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EMPLOYMENT TRIBUNALS

Claimant: Ms M Haslam

Respondent: London Borough of Waltham Forest

Heard at: East London Hearing Centre

On: 17-18, 23 May 2017
& (in chambers on
25 May 2017)

Before: Employment Judge C Hyde

Members: Ms L Conwell-Tillotson
Mr L O'Callaghan

Representation

Claimant: In person

Respondent: Ms S King (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that: -

- (1) The name of the Respondent was amended from "Willowfield Humanities College" to "London Borough of Waltham Forest" forthwith.
- (2) The unfair dismissal complaint was dismissed on withdrawal.
- (3) The indirect disability discrimination by association complaint under the Equality Act 2010 was not well-founded and was dismissed.
- (4) The indirect age and sex discrimination complaints were not well-founded and were dismissed.

REASONS

1 Reasons are provided for the above judgment because the judgment was reserved, and are provided only to the extent that it is necessary to do so in order for the parties to understand why they have won or lost. Further they are provided only to the extent that it is proportionate to do so.

2 All findings of fact were reached on the balance of probabilities.

Preliminaries

3 By a claim form which was presented on 11 June 2016, and which was subsequently amended at a preliminary hearing on 16 January 2017 before Employment Judge Brown, the Claimant alleged indirect age discrimination, indirect sex discrimination and indirect disability discrimination by association, all under the Equality Act 2010 (“the 2010 Act”).

4 The claim form also originally alleged unfair constructive dismissal. This claim was not pursued. It was therefore treated as withdrawn, and the Tribunal dismissed it on withdrawal.

5 The Respondent presented a response to the complaint on 19 September 2016 but in the light of the amendment of the Claimant’s complaint they were given permission to file an amended response and grounds of resistance by 6 February 2017. This was duly done.

The Issues

6 At the hearing at which the amendment was granted, the issues were also agreed. These remained the issues which the Tribunal decided at the full merits hearing.

7 The issues to be determined were as follows: -

7.1 In her indirect age discrimination complaint, the Claimant relied on her age group as late 40s and 50s and compared herself with people in age groups 20s to 30s.

7.2 In her indirect sex discrimination complaint, she relied on the fact that she is a woman and is therefore more likely to be a single parent and have responsibility for the sole care of children.

7.3 In her indirect disability discrimination claim by association, she relied on the fact that she had an 11 year old child who had a diagnosis of autistic spectrum disorder with severe learning difficulties and who had associated significant care needs.

8 The Tribunal then had to consider whether the Respondent applied the following PCPs (provisions, criteria or practices): -

- 8.1 Requiring teachers to create new resources for the new GCSE curriculum.
- 8.2 On 22 February 2016, requiring English teachers to prepare 20 additional lessons for the GCSE curriculum.
- 8.3 Requiring teachers to work outside contractual hours in order to do the work needed.
- 8.4 Requiring teachers to complete work in the circumstances that little free time was allocated in their teaching timetable for this.
- 8.5 Requiring teachers to work late at nights, early in the mornings and at weekends, in order to complete the work required of them.

9 The next question was whether those PCPs put people in their late 40s and 50s and/or women and/or parents of disabled children at a substantial disadvantage compared to others who did not have those protected characteristics, in that: -

- 9.1 Older people, aged around 50, became more tired when required to work long hours, than younger people aged in their 20s and 30s.
- 9.2 That women were more likely to be single parents with childcare responsibilities and were therefore less able to devote time to work outside their normal working hours, due to these childcare responsibilities.
- 9.3 Parents of children with disabilities had greater childcare responsibilities, which required them to devote more time and energy to these and they were therefore less able to devote time and energy to work outside normal working hours.

10 Did the PCPs put the Claimant at that disadvantage? The Claimant contended that they did in that: -

- 10.1 She became very tired and ill as a result of the Respondent's requirements to do the relevant work and to do that work outside normal working hours.
- 10.2 The requirement to create new resources for the GCSE curriculum required very substantial additional work at weekends and at evenings, which the Claimant was not able to provide, due to her childcare responsibilities and, in particular, her childcare responsibilities for her disabled child.

11 If the Claimant was put at a substantial disadvantage by the relevant PCPs, has the Respondent shown that the application of the PCPs was a proportionate means of achieving a legitimate aim?

12 It was anticipated when the issues were agreed that the Respondent would

include particulars of their defence of justification in the amended response. In the event the Respondent did not do this but applied by letter dated 27 April 2017 for leave or permission to amend their Grounds of Resistance to include their case on legitimate aim.

13 By letter dated 9 May 2017, (p.58(xiv)) the Tribunal wrote to the parties to inform them that Employment Judge Brown had granted the Respondent leave to amend its response in relation to the legitimate aim. The Respondent therefore relied on the following matters: that insofar as the Tribunal found that the Claimant was put at substantial disadvantages by the relevant PCPs, the PCPs were a proportionate means of achieving the educational achievement of pupils and teaching standards.

14 It was agreed at the hearing in January 2017 that the Tribunal would also need to determine whether the Claimant had presented her claims in time and whether the acts complained of constituted a continuing act, the last of which was in time; and finally, if not, whether it was just and equitable to extend time for the presentation of the Claimant's complaints?

15 The hearing was listed for determination of liability and remedy. As the Tribunal reserved its judgment, issues of remedy were only to be determined in the event that the Claimant succeeded on liability and only in respect of those complaints which succeeded.

Proper Respondent

16 The Claimant had brought her claim against "Willowfield Humanities College". By the commencement of the hearing it appeared that the proper Respondent was the London Borough of Waltham Forest. There had not been a formal amendment of the proceedings. In those circumstances the Claimant agreed that this was a matter that needed to be amended and as there was no objection by the Respondent the Tribunal accordingly substituted the London Borough of Waltham Forest for Willowfield Humanities College as the Respondent in this case.

Evidence adduced/documents used

17 On behalf of both parties, a bundle was compiled by the Respondent which ran to approximately 450 pages. This was contained in two folders, the pages of which were numbered consecutively through to the end. That bundle was marked [R1].

18 The Claimant gave evidence on her own behalf and relied on the witness statements of six further witnesses. However not all those witnesses gave live evidence. Further because the dates on which the Tribunal was able to sit to consider this case had been abbreviated, some of the witnesses could not attend on the dates originally planned. The parties cooperated to resolve this and as a result certain witnesses were interposed in order that all the evidence could be heard before the end of the case.

