williams* [2015] IRLR 885 EAT and see now [2017] EWCA Civ 1008 (upholding the decision of the EAT). If there is unfavourable treatment, it must be done because of something arising in consequence of the person's disability. There are two elements. First, there must be something arising in consequence of the disability; secondly, the unfavourable treatment must be because of that something. While the words "arising in consequence of" may give some scope for a wider causal connection than the words "because of", the difference (if any) will be small. In deciding whether the something did indeed arise in consequence of the disability, the Tribunal may have regard to evidence, including medical evidence, that was not

before the employer at the time: see *City of York Council v Grosset* [2017] UKEAT_0015_16. It is for the Tribunal to decide whether, having regard to all the evidence, the disability was a material cause of the "something": see *Pnaiser v NHS England* [2016] IRR 170.

4.17 As regards failure to make reasonable adjustments: the Tribunal must consider the PCP, the identity of non-disabled comparators where appropriate, and the nature and extent of the substantial disadvantage suffered by the Claimant. It should analyse what steps would have been reasonable for the Respondent to have to take to avoid that disadvantage. The burden is on the Claimant to identify, at least in broad terms, the nature of the adjustment. It then shifts to the Respondent to show that the disadvantage would not have been eliminated or reduced, or that the adjustment was not reasonable: see *Environment Agency v Rowan* [2008] ICR 128, EAT and *HM Prison Service v Johnson* [2007] IRLR 951, EAT. As paragraph 6.16 of the EHRC Code of Practice on Employment (2011) makes clear, the purpose of the comparison with people who are not disabled is to establish whether it is because of disability that the disabled person is disadvantaged by the PCP or other matter. There is no requirement to identify a comparator whose circumstances are the same or nearly the same.

4.18 In a reasonable adjustments claim the Tribunal must actually judge objectively what adjustments were reasonable and may substitute its own view for the employer's: see *Smith v Churchills Stairlifts plc* [2006] ICR 524, CA.

5. Determination of the claims

5.1 We turn to the issues in this case, and apply those legal principles to the detailed findings of fact set out above. We start with the discrimination claims. As indicated, there was no dispute that at all material times the Claimant suffered from a disability within the meaning of the Equality Act 2010 by virtue of the mental impairment of depression.

5.2 The Tribunal considered that the discrimination claims were brought within the relevant time limit. If they had not been, it would have been just and equitable to extend time for bringing them. The Claimant initiated early conciliation on 26 October 2016. The relevant cut-off date was therefore 27 July 2016. There was conduct extending over a period that ended after that date. The series of disciplinary interviews, hearings and appeals and the continued requirement that the Claimant attend the specified meetings amounted to such conduct. The final written warning was a part of that conduct and remained current on 27 July 2016. Even if there was not conduct extending over a period, it would have been just and equitable to extend time for bringing the claims. The unfair dismissal claim, which was in time, depended to a large extent on the same evidence and allegations. Further, the Claimant's mental health was particularly poor in the summer of 2016. In those circumstances the prejudice to her in preventing her from bringing the discrimination claims would have outweighed the prejudice to the Respondent in having to defend those claims.

5.3 The Tribunal turned next to the question whether the Respondent knew or ought reasonably to have known that the Claimant had that disability at the relevant times. The findings of fact above make clear that this was a changing position. The Tribunal found that at the time of the initial discussions with the Claimant in

