Case Number: 3400887/2015
3401365/2014
3400609/2013
1201155/2012

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mrs CN Ochieng	**v**	**The Commissioning Board of Governors of Stantonbury Campus**

Heard at: Huntingdon & Cambridge

On:
23, 24, 25, 26 & 29 February 2016 and 01, 02 & 03 March 2016.
20, 21, 22, 25, 26, 27, 28 & 29 July 2016 and 01, 02, 03, 04, 05 & 08 August 2016.
12, 13, 14, 15 & 16 December 2016.
31 October 2017 and 01 & 02 November 2017.

Before: Employment Judge D Moore

Members: Mr M Reuby and Mrs K Charman

Appearances

For the Claimant: Mr S Onyango (Husband)
For the Respondent: Ms E Gordon Walker (Counsel)

JUDGMENT

1. The Claimant was not discriminated against on grounds of her race.

2. The Claimant was not discriminated against on grounds of disability.

REASONS

1. These four cases which stretch back to August 2012 and relate in part to incidents of even greater antiquity have received a great deal of judicial attention prior to the hearing before us. Certain complaints have been considered to be frivolous and vexatious and struck out, others have been

dismissed as being outside of the tribunal's jurisdiction and others have been withdrawn. Certain amendments have been granted. The age of these cases is attributable to the fact that just as each nears a hearing the Claimant submits a further claim, on occasions repeating earlier claims. Indeed we have now a further new claim. We have not consolidated that matter since to do so would involve vacating the present time allocation which in addition to imposing a burden of cost on the parties and the public purse would increase delay in respect of the present cases. It is said to raise similar complaints which may be subject to challenge by way of an application to strike out. We have listed the matter before us on the last day of the current hearing and following delivery of our judgment.

2. At the outset of the case there was confusion as to the issues, complaint was made that the Claimant's representative did not consider the case to be limited to pleaded issues, and was seeking to change and add to the issues. It was also indicated that in some respects this would have the effect of resurrecting matters already dismissed. Notwithstanding the fact that he had been present throughout the earlier hearings and had indeed appealed one of the decisions albeit unsuccessfully we were generous with the time we allowed him. Regrettably little progress was made. Counsel for the Respondent had prepared a working document which incorporated all of the various changes and assembled the complaints into categories. She joined with our concern that the delay was jeopardising the time allocation for the case and offered a copy to the Claimant's representative. After a further adjournment he applied to amend the claims by substituting that document for the particulars in each of the four claims. That application was unopposed and we granted it having first made it clear that if we did so it would be definitive and that there should not be any expansion or alteration to the stated complaints in the absence of a further formal application to amend. No such application has been made. In this decision the reference numbers we have used in respect of each complaint derive from that document. We reminded the parties at the outset that we would read documents referred to by the witnesses or put to them in cross examination but in accordance with the common practice we would not read the residue of the five lever arch files unless expressly taken to a specific document or documents for cause.

2.1 This history combined with the Claimant's approach has resulted in a somewhat fragmented case. A feature of the case has been that in many instances the simple exercise of comparing a particular complaint to the Claimant's witness statement (the accuracy of which she attested to on oath) and or documents exhibited by her prove the complaint to be false. In submissions Ms Gordon Walker drew our attention to the fact that during cross examination the Claimant on a significant number of occasions gave a third account which differed from both the complaint and her evidence in chief. Each member of the tribunal is of equal weight in the decision making process and each of us has found the Claimant's evidence

to be unreliable. It has been of particular concern to us that she has appeared unconcerned about giving these differing accounts. In essence she appears not to have focused her witness statement on the complaints she seeks to pursue and the evidence of those matters tended to be sparse and fragmented. Indeed we drew this difficulty to the Claimant's representative attention indicating that we would require his assistance during submissions to explain where the evidence of certain matters lay. He has not been able to assist in this regard and indeed his submissions have similarly lacked focus. The Respondent has taken the not improper approach in submissions of taking each complaint and isolating the evidence that pertains to it. In order to preserve this consistency of approach we have taken a like course in setting out our judgment.

2.2 There are however some general findings of fact which provide essential context and it is convenient to deal with those matters at this point. The Claimant is a Kenyan national. In June 2010 she obtained a Post Graduate Certificate in Education. That of itself is not sufficient and in order to teach in a school in this country she was required to attain qualified teacher status. In furtherance of that objective she obtained a post with the Respondent. Given that she had limited ability to remain and work in the UK she required sponsorship from the Respondent and they initially issued her with a three year certificate of sponsorship to enable her to obtain a Visa. We note at this point that there is no evidential basis upon which we could conclude that it was an implied term of her contract that they would always supply a certificate of the maximum duration possible. Their obligations as a sponsor are statutory.