19 Thus, the first witness to give evidence was Ms Patricia Joseph on behalf of the Respondent. Her evidence in chief was given by way of a witness statement marked [R2]. She was the Claimant's former line manager in respect of the non-SEN half of

her job and was Head of the English Department at Willowfield Humanities College, the school at which the Claimant was employed.

20 The Tribunal next heard evidence from the Claimant whose evidence in chief was set out in a witness statement marked [C1]. The Claimant worked as an English and Learning Support Teacher at “the School” from 1 September 2015 to 1 March 2016. The next witness the Tribunal heard from was Mrs Sheila Doré on behalf of the Claimant. Her evidence in chief was set out in a witness statement marked [C4]. She was a Programme Manager for English at Leyton Sixth Form College where the Claimant was employed as an English Teacher from September 2009 to August 2010. Sheila Doré left Leyton College in 2010. The Claimant however continued to work for Leyton Sixth Form College until August 2011.

21 The next witness who gave evidence, also on behalf of the Claimant, was Ms Anne Lamont. Her witness statement contained her evidence in chief and was marked [C5]. Ms Lamont had been an English Teacher at Parliament Hill School at the same time as the Claimant, who was employed there as an English Teacher between May 2005 and February 2007.

22 The following witnesses on behalf of the Claimant did not give evidence live. The first was Ms Semi Abazi whose statement [C2] set out the perspective of a 48 year old woman who was also the single mother of a 13 year old son with a diagnosis of autistic spectrum disorder and severe learning difficulties. The next witness whose evidence was given purely by way of a witness statement was Carol Burchall [C3]. She had taught English at Leyton Sixth Form College between September 2009 and August 2011.

23 The next witness statement that the Claimant put forward in support of her case was that of Maeve McGarrity [C6]. She also worked with the Claimant as an English Teacher at Parliament Hill School from May 2005 until February 2007.

24 The Claimant had originally intended to call a further witness, June Shinkin, to give live evidence but she was unable to attend and the Tribunal therefore considered her witness statement instead which was marked [C7]. She was the Special Educational Needs Coordinator at the School from September 2000. She left at the end of the December term in 2015 so she overlapped with the Claimant for a term at the School. She was the Claimant’s line manager in relation to the Claimant’s SEN duties. The Claimant was employed half as an English Teacher and half as an SEN teacher.

25 The Tribunal next heard the evidence from Mr Clive Rosewell, Deputy Head Teacher at the School until March 2016 and then Head Teacher from April 2016. His witness statement was marked [R4].

26 Finally, the Respondent adduced the witness statement of Mr John Hemingway [R3] who was Head Teacher of the School from 26 April 2011 until his retirement on 31 March 2016. He did not give live evidence.

27 Both Ms King on behalf of the Respondent and the Claimant very helpfully committed their closing submissions (summing up) to writing and they were then given

the opportunity to elaborate and/or reply orally to the other party's submissions. Ms King produced a document which the Tribunal marked [R5] and she attached a copy of a case called *CHEZ Razpredelenie Bulgaria AD v Komisia ZA Zashtita OT Diskriminatsia* [2015] IRLR 746, a judgment of the European Court of Justice.

28 Ms Haslam's summing up document was marked [C8]. It included some matters of fact which had not been adduced during the hearing. The Tribunal explained that for that reason, it would not be entitled to take such matters into account in deciding the case.

Indirect disability discrimination by association

29 Having regard to the *Chez* case and the wording of the indirect discrimination provisions under the Equality Act 2010 and the case of *Coleman v Attridge Law* [2008] IRLR 722. The Tribunal did not consider that we had the power to determine a complaint of indirect discrimination by association under the Equality Act 2010. The Tribunal had regard to the wording of the provisions governing indirect discrimination in the Act as compared to the wording in relation to direct discrimination in which the complainant does not need to indicate that they themselves had the protected characteristic. That is a requirement given the wording of the indirect discrimination provisions under the Equality Act 2010.

30 That complaint was therefore dismissed

Findings of fact and conclusions

31 The Respondent is a mixed secondary school catering for children aged 11 to 16. The Claimant was an employee of the Respondent from 1 September 2015 until 25 February 2016 when she tendered her resignation with effect from 1 March 2016. The Claimant's resignation was accepted by the Respondent with effect from 1 March 2016 and her last day of employment was thus 29 February 2016.

32 Ms Haslam was employed as a full-time teacher of English and Special Educational Needs (SEN) with her duties being split between the two departments. She was line managed in respect of the SEN duties by Ms June Shinkin, Assistant Head Teacher and Special Educational Needs DCO, and the Claimant was also line managed by Ms Joseph, Head of English.

33 The Claimant's teaching timetable carried the same weighting as for all main scale teachers at the School of 42 x one hour long lessons per fortnight. There were 50 lesson slots in a fortnight. The Tribunal accepted the evidence given by the Claimant in relation to the timetables provided by her at pages 210 to 211, subject to the amendment that she agreed to during the course of her evidence. Thus, we found that the Claimant was allocated 25 hours of timetabled work for the English Department not 17 hours as the Respondent described. In addition, she was allocated 25 hours of the timetable in respect of the SEN work. However, the SEN allocation was limited to five hours of SEN lessons and 20 hours of in-class support. It was not disputed that when doing the in-class support, another teacher did the preparation. Thus, in those time slots, which constituted a substantial proportion of the Claimant's time, she had a considerably reduced requirement to prepare lessons, to spend time

on marking the work of students and on assessing the students' reports.

34 In addition, the Tribunal was satisfied, this evidence having been agreed by the Claimant, that in the fortnightly cycle which the timetable covered, she had four free periods entered and two planning and preparation sessions.

35 It was agreed that the school hours were from 8:30am to 3:45pm. The Claimant identified in the after-school period which lasted up to about 5:30pm that there were various meetings and other activities which she attended. However, it became apparent that these entries did not occur every week. For example, in her sample timetable the Claimant had included a weekly entry for year 11 revision meetings on a Friday. These were not timetabled by Ms Joseph but the Claimant had laudably but voluntarily elected to take them. It was also apparent from her oral evidence that this was not a fixed slot but was a slot available to be used by her students if there was a need.