the Autumn term of 2015, and the bringing of the first disciplinary proceedings, the Respondent did not know and ought not reasonably to have done so. At that stage, the Claimant had had one previous absence, a year earlier, for work-related stress. That absence coincided with the bringing of a grievance. There had evidently been some further discussion of stress, because Ms Anderson was asked in July 2015 to provide a stress risk assessment document. The Claimant did not complete it. However, the Tribunal did not consider that this was enough to put the Respondent on notice that the Claimant was suffering from the disability of depression. There is nothing to suggest that the Tribunal was aware of the Claimant's history of mental health difficulties; there was no medical or other information referring to depression, and the Claimant's absence record was not such as to suggest that the Respondent ought to be making further inquiries about this. On the other hand, the Tribunal considered that there came a point when the Respondent either knew or ought reasonably to have known of the Claimant's disability. It now concedes that she was in fact disabled at that time. The Tribunal considered that the date when it ought to have known this was when she submitted her detailed impact statement in connection with the second disciplinary proceedings: 24 March 2016. By that stage, the Respondent had seen a fit note that referred to "anxiety/depression" and had read the Claimant's detailed account of her history of mental health difficulties. Although the Occupational Health reports said that there was not an underlying medical condition, the Claimant's own account, coupled with her recent absence and fit note were sufficient to put the Respondent on enquiry, so that it ought reasonably to have known of the disability at that stage. The fit note of 5 January 2016 was not enough, by itself, to put the Respondent on notice. The absence lasted only a fortnight, and the occupational health report obtained on 22 January 2016 said that there was no underlying medical condition. It was the Claimant's own written account that tipped the balance.

5.4 We turn next to the question of unfavourable treatment. Strictly speaking, the first four allegations of unfavourable treatment no longer arise, because at that stage the Respondent did not have the requisite knowledge of disability. However, if the Tribunal had been required to resolve the issue, it would have found that the first allegation did not amount to unfavourable treatment of the Claimant. It was not unfavourable treatment to ask or require her to attend one additional short morning briefing meeting on a day when she was already working on the premises at 9.00am (or, subsequently, 9.40 am). Nor was it unfavourable treatment to ask or require her to attend a total of five meetings during the academic year for an hour after school on a day when she was working in the afternoon. The Tribunal must make an assessment by reference to an *objective* sense of what is adverse as compared to that which is beneficial. The Claimant was a teacher and Director of Music. That role entails attendance at meetings. The purpose of attending those meetings is not merely to have information disseminated, but to participate and be involved in College life. That is the more so for a staff member with managerial responsibilities. Being asked to attend a proportion of such meetings, at the times described, was not, objectively speaking, unfavourable. It did call for some additional attendance at work by the Claimant, which she evidently perceived as adverse, but objectively speaking, and bearing in mind the Claimant's job role and the function of the meetings, it was not.

5.5 The Respondent conceded that allegations (2) to (7) did amount to unfavourable treatment, and the Tribunal agreed (although allegations (2) to (4) relate to a time before the Respondent had the requisite knowledge of disability). Objectively speaking, the bringing of disciplinary proceedings and the other matters complained of, are to be regarded as adverse rather than beneficial. The last allegation of unfavourable treatment is (constructive) dismissal. For the reasons set out below, the Tribunal concluded that the Claimant was not constructively dismissed. Accordingly, this allegation of unfavourable treatment is not made out.

5.6 The next question is whether the unfavourable treatment was done because of something arising in consequence of the Claimant's disability. The Claimant said that the something arising in consequence was her need not to attend the meetings so as to reduce her stress. There was no dispute that each act of unfavourable treatment was done because of the Claimant's refusal or unwillingness to attend the meetings as requested/required. The issue was whether that refusal or unwillingness was something that arose in consequence of her disability. Was the Claimant's disability a material cause of the refusal/unwillingness? The Tribunal concluded on the evidence that it was not.

5.7 The findings of fact above refer in detail to the evidence and explain the Tribunal's finding of fact that the Claimant's mental ill health was not a cause of her refusal to attend the meetings or a reason for her not attending the meetings and was not exacerbated by her attendance at the meetings. The Claimant places great weight on the written evidence from Dr Robson, who advised the Claimant in 2014 to seek a better work-life balance. That, it seemed to the Tribunal, was advice about striking the right balance between work and personal life. The doctor refers to the Claimant taking up activities outside work as a result. The medical evidence was certainly not specifically about attendance at meetings, nor was it necessarily about doing less work or spending less time at the College. The Tribunal did not consider that Dr Robson's report alone supported the conclusion that the Claimant's disability was a material cause of her refusal to attend these meetings.