2.3 During her first year she was treated in accordance with Department of Education Guidance as befitted her position as a newly qualified teacher (NQT). This involved reduced teaching hours, observation, guidance and so forth. The Claimant however was absent for some 33 days during the school year and could not achieve qualified teacher status at the end of that school year. This time had to be made up in the following year. She did in fact pass that hurdle the following year. A strong theme which underlies this case is the question of the Claimant's ability. Having heard her give evidence at length we have each independently formed the view that she has not understood that achieving good reports during the learning process (ie the academic and the pre qualified status year) is not proof that the standards that are required from a fully qualified teacher have been or are being met. The Respondents have explained that attaining qualified status is regarded within the profession as more of a starting point rather than a finish line and that teacher's need and are expected to develop and hone their skills beyond this point. That is something we recognise as being commonplace in the vast majority if not all professions. A further

factor bearing on this point is that in 2011 the respondents was found by OFSTED to be inadequate and they were served with a notice to improve (pages 1337–1352). It can be seen at pages 1340–1341 that there was a particular requirement to improve the quality of teaching. Ms Gordon Walker rightly draws our attention to the subsequent OFSTED reports which show that the school had effectively implemented strategies to tackle weaker teaching and by 2013 had made rapid progress in that regard because of strong and effective leadership.

2.4 There is an abundance of evidence before us that the shows that not only did the Claimant's development cease to progress, she actually lost ground and her performance was falling. We recognise the possibility that she may (pre OFSTED) have been marked more generously than the OFSTED standards would prefer but that is immaterial. All staff had to achieve and maintain the required standard. Common themes emerge from the documented observations that are in the bundle before us; she had difficulties with the pace of her lessons, she was not completing all that was required by the lesson plan, she was not keeping the students engaged throughout lessons and was experiencing great difficulty in keeping order in the classroom. Mr Williams has illustrated this point by describing a lesson he observed wherin pupils were conducting chemistry experiments without wearing the mandatory safety glasses and the efforts of others to set fire to a ruler with a Bunsen burner was not addressed by the Claimant. She was offered and given mentoring and support including assistance from a specialist adviser brought in from outside of the school. She has not been able to accept that she needed to develop her skills and it is right to say that she was resentful and suspicious of the schools efforts to assist her development. On the 10th December 2012 the Claimant was absent from work with anxiety and depression and has not returned to work since.

2.5 Part way through submissions, having been asked to address us in argument about the inconsistencies in his wife's evidence Mr Onyango sought an adjournment to re-open the Claimant's case in order to obtain medical evidence. She had stated to us in her evidence that she was psychotic. We pointed out to Mr Onyango that at this juncture of the case we were concerned with whether the evidence was reliable (as opposed to the reason for any unreliability that we might find). He was not able to explain how this evidence would address that question and in answer to the Respondent's opposition could not explain why, if he considered it relevant, he had not obtained it at a much earlier stage in the history of these four cases. He has not pressed the point and we have not granted the postponement.

The submissions of no case to answer

3. We arrived at the point where the Claimant has closed her case and we are at this juncture concerned with the Respondent's application to dismiss these claims on the basis that no prima facie case has been established. We have identified the complaints by using the numbers designated to them in the aforementioned document. We gave judgment orally and handed a table of our findings to the parties on the 28th July 2016.

4. We turn first to section one which sets out all of the complaints of Direct Race Discrimination.

1(a) Ms Louise Millard subjected her (the Claimant) to lesson observations that were inappropriate/unscheduled/unplanned and or without due notice on the 8th July 2011, the 30 September 2011, the 3rd October 2011 and the 5th October 2011. The comparator is hypothetical.

The Claimant's Evidence: Between October 2010 and October 2011 the Claimant was a 'Newly Qualified Teacher. At paragraph 19 of her statement (which was her evidence in chief) she confirmed that she had been told by the then Principal that as at the end of July she still had 33 teaching days to complete as she had been absent in January and February 2011. There is statutory guidance in respect of newly qualified teachers and Section 2.27 of that guidance at page 280 renders certain this point since it provides that:-

> "*The length of induction for Newly Qualified Teachers shall be the full time equivalent of one school year.*"

The school of course was on the long summer vacation at the end of July and we do not know the precise date it resumed; however if we took it to be the 1st September 2011, 33 school days would run until the 17th October and thus the dates of these observations in question was during the newly Qualified Year.

5. The Claimant's assertions that the observations were inappropriate/unscheduled unplanned or unprepared rest on the wholly mistaken assertion that they were performed under the auspices of the Performance Management Procedure. (Although it is perhaps more accurate to note that they are more properly recognised as her representative's assertion since in the course of her evidence she has accepted that she was in her Newly Qualified Year).

6. The Performance Management Procedures are at pages 207b (et seq) of the bundle and it is abundantly clear from the second provision that they are not applicable to Newly Qualifying Teachers undergoing their induction year (as the period is called).

7. The applicable procedures are, not surprisingly, found in the 'Guidance to schools on Newly Qualified Teachers', page 281:-

   i) That guidance is statutory.

   ii) It expressly provides under Section 2.34 that NQT's must be monitored and supported.

   iii) Section 2.36 (page 282) expressly provides that NQT's must be observed at regular intervals.

   There is nothing in this clause that requires these observations to be scheduled, or on notice, or by agreement with the NQT.

   The requirement for notice or agreement arises under a separate section ie 2.37 which relates to subsequent meetings at which the observer is required to identify the NQT's development needs. There is also a provision for three formal assessments one at or near the end of each term. There is provision for the School and the NQT to agree when the assessment dates should be set. There is no question of the Claimant (unlike her rep) being confused about these two quite different types of observation because at paragraph 18 of her statement she deals separately and distinctly with these formal observations.