36 Similarly, there was a reference to twilight inset sessions after school but these also did not take place every week. They were only held on occasion.

37 There was a series of induction meetings which were held after school with the Claimant but it was agreed that these came to an end in the second term and that slot would not have been taken up thereafter.

38 The general background to the claim was that in the September 2015 term onwards teachers of English had to deliver not only a core curriculum subject but also a subject whose curriculum had been altered by the then Secretary of State for Education by the introduction of greater emphasis on grammar and the use of English than had previously been the case. In addition, at the end of the previous academic year in the summer of 2015 the English department had been moved into a new building. This had meant that time which was referred to as "gain time" was not used to do some preparation in advance on certain schemes of work. Instead these matters were incorporated into the objectives of the Claimant and the other English department staff which were agreed in the autumn term of 2015 with the Head of Department Ms Joseph.

39 As far as the terms and conditions of the teachers were concerned, all teachers including the Claimant were directed under national terms and conditions to work 1265 hours a year spread over the 195 days of the school year.

40 The evidence before the Tribunal as set out in paragraph 52.7 of the relevant School Teachers' Pay and Conditions document (p405) stated that:

"In addition to the hours a teacher is required to be available for work under paragraph 52.5 or 52.6, a teacher must work such reasonable additional hours as may be necessary to enable the effective discharge of the teacher's professional duties, including in particular planning and preparing courses and lessons; and assessing, monitoring, recording and reporting on the learning needs, progress and achievements of assigned pupils."

41 In the academic year 2015 to 2016 the Head Teacher who was part of the

recruitment panel for the Claimant was Mr John Hemingway until his retirement at the end of March 2016. He was then replaced by Mr Rosewell. Also on the recruitment panel for the Claimant was the Head of English, Ms Joseph and the Assistant Head Teacher in charge of SEN Ms Shinkin.

42 Further, at the time the Claimant commenced her employment she was a single mother aged 49 years with two children, one of whom had a diagnosis of autistic spectrum disorder and severe learning difficulties and who required a high level of care. In her evidence, and this was not contradicted by the Respondent, the Claimant likened caring for her disabled son to caring for an 18-month-old child. At the time that she made this comment, her son was some 12 years old.

43 The Claimant's case in relation to the termination of her employment was that she had been compelled to resign because she had been given an unreasonable workload with unmanageable deadlines. She believed that she had been given work which could not be completed during her working day and which therefore, had to be done outside school hours. The Claimant also said that she worked long hours, but was required, by reason of work deadlines, to work in the evenings at home, in the early mornings, or at weekends. She said that she felt discriminated against by her Head of Department who was 20 years younger, unmarried and did not have children and who did not understand the time and energy that was required of a parent, particularly a single parent of a severely disabled child. She contended that she had very little free time available in her teaching timetable and compared her ability to work with that of people who were not parents.

44 Although it was not expressly set out in the order of Employment Judge Brown which was sent to the parties on 1 February 2017, the effect of the preliminary hearing in January 2017 was to dismiss the unfair dismissal claim and for the matter to proceed on the amended grounds in relation to indirect age, sex and disability discrimination by association. This was apparent from the agreed list of issues. Further, at paragraph 6 on page 48 of the bundle as part of the case summary Employment Judge Brown recorded that the Claimant's claim of unfair dismissal was "not now pursued". For the sake of good order the Tribunal therefore dismissed that complaint on withdrawal in this judgment.

45 The Respondent accepted that the Claimant was aged 49 and a single parent with two sons then aged 14 and 11 years. They further accepted that the Claimant's younger child had autistic spectrum disorder and had severe learning difficulties as explained in the claim form. They accepted in the amended response that Ms Joseph's age fell within the range of 20 to 30, that she was unmarried and that she did not have children.

46 It was not disputed that Ms Joseph had been employed by the Respondent for over 10 years and that she was by the end of 2016, in her second year as curriculum leader for English. Prior to this she was achievement leader for four years and prior to that she was literacy coordinator.

47 It was further important background that the Claimant's case in the Tribunal was that she had made full disclosure to the Respondent about her family circumstances in the sense of having a severely disabled son and that she was a single parent who was

primarily responsible for the care of her children. Whilst it was not disputed that at some point during the first term, in the course of correspondence about the Claimant's absence from work the Claimant shared with Ms Joseph that she was a single parent and that she was divorced, the Respondent disputed that the Claimant had shared any further information about her family circumstances which was relevant to this case until an email sent a few days before her resignation. That email post-dated the matters that the Claimant complained about. In particular, the Claimant contended that during her interview she had shared this information in answer to a question about her experience in dealing with children with special educational needs. She further contended that she had submitted a further document as part of her application form in which she had expanded upon her family situation. This latter document was not produced by the Respondent as their position was that it had never been received and that the documents within the bundle contained the totality of the Claimant's application documents. The Claimant for her part did not produce a copy of the document, maintaining that she had destroyed it after using it.

48 Further, the Tribunal considered that the evidence the Claimant gave and comments that she made in her summing up were consistent with her not having shared this information with the Respondent beyond the agreed references already set out above.

49 The Tribunal had little doubt that the Claimant had hoped to perform extremely successfully and to do what she could to improve the subject performance and life chances of her pupils but when she started to find the work difficult to cope with in the timescales and timeframes available to her having regard to her domestic responsibilities, she failed to seek help. Indeed, the Tribunal considered that it was highly relevant that when she finally confided in the Headmaster in an email dated 24 February 2016 about the details of caring for her son, (p.174) although the letter had been primarily addressed to Ms Joseph and copied to Mr Hemingway the Headmaster, he responded promptly on 24 February 2016 (p.176) also by email to express his regret that the Claimant was unwell and to try to reassure her of the School's support. He indicated to her that in practical terms he would now like to refer her to the School's Occupational Health Service. He stated:

"They will discuss your workload issues with you and provide the school with advice/recommendations about any adjustments that can be made to support you."

He continued:

"Secondly Waltham Forest do provide a free employee assistance service called workplace options."

He gave the details for contacting the employee assistance service by giving the website link in the email. He asked the Claimant to acknowledge receipt of the email and added that if she would like to discuss any of these issues she should "give [him] a ring". He signed off in an informal manner "Regards John".