5.8 As set out above, we carefully considered all the surrounding evidence, including the reasons and explanations given by the Claimant at the time. It is right, as set out above, that as time went on there were occasions when the Claimant referred to work-life balance and to the need to carry out activities that were beneficial to her wellbeing, but it is important to keep in mind what precisely was being asked. The Claimant referred to the knock-on effect of attendance at meetings on her other activities, but her evidence to the Tribunal about the morning meetings was far from persuasive. When this was first raised, she was timetabled to be teaching peripatetic classes at 9am. The briefing started at 8.45 am. We have referred to her evidence that she had other things she could do in those fifteen minutes, such as take her children to school or do some shopping. That seemed to the Tribunal very far removed from the suggestion that attendance at those meetings would have an impact on her work-life balance or mental health. For the afternoon meetings, she was being asked to attend for five hours in total during the course of a year. Although this does not appear to have been what she said to the Respondent at the time, her evidence to the Tribunal about the way in which her 20 hours' typing were organised weekly indicated that she could allocate the hours at a time convenient to her on a weekly basis. Further, the

context was that she was effectively working 0.92 FTE at the College, 20 hours per week for her other employer, dealing with domestic and child care responsibilities and attending other activities such as singing lessons, orchestra and dance class. The five occasions on which she would have to stay an hour at work were a part of that picture. There was force in the suggestion that this was a question of priorities, and that the Claimant could, if she had chosen to, have attended the five meetings by making adjustments in those five weeks, without any detrimental impact on her mental health.

5.9 The Tribunal noted that the need to carry out activities beneficial to wellbeing was not the reason given initially by the Claimant. As set out above, she started by saying that she could not attend the meetings because she was committed to her other employer. That arose in the context that she perceived she had been forced to reduce her hours from 0.8 to 0.5FTE and, in the Tribunal's view, at least in part that lay behind an unwillingness to attend these meetings. That was reflected in the repeated references in the correspondence that followed to the forced reduction in her hours. The Claimant then sought advice from her Trade Union, and she went on to put forward a variety of contractual arguments as to why she was not obliged to attend these meetings. None of that related to her disability, or to the need to participate in activities to support her wellbeing. The Tribunal considered that the Claimant was fundamentally unwilling to attend the meetings, initially in part because of the reduction in her hours, and in part because of a concern about trapped time, and that her position became entrenched. The later references to work-life balance and activities to support her wellbeing were another argument that was deployed in that context. That does not mean that in fact the Claimant's mental health was a material cause of her unwillingness to attend the meetings and, as explained above, the Tribunal finds that it was not.

5.10 The Tribunal carefully considered whether there was evidence to suggest that the Claimant's intransigence on this point was an aspect of the depressive illness from which she suffered, but there was no evidence to that effect.

5.11 Therefore, the unfavourable treatment was not because of something arising in consequence of the Claimant's disability, because her refusal or unwillingness to attend the meetings did not arise in consequence of her disability. Allegations (2) to (4) would have failed on that further basis, and allegations (5) to (7) do fail on that basis.

5.12 The question of justification does not therefore arise. However, the Tribunal would have found that the Respondent's treatment of the Claimant was a proportionate means of achieving the legitimate aims of securing compliance with reasonable management requests and promoting collegiality. The Tribunal would have found that those aims were legitimate. The Claimant was contractually obliged to attend meetings, subject to the reasonable direction of the Principal. Here, the request was reasonable – it was for a reasonable proportion of the meetings, at times when the Claimant was working at the College immediately or closely adjacent to the meeting time. The Tribunal was not persuaded by the suggestion that because the peripatetic work was not part of the Claimant's core contract, the Respondent should have disregarded the fact that she was on the premises at those times. The Tribunal found that it was legitimate to require the Claimant's attendance at this proportion of meetings,

because they were about more than disseminating information. They were to promote collegiality and communication, and the Claimant, as Director of Music, needed to participate and be involved in them. It was legitimate and proportionate for the Respondent to take disciplinary action to secure the Claimant's participation. She was their employee. They had tried to resolve the situation by discussion and it was appropriate to move on to disciplinary action to seek to secure her attendance. The steps taken were proportionate. They were reasonably necessary and there was no lesser measure that could be taken in the circumstances. The Tribunal did not consider that simply waiving the requirement to attend the meetings was an alternative. While the Tribunal acknowledged that Ms Peaks and Mrs Lamplough agreed in cross-examination that excusing the Claimant from attending the meetings would not have had a significant detrimental impact on the running of the College, that was only one part of it. The Respondent placed weight on collegiality and communication, and there would clearly be a significant impact so far as the Claimant was concerned in those respects.