8. Notwithstanding the fact that she was not entitled to agree the observations in question or be given notice of them she has given clear and unambiguous evidence that in respect of each of the averred dates she was given notice. At paragraph 24 of her statement she said that she and Ms Millard arranged the 8th July meeting. At paragraph 39 she said that Ms Millard and she had scheduled the observation for the 30th September 2011, at paragraph 56 she admits being given notice on the 30th September 2011 of the observation on the 3rd October 2011 and at paragraph 64 she admits that she had notice of the observation of the 5th October 2011. In fact she commences this part of her evidence in chief with the following assertion:-

   > "The Respondent provided me with all the rights and entitlements of a newly qualified teacher. All lesson observations were scheduled in advance in line with teacher induction guidelines."

9. This is a claim of direct race discrimination and thus we are concerned with the definition in s.13 of the Equality Act 2010:-

   > "A person (A) discriminates against another (B) if because of a protected characteristic (A) treats (B) less favourably that (A) treats or would treat others."

The Claimant has not cited any actual comparator and relies on a hypothetical comparator. That comparator must be in the same circumstances as the Claimant apart from Race. There must be no material difference (Shamoon v Chief Constable of Ulster Constabulary (2003) IRLR 285, HL). The hypothetical comparator in this instance would be a newly qualified teacher partway through the induction year. It is not sufficient to show a mere difference in treatment it must be less favourable and there must be some evidence indicative that that less favourable treatment was on racial grounds. (Igen v Wong (2005) ICR 931 CA) and (Madarassy v Nomura International PLC (2007) IRLR 247.

10. The Claimant has the burden of proving facts from which inference of discrimination could be drawn (Laing v Manchester City Council (2006) ICR 1519 EAT). As this authority provides it is for her to prove it not merely assert it. She has failed to do so. On her own evidence she has shown that she had to be observed in order to become a fully fledged teacher. It was not inappropriate to observe her it was mandatory, her agreement was not necessary and her averment of not being given notice of these observations was on the face of her own evidence false.

11. There is no inflexible rule of law or practice that requires us to always hear both sides of a case (Clark v Watford Borough Council EAT 43/99). That case provides a helpful summary of the principles to be considered before exercising our power to dismiss a claim at this juncture.

    (i) The power must be exercised with caution.

    (ii) It may be a hopeless waste of time to call upon the party to give evidence in a hopeless case.

    (iii) Even when the onus of proof lies on the Claimant, as in discrimination cases, it will only be in exceptional circumstances that it would be right to take such a course of action.

    These principles were approved by the Court of Appeal in Logan v the Commissioners of Customs & Excise (2004) ICR 1, CA.

12. We have concluded that in respect of this particular case we have a clear illustration of a complaint (or complaints) that are frivolous. We are faced with the situation where the Claimant, principally in her evidence in chief, disproves the factual allegations that she has made in her claim. We are entirely satisfied that this is one of those exceptional circumstances when we should accede to the Respondent's submission and strike out the complaint at 1(a).

13. We turn then to the complaint at 1(b):-

    'Not being given feedback for the lesson of the 3rd October 2011'.

The Claimant again relies on a hypothetical comparator. They Hypothetical comparator in respect of this complaint would also be a Newly Qualified Teacher of a different race to the Claimant in their induction Year.

14. **The Claimant's evidence;** At paragraph 55 the Claimant makes it clear that she knows she is still in her induction year with time to serve. She admits that she was told that Ms Dytrych would observe her lesson on this date. The Claimant objected stating that Ms Dytrych was not her line manager or performance reviewer. This does not provide a basis for objection Section 2.36 of the Guidance relating to NQT's provides that:-

> "Observation can be undertaken by the Induction Tutor or any other suitable person from inside or outside the organisation with qualified teacher status."

The Claimant has not suggested that Ms Dytrych was not qualified

15. At paragraph 60 she claims that she did not get feedback from this observation but in cross examination readily admitted that she did get verbal feedback. This latter statement is established as true and the earlier contention as untrue by the fact that the Claimant, prior to the commencement of this hearing, confirmed in a written reply to a request for further and better particulars (page 130k) that she had been given verbal feedback.

16. This is a further example of the complaint being disproved by the Claimant's own evidence and it is dismissed. We have applied the same reasoning as that given in respect of 1(a) since it is a further example of like circumstances.

17. For the sake of completeness we note that the Claimant did, in respect of this particular complaint seek to deviate from the complaint made and sought to suggest that in June 2012 she demanded the notes of Ms Dytrych's observation and was not supplied with them. Whereas Feedback is a requirement under the NQT guidance (Section 2.37) there is no requirement for it to be in writing and there is no mention of any requirement for the observer to disclose their own notes of the observation.

18. 1(c) is a complaint framed in these terms:-

'*Ms Peskett Instructed Mr Davis to put pressure on the Claimant for underperforming on the 30th September 2011'.*

This complaint rests solely on the content of an e-mail which the Claimant obtained pursuant to a discovery order made in one of the four cases

before us. It is at page 452 of the bundle and it can be seen that the Claimant has not set out its content accurately. It actually states:-

> *"My thoughts are that this needs addressing full on and to make sure she is accountable for the learning in her lesson. She has had a lot of support and I do not want another case like last year. If she is supported and still not achieving we must make her feel that pressure to perform."*

19. The Claimant has given little evidence on the point. That is not perhaps surprising since the only knowledge she has of the matter is that she found the e-mail during the disclosure exercise. What is of greater concern is that despite only having a few words of typescript to focus on she wholly mis-states the text in her witness statement. It does not state that:-

> "She (the Claimant) has been given too much support and had failed to improve."
>
> "If she is supported and still not achieving we need to make her feel the pressure to perform."