50 The Claimant then sent a further letter by email on 25 February 2016 (p177) thanking Mr Hemingway for directing her to places where she could get support as a

teacher but indicated that after much thought and consideration she had decided to resign. She stated: *"I cannot meet the demands of the English Department at Willowfield"*. She attached a two-page letter (pp178 – 9) to the email. In the letter, she described many positive experiences teaching at the school but also indicated that there had been many challenges and pressures that had caused her an inordinate amount of stress which was having an adverse effect on her health. She identified the expectation on her to develop new schemes of work for the new English curriculum in her own time outside of school hours. This was the central complaint and the issue for the Tribunal to consider at the hearing. She effectively described that the allocation of this duty at the beginning of the year had been exceptional in her experience of teaching but that the decision of Ms Joseph to require the preparation of a second scheme of work after half term in February 2016 had been the final issue for her.

51 The correspondence of 24 and 25 February 2016 was the first occasion on which the Claimant had set out her concern about the workload. Whilst politely acknowledging that Mr Hemingway had directed her to sources of support she indicated that she thought it was best if she resigned. She closed her letter as follows:

"The workload in the English Department is not going to change, it is only going to increase with the changes in the new GCSE curriculum. I cannot be working around the clock developing resources on a full teaching timetable and still have the time and energy to care for my children and have a life outside of work.

I would like to thank you for the opportunity to teach at Willowfield Humanities College."

52 There was some further correspondence from and on behalf of the Claimant and the school in which the Claimant refined her position to indicate that she believed she had been bullied by Ms Joseph at the instigation of Mr Hemingway or because of the regime which Mr Hemingway allowed to exist. She expressed a concern about her financial situation in the letter dated 27 February 2016 as she anticipated possibly not being able to find another permanent position to begin until September 2016. She expressed the hope that Mr Hemingway would: *"provide a compassionate response to my circumstances"*.

53 After the School accepted the Claimant's resignation, in a further letter dated 1 March 2016, the Claimant set out the point already made above about her believing that it was not so much Ms Joseph bullying her but that as she put it Mr Hemingway turned Ms Joseph into a bully by administering an unfair workload on the English Department and that it was Mr Hemingway who *"corrupted"* Ms Joseph by demanding that she improve the controlled assessment results of students who had repeatedly demonstrated an inability to achieve a C grade (pp197 and 198). She repeated the concern expressed in her previous letter about her financial position now that she had left Willowfield. On this occasion, she made a specific request for compensation.

54 Mr Hemingway acknowledged receipt of that letter by a letter dated 3 March 2016 and informed the Claimant that the School would be exploring some of the points and issues raised and would ensure that any recommendations for changes of practice in the English Department were implemented.

55 Mr Hemingway retired from his post as Head Teacher at the end of March 2016 and he was succeeded by Mr Clive Rosewell as Head Teacher. Mr Rosewell had been Deputy Head for two years prior to that at the School and had also had long experience in teaching initially commencing as a PE teacher. He had also delivered other areas of the curriculum.

56 The Claimant wrote to Mr Rosewell on 14 May 2016 congratulating him on his appointment as Head Teacher at the School and asking if she could meet with him. She indicated that she missed the School and that she would like to have the opportunity to explore a resolution with him that would allow her to return to Willowfield as a teacher. Among other matters she stated: *“I have had much time to think and reflect on my time at Willowfield and I always return to feeling the same way – I wish I was still teaching at Willowfield”*.

57 By a letter dated 18 May 2016, Mr Rosewell responded and thanked the Claimant for her correspondence and congratulations. He indicated however that, at the current time the School was fully staffed in English so there were therefore no vacancies in that department. He expressed his regret that he was disappointing the Claimant but wished her well in securing another teaching post.

58 The Tribunal was satisfied that Mr Rosewell stated the position in relation to vacancies accurately. The Claimant had received information from Ms Shinkin that the post she had vacated had not been filled. The Tribunal considered that as Ms Shinkin was no longer employed at the School by then, she would probably not have been aware that although there was no current replacement for the Claimant, appointments had been made for recruits into the English Department starting the following September. The Tribunal also accepted the Respondent's case that during the time that the Claimant was working in the department it was in principle overstaffed as there was a supernumerary teacher. The Tribunal considered that Mr Rosewell and Ms Joseph were in the better positions to know the true position in these respects.

59 The Claimant then wrote back to Mr Rosewell in a letter dated 24 May 2016 expressing sadness that there was no possibility of her returning to Willowfield as an English and SEN teacher. She explained that the source of her belief that there was a vacancy was Ms Shinkin. She repeated her desire to recover compensation and also indicated that she would now proceed to an Employment Tribunal alleging unfair constructive dismissal. She once again set out her case that she left her teaching position due to stress related health issues. Among other matters she also stated that the primary causes of the stress and anxiety she experienced at Willowfield were the unreasonable workload which did not allow her to achieve a work/life balance. She then set out some more details of her background including the fact that she was Canadian and therefore had no family or support network in this country to help her.

60 The Tribunal did not set out in this judgment the details of the Claimant's son's condition and its effect on him in order to respect his privacy. Further, that evidence was agreed during the hearing so it was not proportionate to set it out here. The details were set out in two application forms for support which were completed on behalf of the Claimant's son contemporaneously in relation to support with his own education and other needs. The documents prepared for the Claimant's son were an

early help assessment form dated 30 January 2016 (pp.150-160) and a resource allocation system form covering the period 29 February to 4 March 2016 (pp.182-196).

61 The Tribunal has already referred to the Claimant describing looking after her son who was then 11/12 years old as similar to looking after an 18-month-old child. Although the details of the demands of caring for her son were omitted from these reasons, the Tribunal acknowledged that whilst the Claimant did not express them as such, the demands on her of looking after her son were on any view considerable.

62 Another relevant background matter was that in the 18 months or so before the Claimant commenced work with the Respondent she had been a full-time carer for her son. To that extent, her employment with the Respondent was similar to that of someone returning to work after a long-term absence.

63 In the further letter dated 24 May 2016 to Mr Rosewell the Claimant reverted to criticising Ms Joseph's competence as the Head of Department although she acknowledged that she was "*very hard working and ambitious*".