5.13 We turn next to the reasonable adjustments claim. In view of our finding that the date at which the Respondent knew or ought to have known that the Claimant had the disability was 24 March 2016, the reasonable adjustments claim must relate to the period from 24 March 2016 onwards.

5.14 The Claimant accepted that the first of the two PCPs relied on was not made out on the evidence. She maintained that the Respondent applied a PCP of requiring her to attend meetings regardless of the gap between teaching times and meeting times - trapped time. The Tribunal did not consider that that PCP was made out on the evidence either. It seemed to the Tribunal that the evidence very clearly demonstrated that the Respondent had careful regard to the times when the Claimant (and other part-time teachers) were teaching when identifying the meetings at which attendance was required. In the Claimant's case, she was only being required to attend meetings at times when she was already teaching on the morning or afternoon in question (and, indeed, was timetabled to be in College doing peripatetic work during much or all of the "trapped time" that might otherwise have arisen). Far from proceeding regardless of when she was teaching, the Respondent's requirements were based precisely on that. On that basis the reasonable adjustments claim as pleaded must fail.

5.15 However, the Tribunal went on to analyse the reasonable adjustments claim on the basis of a slightly different PCP, which clearly was applied, i.e. a requirement to attend an additional morning briefing on a Tuesday or Thursday and to attend a total of five Tuesday afternoon staff meetings.

5.16 The first question the Tribunal asked itself is whether such a PCP put the Claimant at a substantial disadvantage in comparison with non-disabled employees. Mr O'Dair submitted that this put the Claimant at a disadvantage because it made it more difficult for her to manage her health problems and to comply with her doctor's advice to seek a better work-life balance. The pleaded disadvantage was that it created trapped time, which increased the Claimant's stress levels and made it difficult for her to participate in therapeutic activities needed to overcome her illness. It seemed to the Tribunal that there were two elements to the disadvantage based on the pleaded case and the submissions: (1) that it increased the Claimant's stress; and (2) that it made it more difficult for

her to participate in therapeutic activities/achieve a suitable work-life balance. The Tribunal did not consider that the PCP put the Claimant at either such disadvantage. So far as stress was concerned, we refer again to our findings of fact above. In particular, there was no medical or occupational health evidence that attendance at these particular meetings would increase the Claimant's stress, and her own oral evidence was that it was not the attendance at the meetings that caused her to be ill, but the conflict that arose as a result of her non-attendance. No doubt her heavy work commitments, both at the Respondent and elsewhere, and her other activities and obligations out of work, did give her a lot to manage. This itself may have been stressful. But the evidence did not support a finding that the requirement to attend for 10-15 minutes one additional morning a week (when the Claimant was scheduled to carry out peripatetic teaching on the premises immediately or shortly thereafter) and to attend a total of five meetings at 4pm for one hour over the course of the year was itself particularly stressful. The stress that was particularly associated with this requirement arose because of the Claimant's refusal to attend the meetings, and the processes to which that led. As to the second aspect of disadvantage, again the evidence did not support a finding that a requirement to attend on these particular occasions made it more difficult for the Claimant to participate in necessary therapeutic activities or to achieve a suitable work-life balance. Her own evidence was that during the extra 10-15 minutes in the morning she could have "taken the children to school or done a bit of shopping." She did not suggest that these were therapeutic activities or activities important for work-life balance. Given her peripatetic teaching commitments, initially there would have been no trapped time. Even when the Claimant moved her peripatetic teaching, the trapped time would have been 40 minutes. No doubt she could have used that time to carry out undirected activities, or indeed other activities. It was not suggested that she would have carried out her typing work at that time. Attendance on five occasions at 4pm for one hour might have had a somewhat greater knock-on effect on the Claimant's other activities, although there was no evidence that it would have affected her participation in therapeutic activities. In any event, given that what was at issue was five occasions over the course of a year, and given the totality of the Claimant's commitments, the Tribunal did not consider that this would have given rise to a significant impact on her work-life balance. Further, even if the requirement to attend these meetings did give rise to any disadvantage, the Tribunal did not consider that it arose because of the Claimant's disability of depression. It arose because the Claimant was heavily committed, carrying out 0.92 FTE work at the Respondent, 20 hours' typing elsewhere, undertaking domestic responsibilities, attending her own singing lesson and participating in activities for herself (dance class and orchestra). A healthy work-life balance is important for all employees, not just those with depression. Anyone with that level of commitments would have found it difficult to achieve such a balance.