20. We find in respect of this complaint that the context in which this e-mail was written is relevant to ascertaining the facts, some of which were evidently known to the correspondents (ie the reference to 'last year') but not presently in evidence before us. We are mindful of the fact that the power we are invited to exercise in this application is one which we should exercise with caution and only in exceptional circumstances and on the basis that we do not find this matter to be transparently obvious as for example the position in respect of the last two complaints we are not persuaded that we should exercise it in respect of this particular complaint. The factual averments in respect of this complaint are the same as in complaint 4(a) and we do not strike out that complaint at this juncture.

21. 1(d) is in the following terms:-

> *Being threatened on the 4 October 2011 by Mr Davis Deputy Head of Faculty that I would not be granted Qualified Teacher Status.*

This self same complaint is also made at 4(b) and is also relied upon to an extent in 6(a) where it is averred that an informal complaint about this matter was a protected act for the purposes of the victimisation claim set out therein. In respect of this matter it is not argued that the Claimant's evidence as given destroys the factual premise of the complaints but rather that there are grounds for rejecting as unreliable her evidence. We are therefore required to weigh evidence and we note that the question of the reliability of a parties' evidence is often informed by the evidence given by other witnesses. Whilst recognising the burden of proof borne by the Claimant we are also reminded of the guidance in Clark and Watford and find ourselves not to be in the exceptional position that would entitle us to

dismiss this complaint at this juncture. The factual averments in respect of this complaint are common to those in complaint 4(d) and we do not strike out that complaint at this juncture.

22. We now turn to the complaint at 1(e):-

'*On the 14th November being informed by Ms Dytrych that a parent who had accused the Claimant of picking on her son would be permitted to observe her lessons'.*

The Claimant relies on Mr Sky Underwood as a comparator.

The Claimant's evidence; The information referred to is in an e-mail which is at pages 489–490. On the 16th the Claimant complained to Mr Davis and received a reply the same day stating that one of the school's strategies for dealing with poorly behaving pupils was to invite parents to observe them in the classroom but if the Claimant was uncomfortable with that approach it would not go ahead and the parent would be informed.

23. There was however a meeting between the parent, the Claimant and others and at paragraphs 98-99 of her witness statement the Claimant explains how she was commended for her own strategy for dealing with the problem and asked to share it with Mr Underwood. She has admitted that Mr Underwood had not been the subject of a complaint from a parent and indeed the only common ground between them was that he was one of a number of teachers who taught this pupil for a small number of sessions each week.

24. She has failed to establish that her comparator was treated differently in like circumstances indeed she has failed to establish that she suffered any detriment. The information she was given enabled her to make her feelings known and the matter was immediately acted upon. The parent did not observe one of her classes, the complaint was not progressed and on her own evidence she was commended both by the parent and the school.

25. We find this complaint to be contradicted by the Claimants own evidence and frivolous. Having regard to the guidance in Clark v Watford (ante) we are satisfied that it is right to dismiss this complaint at this juncture and we do so.

26. The complaint at 1(f) is:-

Not being given feedback for the lesson of 28th November 2011 By Rob Bryges'.

The Claimant relies on a hypothetical comparator.

The Claimant's evidence: The only reference to this matter in the Claimant's statement is at paragraph 100. She has adduced no evidence that Mr Bryges attended pursuant to any formal process. She states that he was a vastly experienced science teacher who attended to benefit her. She makes no mention of any advice he gave her at the time because she has devoted her attention to the fact that some seven months later on the 22nd June 2012 she demanded a copy of his notes. She accepts that his response was said that his attendance hadn't been formal and that he had lost any notes he had taken. In cross examination the Claimant has admitted that 'this was not negative it was neutral not to get notes.

27. Her evidence does not establish less favourable treatment. Her comparator would be a recently qualified teacher who hoped to benefit from advice given by an experienced colleague. There is no evidential basis before us from which we could conclude that such a comparator would not have been treated in the same way. There is no evidence from which we could conclude that the Claimant suffered a detriment. It being an informal 'favour' to an inexperienced colleague Mr Bryges had no obligation to take notes let alone keep them.

28. We find this complaint to be frivolous and we dismiss it.

29. The complaint at 1(g) is that:-

In the period January 2012 to June 2012 repeated failures by the Respondent to either support the Claimant in dealing with pupil's conduct issues, to include failing to carry out pupils detentions that she had ordered through Mr Otchere and Ms Millard both acting as in a position of authority as Hall Curriculum Leaders (HCL) and which behaviour also led to her being unable to access coaching support which was being provided to several teachers during this period'.

The Claimant again relies upon a hypothetical comparator.

The Claimant's evidence: It is right to note that the Claimant's evidence falls considerably short of establishing a complaint of the magnitude that she has made. At paragraph 125 she refers to the conduct of just two students whom we refer to as 'G' and 'K' she said she removed them from her class when K threw a book at her. At paragraph 129 she states that a student '*whistle blew to me that my after school detentions are never done'*. At 130 she says she checked the detention sheet (pages 1382–1402) that detentions she had set between the 9th January 2012 and the 8th March 2012 had not been done. She has referred us to pages 1382–1402 of the bundle but has not given explanation of them other than to state that these caused her to believe detentions she had 'ordered' were not being carried out. She is not identified on those documents as being a staff member who ordered a detention and she has adduced no other

evidence to show what detentions (if any) she had ordered and who might therefore have appeared on these sheets.