64 The picture painted by the Respondent which appeared credible to the Tribunal on the balance of probabilities as it was supported by contemporaneous documents was that the Claimant had Ms Joseph's personal mobile number and would text her out of school hours concerning work matters and for example to inform her if she was unable to make it into work. The evidence was that Ms Joseph was sympathetic and supportive on any such occasions. The Tribunal found above that the Claimant shared with Ms Joseph some limited information about her personal circumstances.

65 In this context, the Tribunal considered that it was also relevant to note the occasion on which the Claimant had taken a few days off work due to sickness in the autumn term and had therefore reached a total of 8.5 days off sick which triggered the need for a sickness review meeting under the Respondent's procedures. This was held with Mr Hemingway (p.129). A standard form was completed about what was discussed and this was signed by Mr Hemingway who provided it to the Claimant for her signature. Mr Hemingway did not give evidence. It was the Claimant's account that she retained the document for some time before eventually returning it signed, but that she did not consider that its contents were accurate. The Tribunal considered that if that were the case it was extremely regrettable that the Claimant had not used this opportunity to share her difficulties with Mr Hemingway. There was no suggestion that she had communicated to the School this disagreement with the contents of the record before the hearing.

66 The standard form included a section inviting comments from the employee. The position therefore was that the signed form recorded that the Claimant had stated that she felt there was "*no underlying reason*" for her three separate sickness absences that term but that she had been working hard and had become run down. It was recorded that she hoped that this would improve after the holiday. Mr Hemingway was recorded as saying that if the Claimant required any support she should inform her line manager of this and that in the meantime he would continue to monitor her attendance.

67 Once again it appeared to the Tribunal that if the Claimant had shared, as she

subsequently stated, detail about her family circumstances and in particular about the caring needs of her son, the sort of action which Mr Hemingway later proposed in February 2016, namely additional support and a reference to occupational health, would have been forthcoming at the time and the details and support offered would have been noted.

68 The Tribunal considered that on the balance of probabilities the matters recorded by Mr Hemingway as having occurred were indeed the matters discussed and that the further information which the Claimant suggested she had brought to his attention, was not. That meeting took place on 7 December 2015.

69 It was not in dispute that when Ms Joseph allocated to the Claimant the assignment in relation to preparing the initial work for the scheme of work which was due in the first instance in early November 2015 and then the second stage which was due in early January 2016, this was for half of a set of 20 lessons i.e. it was for 10 lessons. The other person with whom this task was to be shared was a newly qualified teacher. There was no suggestion that the newly qualified teacher had any difficulty in completing the task. On the contrary, she apparently went above and beyond what was required of her.

70 The Tribunal further noted that after the Claimant's resignation by email dated 26 February 2017 and on the same day, the Claimant wrote a detailed email running to about a page and a half (pp.212-214) addressed to Ms Charlie Sayer and another former member of the English department at the School, Ms Webb. In the email, the Claimant outlined her position in very similar terms to those in the letter that she had sent to Mr Hemingway and Mr Rosewell. She criticised the workload that had been placed on her while at Willowfield and also criticised some of the resources available for teaching. She further criticised Ms Joseph's management of her and demeanour and attitude towards her. She asked Ms Sayer and Ms Webb, if they could provide her with any information that could help her case. She indicated that at that point the hearing date for this Tribunal was in May 2017. She informed them that she had been told that they were both mothers and may have resigned from the School due to workload expectations. She continued by saying that she would be very grateful for any support or information that they could give regarding the School's policies, particularly how teachers were directed to use their time after the year 11 students were off timetable in the summer of 2015.

71 The Claimant raised this last issue during the hearing and her witness also effectively criticised the School for not having used the Summer Term 'gain time' to complete the schemes of work which the Claimant and her colleague, the newly qualified teacher, were eventually allocated as tasks in the Autumn Term of 2015.

72 Ms Webb did not respond to the email. The response from Ms Sayer was polite but firm. She expressed regret that the Claimant felt that she had had a rough time at the School. She continued:

"However, I am afraid I am unable to help you. When I left the School, there were three units of work written and resourced; An Inspector Calls, Romeo and Juliet and conflict poetry. The units were on the system and had been copied on to a number of USB sticks – my own included. I do not know where these

units could have gone or how they could have been deleted.”

She was addressing issues alleged in the Claimant’s email.

73 The email continued:

“The gained time during the summer of 2015 was spent preparing for the decant into the new building, as you can imagine this took up all of our free time.

I absolutely did not leave the School because of an unmanageable workload and had, in fact, applied for the permanent Head of English position; another opportunity just happened to come my way and I chose to take it.

I would also like to add that I have always found Tricia Joseph to be hardworking, fair and supportive both as a member of the English Department and when she was Head of Year for my tutor group.

I wish you every success for your future and I am sorry that I cannot support you further.”

74 The Claimant attended a meeting at the School on 21 July 2015 which lasted for the morning which appears to have been part of her induction. This involved an introduction and a meeting in the English Department at 10 past 11 led by Ms Joseph who was then Interim Curriculum Leader in English and among the issues discussed were the schemes of work, timetable and key information. This was then followed by a meeting with Ms Shinkin an hour later in respect of the SEN Department (p.67a). Other contemporaneous documentation tended to suggest that there had been a reference to the availability of the schemes of work folder in the shared area of the computer (p.67b).

75 The advertisement for the post the Claimant was eventually recruited for included a summary of the role of English/SEN Teacher (p.58e). It called for a:

“.....well qualified and enthusiastic Teacher of English/SEN. You will teach English to mainstream classes and KS3 and KS4 and also have a passion for effectively supporting children with a range of special educational needs.

Willowfield is an expanding school, & due to move into new purpose built buildings in August 2015 ready for the new academic year. We are:

- *‘One of the top 100 non-selective state funded schools in the country’ (DfE 2015).*
- *‘In the top 10% nationally for progress from KS2-4 (SSAT 2015)’.*
- *A winner in the KS4 category of the pupil premium awards 2015.*
- *‘A good school’ – OFSTED, January 2012.*
- *A specialist partner of UCL – Institute of Education.*

- *A partner in the Seven Kings & Whitefields Teaching School Alliances.*
- *Holder of the Investor In People – Silver Standard Award.*
- *Holder of the Gold Quality Mark for Professional Development.*

‘Most striking is the culture of mutual respect and support amongst its exceptionally diverse community’ OFSTED, January 2012.”