5.17 The reasonable adjustments claim therefore does not succeed. However, the Tribunal went on to consider the remaining issues for the avoidance of doubt. We have dealt with the Respondent's knowledge of disability above. In view of our finding that the Claimant was not in fact put at a substantial disadvantage, it would be artificial to consider whether the Respondent knew or ought reasonably to have known that she was put at a substantial disadvantage. That brings us to the question of steps to avoid disadvantage. Even if the Claimant had been put at the substantial disadvantage alleged, the Tribunal would have found that it was

not reasonable for the Respondent to have to take the proposed steps to avoid that disadvantage. The Tribunal did not consider that it would have been reasonable for the Respondent to excuse the Claimant from attending the meetings and to update her by email. The meetings were not just about the dissemination of information; they were about promoting and facilitating good communication and relationships between colleagues. That could not be achieved by emailing information to the Claimant. Further, the Claimant was a Head of Department. It would not have been reasonable to require the Respondent to excuse the Head of Department from attending all of the whole staff meetings. Nor would it have been reasonable to require the Respondent to adjust her timetable so that the meetings occurred proximate to her teaching times. Firstly, to a great extent the meetings did occur either immediately, or shortly adjacent to times the Claimant was on the premises. It would be artificial and unreasonable to require the Respondent to ignore the fact that the Claimant was on the premises carrying out peripatetic teaching immediately or shortly adjacent to meeting times. (Indeed, if she was, it is difficult to see how adjusting the timetable would avoid the disadvantage: in either case she would be on College premises carrying out paid work adjacent to the meeting times). Further, to the extent that there were longer gaps, the Claimant did have other duties that could have been slotted in. The context, of course, is that the College timetable must be planned long in advance and to adjust it part way through the year would plainly not be straightforward and would have implications for staff and students in the Music Department and beyond. Unusually in the Claimant's case there was in fact some flexibility, which related to the timetabling of her peripatetic teaching sessions. But those were for the Claimant to arrange. She could, and did, move them. For similar reasons, it would not be reasonable to require the Respondent to excuse the Claimant's attendance until her timetable could be adjusted. Her attendance was reasonably required and it was not reasonable to postpone it for, say, an entire academic year. It was not clear how attendance by video link would have avoided the disadvantage: the Claimant would still have been required to participate and would not have had available a substantial window to carry out typing work. In any event, that would not have been a reasonable substitute for attendance at the meetings. Even if information could have been disseminated to some extent to the Claimant, it would still not address the need to foster collegiality, communications and working relationships. Accordingly, even if the Claimant had been put at a substantial disadvantage, the Respondent did not fail to take steps that would have been reasonable steps to take to avoid the disadvantage.

5.18 The indirect discrimination claim relies on the same PCPs and the same disadvantage as the reasonable adjustments claim. For the same reasons as the reasonable adjustments claim, the indirect discrimination claim does not succeed.

5.19 We turn lastly to the unfair dismissal claim. The first issue is whether the Respondent was in fundamental breach of the implied term of mutual trust and confidence, based on a failure to remove the requirement that the Claimant attend the meetings and the way in which that was addressed by the bringing of disciplinary proceedings. Mr O'Dair helpfully set out in his closing submissions a number of matters on which the Claimant relied in support of her position. Having considered those matters, and the detailed findings of fact above, the Tribunal concluded that the Respondent was not in breach of contract. It did not

(either singly or cumulatively) conduct itself without reasonable cause in a manner that was calculated or likely to undermine mutual trust and confidence. In particular:

5.19.1 As set out above, it did not discriminate against the Claimant on the grounds of disability.

5.19.2 The Tribunal considered that the Respondent was contractually entitled to require the Claimant to attend the disputed meetings. The Claimant gave evidence of the activities she said she carried out and put forward a calculation she said demonstrated that she was already carrying out more than the contractual requirement of 632.5 hours' directed time. The Respondent disputed that. On the limited evidence before us, it did seem to the Tribunal that there was some difficulties with the Claimant's approach, and we tended to the view that she was not being required to carry out work in excess of her contractual directed hours requirement. However, we were not in a position to resolve precisely how many hours' directed time the Claimant was carrying out, nor was it necessary for us to do so. As set out above, the contractual position was that the Claimant was required to do 632.5 hours' directed time and it was for the Principal reasonably to allocate the duties to be carried out in that directed time. She was also required to work such additional hours as might be required to discharge her duties effectively. The fallacy in the Claimant's approach was to suppose that she could add up all her other directed hours and, if they were (or might by the end of the year be) in excess of 632.5, she could treat these particular meetings as an extra and refuse to attend them. As was made clear to her, if there was indeed an issue with her directed time duties exceeding 632.5 hours, then it might be necessary for management to look at her duties as a whole and see what changes could be made. They offered to do so. But it was not for the Claimant, at the start of the academic year, to single out one particular aspect and refuse to do it. She could not "cherry pick." The Respondent made clear that it regarded these meetings as part of her directed time. Subject to the question of reasonableness, the Claimant was then contractually required to attend. That is part of the right of management to manage. For the same reason, the Respondent was entitled to say at the disciplinary hearings that it would not discuss the Claimant's contention that she was being required to work in excess of 632.5 hours' directed time. The issue was whether she was doing a particular activity that was required of her. If she had concerns about the 632.5 hours, that could be looked at with her manager outside the disciplinary process, but she could not simply refuse to attend these meetings.

5.19.3 The Tribunal considered that the Respondent's approach was reasonable. The Claimant was being required to attend substantially fewer than 50% of the meetings, although she was 0.5FTE. It was reasonable to take into account times the Claimant was on the premises carrying out peripatetic teaching pursuant to her self-employed contract with the Respondent. The element of "trapped" time in that context was minimal, and requirements were well within the guidance set out in the appendices to the Red Book. Attendance at these meetings per se would not have had a significant detrimental impact on the Claimant's work-life balance. The real difficulty with her work-life balance was not

that the Respondent was requiring her to attend these particular meetings, but that she was so heavily committed professionally and personally.

5.19.4 Given the Claimant's position, the Tribunal considered that it was reasonable for the Respondent in principle to institute disciplinary proceedings and to issue sanctions as it did. As to the particular aspects of that relied on by Mr O'Dair in closing, the Tribunal's findings are as follows.

5.19.5 It is right that Mrs Peake conducted the first disciplinary hearing without waiting for the occupational health report. However, neither the Claimant nor her Union representative raised a concern about that at the time, nor did they suggest that the Claimant was unfit to attend the disciplinary hearing. The Claimant was back at work, having had a two week absence, and had told Mrs Anderson that she was feeling much better. Proceeding in those circumstances was not calculated or likely to undermine mutual trust and confidence. In the event of course, the occupational health report said that the Claimant was fit to attend the disciplinary hearing.

5.19.6 We have addressed above the fact that the Respondent refused to debate the Claimant's calculation and contention that she was working in excess of the 632.5 hours during the disciplinary hearings.

5.19.7 No concern was raised at the time about whether staff conducting the disciplinary or appeal hearings had been trained in disability discrimination matters. The Tribunal did not consider that the Respondent's approach was conduct, without reasonable cause, that was calculated or likely to undermine mutual trust and confidence. The hearings were conducted by members of the SMT. That was a finite group of people. Each hearing was attended by an HR officer and the decision makers were clearly taking HR advice as appropriate.