30. On the 8th March she stats that she e-mailed Ms Millard with her concerns and to ask for a report on them. That E-Mail exchange is at pages 553–554 and it discloses a significantly different position. The e-mail exchange starts at 14.21 on that day with a complaint that students had been sent to the Hall by the Claimant for a Hall detention when there was no one there to supervise them. At 16.00 there is a reply from the Claimant which states that she did not put the students on Hall detention on the day in question that they had gone there by themselves. She explains that earlier in the week, on the 5th two students had walked out of her classroom detention and told her to put them on Hall detention which she did. She did not ask for a report into detentions per se she asked for confirmation that these two students on that particular occasion had done the hall detentions. Ms Millard replied that she hadn't had time to process them but would do so for the following week. In cross examination the Claimant admitted that there had not been a failure just a delay of a few days. She has not adduced evidence to show what the normal time lapse between imposition and service of the detention was or that this lapse of a few days was anything other than normal. She has failed to prove the factual basis upon which she relies, this complaint was frivolous and is dismissed.

31. The Complaint at 1(h) is that:-

'She was assaulted by two pupils K & G on the 6th March and the 19th April 2012 and that no or insufficient action was taken against them.

The comparator is Ms Millard.

The Claimant's evidence: The Claimant has given little evidence of these incidents; at paragraph 126 of her witness statement she stated that on the 6th March 2012 K threw a book at her. She admits in cross examination that it did not strike her. Her account of G's behaviour on the 19th April is found at paragraph 146 of her witness statement and it is limited to the assertion that G was 'verbally aggressive'. Her assertion that G was excluded for a later incident of aggression to Ms Millard is not correct and the Claimant has admitted that she was excluded for 1 day because of her behaviour towards the Claimant and 15 days because of her behaviour towards Ms Millard which she further admits involved a physical assault on Ms Millard's person. Again in cross examination she admits that K was removed from her class and placed in another for the remainder of the year.

32. The Claimant's first assertion that the behaviour of these two pupils was not addressed by the school is shown by her own evidence to be false. That aspect of it is frivolous. However given the dictates of Clarke v

Watford (ante) we find the question of disparity between the sanction for K's behaviour which on the Claimants evidence would amount to an attempted physical assault and the sanction for G's assault upon Ms Millard to be one that lacks the clarity and certainty that must exist before we could exercise our power to dismiss the complaint at this juncture of the case.

33. The complaint at 1(i) is:-

That on the 21st May 2012 During a lesson observation feedback session Mr Davis gave the Claimant negative feedback and suggested that she find other employment with the allegation being that such employment would be of a menial nature.

The Claimant relies on a hypothetical comparator.

This complaint engages what is the central theme in this case. The Hypothetical comparator would be a teacher recently out of their Induction year as a newly qualified teacher. However the remaining characteristic of that hypothetical comparator is one we are not presently able to determine. Was the Claimant and thus the comparator fully fledged and fully competent or were there shortcomings in her ability and performance? Was she resisting improper attempts to undermine her or was she reacting adversely to bona fide attempts to give her advice and address performance issues? We have concluded that we would need to hear from the Respondent's witnesses in order to address this fundamental issue of fact and so we do not strike out this complaint at this juncture.

34. We turn to the complaint at 1(j):-

That on the 24th May 2012 the Claimant was ordered by *Mr Davies, at one days notice to vacate her classroom, for a part time teacher and in turn given an unkempt room thus requiring her to carry out further work to install resources and teaching aids and to arrange seating plans.*

The Claimant's evidence: At paragraph 207 of her witness statement the Claimant makes it clear that she was asked to relocate to a different laboratory. At 208 she states that she was advised that laboratories were being relocated because another teacher (Mrs Hooley) was returning from maternity leave. In her witness statement she complains of being treated less favourably than Mrs Hooley but her complaint relies on a hypothetical comparator. She has been taken to a circular e-mail addressed to a number of members of staff at 657 announcing Mrs Hooleys return and stating that the Claimant would move laboratories and that other staff may be affected by those changes. She has accepted in cross examination that staff is allocated laboratories and classrooms to use and that this is a matter for the school. She has stated in her witness statement that the room she was allocated to move to was in a poor state and that it took her

two and a half hours (She states 3.00 to 5.30 to tidy it and transfer her teaching aids. She admits that despite complaining about this move in an internal grievance she has made no earlier reference to this point. She has adduced no evidence that she was required by the Respondent to tidy the room.

35. It is for the Claimant to show facts which prove or from which we could infer that she was treated less favourably than her chosen comparator. The hypothetical comparator in this case would be another teacher at the school. It is common ground between the parties that the Respondent school is a very large one. It is within the catchment area of this Tribunal and we understand from our local knowledge to be one of the largest secondary schools in the country. As the Claimant has admitted teachers do not have career long rights to occupy a particular classroom or laboratory and from time to time they have to move. The Claimant has not established that she suffered less favourable treatment and there is no evidence whatsoever from which we could infer that her race played any part in the matter. This complaint is frivolous and is dismissed.