76 This advertisement appeared on Friday 12 June 2015. The closing date for the position was Tuesday 30 June 2015.

77 The Tribunal considered that such information was not determinative of any of the factual issues but provided a useful background to assessing the evidence.

78 We further accepted the evidence from the Respondent’s witnesses that the English Department under Ms Joseph had now become an exemplar and was used as an example of best practice amongst neighbouring schools in the Borough.

79 Although it was not an issue which the Tribunal broached with the parties, the Tribunal noted that the mentor allocated to the Claimant was Ms Joseph. The Tribunal where appropriate may express a view which may be helpful and constructive to the parties going forward, although not strictly a part of the reasons for our Judgment. It did not appear to the Tribunal to be appropriate to allocate as a mentor the line manager of a particular member of staff.

80 A further matter that the Tribunal raised with the Respondent was the method by which records of notes of recruitment interviews were kept. The Tribunal was reassured that Mr Rosewell had since reviewed and changed the practice. The question of notes of the interviews of the Claimant is dealt with below.

The claims

81 The Tribunal has already dismissed the indirect disability discrimination by association. That left the indirect sex and age discrimination complaints to be determined.

82 The text of section 19 of the Equality Act 2010 which sets out the statutory provisions governing the complaints of indirect discrimination was set out at paragraph 36 of Ms King’s written submissions. The applicable law in relation to the protected characteristics of age and sex (section 19(3)) was not in dispute.

83 The Claimant relied on five PCPs as set out in the Issues above. The first two are dealt with separately and then the third, fourth and fifth are dealt with together.

Did the Respondent apply a PCP that the English teachers were required to create GCSE (KS4) resources (“the first PCP”)?

84 There was a dispute between the Claimant and the Respondent as to whether

the Claimant was indeed required to create resources for the new GCSE curriculum. This was asserted on page 4 (in the penultimate paragraph) of the Claimant's Summation. It was not in dispute that all teachers on the main pay scale were allocated similar schemes of work tasks to complete (pp78 – 80).

85 The Tribunal found that in September 2015 the Claimant was assigned the task of preparing a week by week outline for half of the scheme of work in relation to Animal Farm. It was also apparent from the GCSE curriculum information which the Claimant provided, that Animal Farm was to be studied at KS4 for the GCSE. The Tribunal took into account however that the Claimant was asked to prepare the outline for the scheme of work for year 9 which is the last year of KS3. The scheme of work was due to cover work which year 9 were to do and be examined on in the summer term (p.80C), as was listed in the "Assessment" column.

86 Somewhat misleadingly to an outsider, the minutes of the meeting on 21 September 2015 (pp78 – 80) record at Item 3 that Ms Joseph discussed a spreadsheet with details of the Schemes of Work for 2015-2016 (pp80a – 80e). The document was attached to the minutes of the meeting. Ms Joseph explained that the Schemes of Work ("SOW") outlined had to be adapted or re-written. She stated that the document "*outlined skills, resources etc which must be included in the SOW*". The minutes continued that Ms Joseph "*..stressed that the 'differentiation' column should be used to outline resources for the Less Able **and** Most Able.*" The note continued that the staff were to get the SOW overview (and an example was attached to the minutes) to Ms Joseph by 2 November 2015 and the SOW including lesson resources and clear differentiation resources/activities to her by 4 January 2016. The SOW the Claimant, in collaboration with the NQT Ms Sookilall, was to prepare was listed in the spreadsheet (p80C). Each agreed to prepare half of the SOW on Dystopian Worlds. There was a separate column in the spreadsheet for the resources, and the resources for Dystopian Worlds SOW were listed – the text of Animal Farm, and non-fiction sources on the Russian Revolution and Stalin era: speeches, historical articles, biographies. The Claimant asserted in her Summation that this meant that she was supposed to "source or create handouts on the Russian Revolution and the Stalin era: speeches, historical articles, biographies".

87 In paragraph 54 of Ms Joseph's witness statement in the last bullet point she stated that the item of the minutes quoted from above (Item 3) was an action for the Second in English and for teachers of Years 8 and 9. The Claimant did not have responsibility for a Year 8 or 9 class and therefore she did not have to complete this task.

88 Although the minutes may give a different impression, in her oral evidence the Claimant agreed that she was never told to create resources by Ms Joseph, but that she had assumed, because of her past experience, that she was expected to do so. The Tribunal found that the Claimant was at this stage only required to produce a week by week outline of objectives for the topic by the beginning of November 2015 and that by the January 2016 deadline she was to create lesson by lesson objectives. Ms Joseph's intention was that once those two phases had been completed the next phases of identifying resources and differentiation to meet the needs and abilities of all the pupils within the class would commence.

89 The Respondent thus argued first that the Claimant had not been asked to do work for GCSE/KS4, but for KS3 (Year 9). Further, in any event they submitted that the Claimant had not been asked to generate resources. It appeared that the Claimant believed that she was required to prepare the resources based in part on her awareness of the preparation by the NQT, which the Tribunal found was more extensive than was required. There was certainly no express reference to the Claimant being required to prepare or create of such resources.

90 The Tribunal has already noted that the subject of schemes of work was broached with the Claimant on her visit to the School in the summer term in July 2015 and during that visit reference was also made to the materials available on the computer.

91 The Tribunal found therefore on the balance of probabilities that the Claimant was not required to create new resources for the new GCSE curriculum. It was therefore unnecessary to go on to determine whether the comparative group disadvantage under section 19(2)(b) was established. However, as the Tribunal had heard a considerable amount of evidence, and submissions on this issue, we considered that it might be helpful to the parties to indicate our likely view if that issue had needed to be determined. This is set out below.

Did the Respondent require English teachers to prepare 20 additional lessons for the GCSE curriculum (“the second PCP”)

92 In relation to the second PCP, the Tribunal found that the Claimant, and not the English teachers in general, was assigned the task of creating a scheme of work for three weeks’ worth of lessons on the topic of 19th to 21st century non-fiction texts (p.172).

93 The relevant notes of the department meeting on 22 February 2016 were at pages 168-171 of the bundle. The last item at (p.171) recorded under “AOB” that all previous schemes of work activities should be completed and saved on to the staff shared drive. It continued that Ms Joseph had issued the department with new schemes of work tasks as attached. The note also stated that the new schemes of work outlines were due to be given to Ms Joseph by 24 March 2016 and they needed to be on the shared area by 27 May 2016.