5.19.8 As regards a stress risk assessment, Mrs Anderson provided appropriate documents when she was asked to do so in July 2015. The Claimant did not fill in the forms or get back to Mrs Anderson, but there was plainly room for improvement, in that nobody appears to have followed this up with the Claimant. There was also room for improvement when the issue arose again in late 2015/early 2016. It was not ideal that the first discussion was squashed between teaching commitments and parents' evening and that there was some delay before a fuller discussion took place. However, the context was the general difficulty in arranging meetings with the Claimant, particularly given the ongoing disciplinary, grievance and management allowance consultation processes. Again, there was room for improvement on both sides – there were occasions when Mrs Anderson attempted to arrange a meeting with the Claimant to deal with the stress risk assessment and the Claimant did not respond. While there were shortcomings, the Tribunal did not consider that this met the high threshold of amounting to conduct likely to undermine mutual trust and confidence.

5.19.9 The documentation for the second disciplinary hearing included the relevant investigation report and associated documents, but not the stress risk assessment documents. While Mr Lloyd referred to the stress risk assessment at the second disciplinary hearing, no particular concern appears to have been raised at the time about the fact that it was not included in the documentation. This was not one of the

Claimant's grounds of appeal against Mrs Lamplough's decision. As the Tribunal found, Mrs Lamplough did in fact ask for and consider the assessment after the disciplinary hearing. The Tribunal did not consider that the stress risk assessment document was something that would necessarily have been included in the pack for the disciplinary hearing. We certainly did not consider that the failure to do so was something that was calculated or likely to undermine mutual trust and confidence.

5.19.10 The Tribunal had some concerns about the fact that the second disciplinary appeal hearing was held in the Claimant's absence. There was certainly an argument that it would have been better to wait until the Claimant was fit to attend (although the Tribunal could see the Respondent's perspective of wanting a fresh start in the autumn term). However, the rationale for proceeding in her absence was explained to the Claimant and she was provided with options to ensure that her case was put. This was an appeal, not a disciplinary hearing, and the Respondent plainly did conduct an appeal hearing in the Claimant's absence. The outcome letter and proposed timetable for the forthcoming academic year were consistent with the Respondent's reasoning for proceeding with the appeal, in that they invited a fresh start in the new academic year, and provided a timetable that largely addressed the Claimant's concern about meetings. In all the circumstances, the Tribunal did not consider that proceeding with the appeal in the Claimant's absence was conduct, without reasonable cause, calculated or likely to undermine mutual trust and confidence.

5.19.11 The Tribunal did not consider that the decision not to obtain further occupational health advice in June 2016 was conduct calculated or likely to undermine mutual trust and confidence. The most recent occupational health report was sent on 28 April 2016, just over six weeks before the disciplinary hearing. In the Tribunal's experience, that was a relatively up-to-date report. There was nothing to suggest there had been any particular change in circumstances. Obtaining a further report would have entailed further cost and delay and the decision not to do so was entirely reasonable.

5.19.12 There was no basis in the evidence for the contention that Mr Trivedy failed to read the documentation relevant to the July appeal hearing carefully.

5.19.13 There were, as indicated, some areas where things might have been done better. The Tribunal considered carefully whether the cumulative effect of those matters was such as to amount to a breach of the implied term of mutual trust and confidence, but we were quite satisfied that it was not. These matters fell far short of the high threshold required.

5.20 The Claimant also contended that the Respondent was in breach of the implied term of mutual trust and confidence based on the removal of her management allowance. The Tribunal found that the Respondent's approach to the management allowance was not conduct without reasonable cause that was calculated or likely to undermine mutual trust and confidence. Management allowances were reviewed periodically. On the previous occasion three such allowances had been reduced or withdrawn, on this occasion two were being altered. There was no suggestion that the Claimant was being singled out. A clear rationale was set out, and the Claimant was invited to, and did, participate

in a consultation process. The removal of her allowance did not relate to her part-time status but to the size of the curriculum area. The Respondent is a Sixth Form College with finite resources spending public money and the review of management allowances must be seen in that context.

5.21 On that basis, the final contention, that the Respondent was in breach of contract by paying the Claimant the salary of a teacher of music from September 2016, also fails. Following a consultation process the Claimant agreed (albeit "under protest") to the change in her role, with the associated change in salary, from September 2016. She was paid in accordance with her contractual entitlement.

5.22 In the absence of a fundamental breach of contract, the Claimant cannot have been constructively dismissed, and the unfair dismissal claim therefore cannot succeed.

Employment Judge Davies

Date: ***10 August 2017***