36. The complaint at 1(k) is that:-

'on an unknown date in September 2012 Mr Otchere asserted that the Claimant had 'failed to adapt from her African Way which he knew himself'

Our decision on this point rests on like grounds to that in respect of 1(i) and raises a similar point; was this, in the context in which it was made, a justifiable and appropriate observation or was it a derogatory comment. We have no ability at this point in the case to determine that point and do not dismiss this complaint at this juncture.

37. The complaint at 1(l):-

That on the 24th September 2012 Mr Upstone allowed a parent to falsely accuse C that her accent had caused the grades of (A pupil) to drop from A/A to Be despite knowing that C had not previously taught (that pupil)*

Again a matter we can address shortly, in cross examination the Claimant has admitted that neither Mr Upstone nor any member of the school's staff had any control over complaints made by parents. Parents did not need permission to complain and could raise their complaints in any terms they saw fit. The Claimant further admits that the school had a duty to act on complaints. She was taken to page 738 of the bundle and accepted that her suggestion of moving the pupil away from her friends in order to improve her concentration met with approval from the parent and was successful.

38. On the basis of the Claimant's own evidence no factual basis from which an act of discrimination could be inferred has been established. The complaint is frivolous and is dismissed.

39. We turn next to the complaint at 1m) which takes us to a different chapter of events. It is in these terms:-

On 18th October 2012 Ms Michelle Rhodes, a vice principal, sent the grievance investigation report to C in which C's grievance was reduced to a Peer/Mob trial of her capability to perform her professional duties.

The comparator is said to be a hypothetical comparator.

This relates to a grievance she lodged against Mr Davies. In cross examination she refined her accusation against him by saying the he was 'trying to manage her out of her career'. It was put to her in cross examination that her capability as a teacher was a relevant consideration and she has accepted that it was. We have been taken to the report in question and on its face there is no indication of impropriety it appears to be a collation of statements from the Claimant's colleagues and references to documentary evidence dealing with Mr Davies interactions with the Claimant. In short exactly the sort of material one would expect to see in a report relating to a process such as this. The Claimant's reaction to this was to appeal Ms Rhodes decision and to launch a grievance against Mr Otchere in respect of the evidence he had given to Mr Rhodes at the grievance Hearing (which incidentally the Claimant did not attend). This evidence which the Claimant admits she took from the minutes of the meeting and the outcome letter.

40. However the theme continues through 1(o), 1(p), 1(q), 1(r), 1(s), 1(t) and 1(u), the claim of sex discrimination at 2, 4 (d), (e) and (f). The Claimant engaged upon a succession of grievances and raises complaints of discrimination in respect of the decisions that were made and certain colleagues who gave evidence in those proceedings. She relies on a hypothetical comparator in respect of those complaints.

41. We are able to establish certain characteristics of that hypothetical comparator at this point however two elude us. It is clear that the comparator would be a teacher who had recently completed their NQT induction year. However the outstanding questions would be whether the Claimant and thus the comparator would be a fully fledged teacher with no performance issues or would the comparator be one who had such issues and who rejected advice from colleagues and supervision from her superiors.

42. We are unable to address this issue without hearing evidence from the Respondent and we do not dismiss these complaints at this juncture.

43. At 1(n) we have the complaint:-

'On the 1st May 2013 Ms Carol Wolf unlawfully deducted C's wages for April 2013 contrary to the terms and conditions of service for teachers as contained in the Burgundy Book Section 4 sick pay scheme. Ms Wolf has unlawfully deducted the Claimant's wages until June 2014'

The Claimant relies on a hypothetical comparator.

44. This particular complaint although drafted in like terms to an allegation of unlawful deduction from wages is a complaint of direct race discrimination which expressed shortly visits the Claimant with the obligation of establishing a prima facie case that Ms Wolf did not pay her for this period because of her race, colour or ethnic origin. It is right to note that she has given little or no evidence on this point and has focussed her attention on her assertion that she was owed the money.

45. The Reference to the burgundy book is a reference to the Teachers national Conditions of Service. The Claimant had three years service at the time she commenced the absence from which she has not yet returned in December 2012. As we can see from page 156 that entitled her to 75 days full pay and 75 days half pay. The Claimant brings this complaint on the strength of her assertion that her mental illness was an injury at work. The relevant section is 9.1 which provides:-

'In the case of absence due to accident, injury or assault attested by an approved medical practitioner to have arisen out of and in the course of the teachers employment.. full pay shall in all cases be allowed.. subject to the production of self certificates and/or Doctors statements from the day of the accident to the date of recovery but not exceeding six calendar months'.

Sections 2 and 3 of the burgundy book (P372 A) requires the mandatory attestation to be from any registered medical officer nominated or approved by the employer. The Claimant did not produce such an attestation. She has been taken to the Respondents occupational health report which was the only medical evidence that fell within the dictates of the Burgundy Book at the relevant time and she accepts in cross examination that he describes her as having 'anxiety' which he principally attributes to her grievances and employment tribunal's claims. She has been taken carefully through Ms Wolf's statement in cross examination and has stated that she does not consider her evidence to be untruthful.