94 The requirement for this task to be done arose from the allocation of this task to the Claimant much earlier, namely in September 2015. Ms Joseph and her deputy had formulated a spreadsheet entitled “Y11 SOW to be written 2016” in which the tasks to be allocated to various members of staff were set out (pp.131-135). The Claimant’s initials had been set out alongside this task (p.133) to be done in the first half of the spring term. The evidence therefore was that this was a task allocated only to the Claimant. Other members of the department had other tasks allocated to them.

95 An outline was to be prepared by 24 March 2016 with individual lesson objectives to be prepared by 27 May 2016.

96 The Claimant agreed in her oral evidence that her share of the work would have involved outlines for 10 not 20 lessons. Further the task would not have involved the

creation of GCSE resources because resources were already provided by the examination board. In this respect the Claimant accepted that she was not asked to create resources.

97 There was no record in the minutes of Ms Joseph having told the Claimant that she did not need to complete this work. The Respondent's case was that this was what was said to the Claimant in the meeting on 22 February 2016. Ms Joseph's case was that she told the Claimant to disregard the task and that she should complete the section of the 'dystopian worlds' (Animal Farm) scheme of work instead.

98 It appears clear from the Claimant's resignation letter sent on 25 February 2016 (p.178) that she believed that she had been asked to prepare the non-fiction scheme of work.

99 Ms Joseph described in her witness statement (para 70 penultimate bullet point) that it was a year 11 scheme of work.

100 The Tribunal accepted the Claimant's account on the balance of probabilities that she was not told that she should disregard the 19th to 21st century non-fiction texts three week lessons scheme of work on 22 February 2016. However, the Tribunal has also found that the allocation of the task to her was not a PCP. It was a specific task within the curriculum of the English department which she was asked to complete.

101 The complaint in relation to the second PCP was thus not made out and was dismissed.

The Third, Fourth and Fifth PCPs

102 These PCPs all alleged that, in effect, the Respondent had overloaded the teachers with work such that they had to work outside their contractual hours, that little free time had been allocated in the timetable for the work, and that the teachers were required to work late at nights, early in the mornings and at weekends to complete the work required of them. The reference to "teachers" was taken to be a reference to the teachers of English at the school.

103 The Respondent argued that appropriate time had been allocated within the school timetable for the tasks set by the Head of English. They pointed also to the Claimant's own description of considerable time spent doing tasks which had not been set by Ms Joseph, in support of that contention.

104 The Claimant's own evidence disclosed a task which she had undertaken which involved a large amount of time, but which had not been set by Ms Joseph. The Claimant had recreated revision notes for the text 'Of Mice and Men'. The Claimant disputed that there were already notes available for these but the Tribunal preferred the contemporaneous evidence from Ms Joseph to the Claimant stating that the notes were in the cupboard (p.130). The Claimant's evidence on the notes was somewhat inconsistent.

105 A further activity which the Claimant described as part of her evidence which did not appear to be something which she was required by Ms Joseph to do was the

creation of resources for a controlled assessment on colour. The contemporaneous documentary evidence (p.79h) indicated that Ms Joseph had forwarded resources prepared by another colleague to the Claimant on this issue on 15 October 2015.

106 A further example was the Claimant's evidence that once again she spent a considerable amount of her free time recreating Romeo and Juliet resources for a different unit. It was not in dispute that the Claimant had not been asked to do this by Ms Joseph or anyone on behalf of the Respondent and indeed the Claimant had not informed Ms Joseph that she was undertaking this task. The Tribunal accepted the Respondent's contention that every teacher had been given access to a complete scheme of work on the topic of Romeo and Juliet and that there were resources on the system for this. This is confirmed by Ms Sayer in her email on 26 February 2017 (p.212).

107 This evidence painted a picture of the Claimant using her time for a considerable number of tasks which she was not required by the Respondent to do such that she may well have been unable to find the time to complete the tasks that she was specifically allocated by Ms Joseph and for the completion of which time was made available in her timetable by the Respondent.

108 The Tribunal accepted the Respondent's contention that allocation of work in the school timetable demonstrated that teachers had time allocated within school hours to complete their tasks. It was also relevant that during the Claimant's employment at the school, the English department had one supernumerary teacher.

109 Further, the teachers' objectives were set with reference to their personal circumstances. This latter point was apparent from the express text of the Policy For Appraising Teacher Performance referred to above. At p.322 it expressly provided under the heading: "Setting Objectives" that the objectives for each teacher would be Specific Measurable, Achievable, Realistic and Time-Bound and would be:

"appropriate to the appraisee's role and level of experience. In setting the objectives, reviewers will have regard to what can reasonably be expected in the context of roles, responsibilities and experience, consistent with the school's strategy for achieving a work/life balance for all staff. Appraisees may at any point append their comments alongside their objectives."

110 The Policy document also confirmed expressly that objectives may be revised if circumstances changed. It further provided that the appraiser would take into account the effects of an individual's circumstances, including any disability, when agreeing objectives.

111 The Tribunal considered that the template sickness absence return to work form (p.129) was also relevant. Without specific reference to any particular circumstances, it included in the manager's checklist of issues to be covered during the meeting "any support the employee may require and how best to implement any adaptations/support recommended by occupational health". The Tribunal considered that our findings above about the way in which the meeting had been conducted and the content of the discussion with Mr Hemmingway set out above confirmed that this was covered and was consistent with the school's approach to the welfare of the staff.

112 A further concrete example of this was the way in which the timetable was structured. It ran on a two-week basis but the school included eight hours per 10-day cycle which were allocated for the teacher to undertake preparation. This consisted of six hours of non-directed time and two hours of PPA time within the school day. The timetable also provided periods of directed time in which the heads of departments could assign tasks to the teachers.

113 There was documentary contemporaneous evidence before the Tribunal that directed time was indeed used to prepare the assigned schemes of work e.g. at directed time meetings on 14 October 2015 (p.88) and on 3 February 2016 (p.162).

114 Further the Tribunal found as set out above that the Claimant had fewer lessons to prepare than any other teacher in the English department by virtue of her sharing the role between the English department and the SEN department and the large number of periods in which she was providing in-class support to another teacher in her SEN department role.