46. The Comparator in this case would be a teacher of a different race to the Claimant with the same sick leave entitlement and with the same medical evidence. The Claimant has adduced no evidence from which we could infer that Ms Wolf would have reached a different understanding of the right to sick pay in those circumstances and we dismiss this complaint.

47. It is convenient at this point to break the sequence and deal with the like complaint expressed at S:5 of the list of complaints as a claim of unlawful deduction from wages. The focus for our attention differs in respect of this complaint. It is for us to determine the amount that was properly payable to the Claimant and whilst we take the opportunity to note that the Claimant cannot bring a contract claim in this jurisdiction (since by virtue of the extension of jurisdiction order we can only deal with contract claims that arise or subsist at the point of termination and the Claimant's employment has not yet ended) we have to determine what her entitlement to pay was on the ordinary principles of common law and contract Greg May (Carpet Fitters & Contractors Ltd v Dring (1990) ICR 188 EAT. That task requires us to construe the provision in the Burgundy Book. The parties' arguments on this point have not been expansive (indeed MS Gordon Walker in her submissions recognises something of a moot point on the question of whether the pursuit of grievances satisfies S:9.1 and if so whether that pursuit has to be bona fide.

    We have concluded that we should hear further argument on the point and thus we do not strike out this element of the claim at this juncture.

48. We return to the complaints of direct race discrimination in section 1 of the list at 1(v), it is in these terms:-

    On the 28th January 2014 Ms Carole Wolf reduced the duration of C's sponsorship certificate from the maximum of 3 or 5 years to 12 months.

    The Claimant relies on a hypothetical comparator.

49. This relates to the Claimants ability to work in the UK. She is a sponsored worker and at the time she entered the Respondent's employ her visa was due to expire on the 31 January 2011 (paragraph 7 of her witness statement) We have found there to be no substance in her assertion that there was an 'implied term in her contract of employment that the Respondent would take over visa sponsorship' and no substance in her assertion that it was an implied term that the parties would work together to limit costs by applying for the maximum allowed duration prescribed by immigration law. The provisions are as she recognises statutory and there is no need for any contractual term let alone an implied one and furthermore as a matter of law any term which contradicted any of the relevant statutory duties would be void. It is perhaps pertinent to note that the Claimant appears to misunderstand the concept of permanent employment. It does not of course mean that she is entitled to remain employed for life; it means a contract determinable by notice.

50. The date referred to in her complaint is the 28th January 2014. Her contention that Ms Wolf reduced her period of sponsorship is not correct she renewed it for one year rather than a longer period. At this date the

Claimant had been continuously absent from work for 2 years. She was not therefore actually performing the work for which she had been sponsored and it is right to note that the questions of a) whether she would recover and return and b) for how long the Respondent could contain the absence before bringing the employment to an end existed. As we have noted before the Claimant has been taken carefully through Ms Wolf's statement in cross examination she does not believe Ms Wolf was being untruthful and does not challenge her evidence that a) Ms Wolf was concerned that the Respondent should not breach its statutory obligations as a sponsor, that she took advice from the border agency and decided to proceed cautiously by renewing for a shorter rather than a longer period.

51. A hypothetical comparator would be another teacher dependant upon sponsorship to work in the UK who had been absent for a considerable period of time and in respect of whom there was a significant doubt about whether they would return to carry out the work to which the sponsorship related. The Claimant has adduced no evidence that this comparator would be treated differently to herself and no evidence from which we could infer that race discrimination had occurred. We dismiss this complaint.

52. 1(w) is a complaint that the Claimant refused to consider medical evidence in respect of her wages claim. On her own admission her internal appeal was adjourned for the express purpose of allowing her to produce medical evidence. She failed to do so by the agreed date and did not provide it until some eight months after the process had concluded. She can produce no evidence that she was told that it would be considered and the letter she relies upon states no more than that the recipient was on leave. The evidence does not establish the necessary causal link. There is no evidence before us capable of giving rise to an inference of discrimination and this claim is dismissed.

53. The complaint at 1(x) is:-

That on the 20th February 2014 and the 5th September 2014 the representative to the Respondent sent a letter in which they wanted the stay granted by the Tribunal to be lifted and the case resumed on account of the Claimant being a sponsored worker.

The Claimant relies on a hypothetical comparator.

Those letters are at pages 130ccc and 130eee respectively and confirm that the factual averment relied upon in respect of this complaint is false. Neither letter is an application to lift the stay. The first does not oppose a continuance of it and the second simply refers to procedural matters that arise upon its expiry. This is a frivolous complaint and it is dismissed.

54. Section 3 raises a complaint of Disability Related Discrimination at 3.1(a):-

Decision by Carol Wolfe on the 28th January2015 to restrict my visa sponsorship certificate to twelve months instead of 3 years because of my depression driven disability and or to cover employment tribunal case instead of basing it on my permanent contract with the Campuses was the case before I raised a grievance and made a claim at the employment tribunal.