115 There was little specific contemporaneous evidence if any, of the Claimant actually working at the times that she complained she was required to work i.e. late into the evenings, in the mornings and at weekends. The Tribunal had no doubt that there were occasions on which she had to carry out such work at such times but there was a dearth of evidence as to the amount of such work that she did. Against that the Tribunal had the picture of the Claimant's timetable commitments and the time allocated to her to carry out and complete the work.

116 There was no other evidence of the time spent by the other English teachers in support of the picture the Claimant attempted to paint.

117 The Tribunal also made relevant findings above about the ability of the newly qualified teacher Ms Sookilall to complete the tasks set for her.

118 In all the circumstances the Tribunal was unable to find on the balance of probabilities that the school had required English teachers to work outside contractual hours in order to do the work needed, that it required teachers to complete work in the circumstances that little free time was allocated in their teaching timetable for this; and that the school required teachers to work late at nights, early in the mornings and at weekends in order to complete the work required of them.

119 The Tribunal therefore found that the Claimant had failed to establish any of the PCPs that she relied on. The complaints of indirect discrimination therefore failed on those grounds.

120 The Tribunal also concluded in relation to the indirect disability discrimination by association complaint which were alternative to the Tribunal's primary conclusion that there was no jurisdiction to determine such a claim in the circumstances that the Claimant did not possess the relevant protected characteristic (being a disabled person): *CHEZ* above.

Supplementary Findings and Conclusions

121 The Tribunal went on to record certain findings and conclusions in relation to the broader indirect discrimination complaints despite the conclusion referred to above in relation to the PCPs. These were included in the reasons out of an abundance of caution in case the Tribunal was wrong about the PCPs not having been established, but also as set out above earlier, to give the parties an indication of the likely conclusions even if the PCPs had been established.

122 Section 19(2)(b) provides that the PCP: ‘puts, or would put persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it’. B in that sentence is a reference to the Claimant. The Tribunal considered the position in relation to each of the protected characteristics (age and sex).

123 The profile, including by age and sex, of the remaining six members of the English Department, apart from the Claimant and Ms Joseph, is set out below: -

- (a) An experienced female colleague who was also the second in charge of English (her initials are AA). She was called Mrs Aram Aslam and she had a young child at the time. At the time, AA was between the ages of 20 to 30.
- (b) An experienced main scale female colleague (Lesley Brown) who at the time was between the ages of 40-50. By the time of the hearing she was over the age of 50.
- (c) An experienced male main scale teacher who at the time the Claimant was employed was between the ages of 40 to 50 and was employed as a literacy intervention teacher. He was over 50 also by the time of the hearing and the Tribunal understood this to be a reference to Mr Robin Smith.
- (d) A main scale newly qualified teacher (“NQT”) who at the time of the Claimant’s claim was between the ages of 20 and 30. She was female. This was a reference to AS – Ms A Sooklall.
- (e) An experienced English Teacher who was employed on a long-term supply contract who was female and at the time was aged between 50 to 55. She also had two adult children. This was a reference to Lesley Staff.

124 The Claimant had not provided any evidence from which a tribunal could conclude that people in their late 40s and 50s were placed at a particular disadvantage. The Tribunal could only speculate about the potential that a more experienced and possibly older teacher might find certain tasks less challenging than a younger and less experienced teacher. Such speculation could not however properly found a relevant conclusion in relation to an age discrimination complaint. In particular, there was no evidence about the particular timeframe relied upon, namely people in their late 40s to 50s.

125 The evidence provided by Ms Abazi on behalf of the Claimant was not relevant in the context of this case as she had never worked as a teacher in any school. Indeed her evidence was to the effect that her son's disability prevented her from working in any capacity or even volunteering. In those circumstances, she could not be someone to whom any of the Respondent's PCPs could apply.

126 Ms Lamont, Ms Burchell, Ms McGarrity and Ms Dore also did not work at the school and therefore their comments on the school's workplace practices were mere statements of opinion. Further, they can only have been based upon what they had heard from the Claimant. None of these witnesses in the latter category suggested that they had been or would have been disadvantaged by any PCP of the school. Whilst the latter four witnesses also gave direct evidence in relation to their symptoms of the menopause, they did not suggest that their symptoms made them less able than younger or male colleagues to do their teaching jobs.

127 In relation to the indirect sex discrimination allegations, there was no evidence to suggest that women, even with childcare responsibilities, were less able to prepare GCSE resources than men. The Tribunal has already set out its conclusions above in relation to the PCPs being established.

128 The Claimant agreed that she did not get beyond the first stage of the first dystopian fiction (Animal Farm) scheme of work tasks. Her evidence on this was that the only work that she undertook in relation to either scheme of work was five hours of preparation in respect of the outline due at the beginning of November 2015.

129 The inclusion in the Claimant's sample timetable of slots in which she herself took on additional responsibilities also tended to point to the conclusion that any disadvantage the Claimant encountered was nothing to do with the duties assigned to her. As outlined in the findings of fact set out above, the Claimant was returning to work after a long-term absence and was in a situation where she had considerable caring responsibilities over and above those of the average primary carer. However, it was difficult to correlate the disadvantages which the Claimant relied upon, namely being more fatigued and being less able to devote time to work outside her normal working hours due to her childcare responsibilities, to the PCPs relied upon, even if they had amounted to PCPs. Or put another way, the evidence of the group to which the Claimant belonged suffering a particular disadvantage when compared with persons with whom she did not share the characteristic was lacking.

130 The Tribunal concluded in all the circumstances that indirect age and sex discrimination complaints were not well-founded and were dismissed.

Time

131 It was not necessary to make a determination about whether the Tribunal had jurisdiction to consider the complaints having regard to the dates on which the decisions to allocate the schemes of work to the Claimant were made as the claims were not well-founded in any event. It was likely if the Tribunal had had to decide this that the Tribunal would have found that the Claimant's claim was presented out of time because she complained about the allocation of work which was made by Ms Joseph in September 2015. She did not put forward any adequate grounds to justify a just and

equitable extension of time: section 123(1)(b) of the Equality Act 2010.

132 In all the circumstances the complaints were not well-founded and were dismissed.

Employment Judge Hyde

13 September 2017