This relates to the same factual scenario as the complaint of Direct Race Discrimination we have dealt with at 1(n) (ante). Under this head it engages consideration of S:15 of the Equality Act 2010 (Discrimination arising from a Disability)

(1) A person (A) discriminates against a disabled person (B) if:-

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

For the purposes of this complaint the Respondent concedes that the Claimant was disabled at the averred date. There is no requirement for a comparator and the quality of the required treatment changes from less favourable to unfavourable. To quote HHJ Peter Clark in Land Registry v Houghton UKEAT/0149/14 BA. The statutory formulation is *'deliciously vague'*. What he means by this is that if there is a link between the something that led to treatment and the disability S:15 comes into play. It is arguable that the Claimant's prolonged absence was material, that by the relevant date it was by virtue of the Respondent's concession a disability. It follows therefore that it may well be the case that the point turns on subsection 15(b) which requires the discharge of an evidential burden by the Respondent and thus this is not a complaint we dismiss at this juncture.

55. At 3.3(a) The Claimant raises a complaint that this matter amounted to a failure to make a reasonable adjustment. She puts her complaint in these terms:-

'Would it have been reasonable for R to: a) refusal and /or omitting to renew my sponsorship certificate on the 28th January 2015 for the expected duration of three years on account of the depression driven disability'.

We turn therefore to S:20 of the Equality Act 2010 the second and third requirement of which are not applicable in this instance.

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

56. The Claimant has not directed her attention to establishing a 'provision criterion or practice'. The definition is wide (Briggs v North Eastern Education and Library Board (1990) IRLR 181) and can apply to any test or yardstick applied by the employer, (Hampson v Department of Education and Science (1988) ICR 278 EAT). As the Claimant has accepted the Respondent's obligations were not of their making but were statutory. She accepts that Ms Wolf truthfully records the fact that her actions were based on advice from the border agency and her obligation to act properly. On the date in question the 28th January 2015 the Claimant had done no work of the kind to which her sponsorship related for over three years and she has given no evidence of an immediate return to those duties.

57. The Claimant has failed to give evidence on the issue of whether she suffered a substantial disadvantage. Her evidence was that the detriment she suffered was the financial one of having to pay a renewal fee sooner than if a longer period of sponsorship was given. This does not differ from the detriment that a non disabled person would suffer if the same practice were applied. We dismiss this complaint.

58. We now move to S:4 of the list of complaints which are allegations of harassment 4(a), (b), (d), (e) and (f) are echoes of complaints of direct discrimination which have indicated we do not dismiss at this juncture. The reasons we have already given are applicable to the complaints made under this different head and we do not dismiss these points at this juncture.

59. The complaint at 4(c) is in these terms:-

'that on the 2nd February 2012, 23rd February 2012, 5th April 2012 and the 3rd May 2012 T a pupil verbally abused her stating 'impatient bitch' 'I hate you' 'everyone hates you' 'no one wants you here' go back to your country' go die in a hole'.

The provisions on an employer's liability for actions of third parties have now been repealed by the Enterprise and Regulatory Reform Act 2013 with effect from the 1st October 2013. Proceedings in respect of alleged contraventions prior to that date are not excluded. (Art 4 SI 2013/2227.) The alleged dates pre date the 2013 Act and are thus not barred. The pre repeal provisions required the employer to be put on notice of the conduct before liability could attach. The Claimant has given no evidence in respect of the April 2012 allegation. However the question of what she raised with her employers and what she didn't in respect of this matter is one which rests in part on the reliability of her evidence and we conclude therefore having regard to Clarke & Watford that it is not one that we should dismiss at this juncture.

60. Harassment is the fourth of the statutory definitions called into play by the complaints of discrimination in the present case. The definition is as we have indicated defined by S:26 of the 2010 Act.

S:26(1)
A person (A) harasses another (B) if:-

(a) A engages in unwanted conduct related to a relevant protected characteristic and

(b) The conduct has the purpose or effect of (i) violating B's dignity or (ii) creating an intimidating, hostile, degrading. Humiliating or offensive environment for b.

The question of the conduct in question does not rest on the trite understanding of the word unwanted. A just and appropriate reprisal for an act of wrongdoing is often unwanted. If we revert to Lord Rodger's example in Shamoon. The persistent latecomer is likely not to have wanted to be reprimanded for her tardiness but it cannot have been the intention of parliament that a deserved and proportionate response to her wrongful act should have been actionable. The point came under consideration in Ali v Mitie Security Ltd ET Case No 231793 a first instance case which we find to be persuasive on the principle. Mr Ali had instigated a controversial discussion about race. The other party to the conversation expressed his own views and Mr Ali's claim of harassment failed on the ground that he had instigated the conversation. The concept of a Claimant 'consenting' or being deemed to have consented to the complained of conduct it arises consequentially from their own actions was considered by the Court of Appeal in Land Registry v Grant (2011) ICR 1390 CA. G was a homosexual who had disclosed his homosexuality in the office where he worked. He transferred to another office and the manager there disclosed G's sexuality. The Court of Appeal (Elias LJ) found him to have put the information into the public domain and had thus by that reasonably led the employer to believe it would not cause him concern.

61. The latter part of the definition (S:26(1)b) can be satisfied with evidence showing either purpose or effect, therefore conduct intended to have the proscribed effect will be unlawful even if it does not have that effect and conduct not intended to have that effect will in fact be unlawful if it does. The forbidden purpose or effect can be brought about by a single act or a combination. In order to establish purpose there needs to be evidence of the perpetrators intentions. In the absence of direct evidence that may be achieved by drawing inferences from the surrounding circumstances. In determining whether the conduct had the proscribed effect we are obliged to take into account each of three factors:-

    i) The perception of B;

    ii) The other circumstances of the case; and

    (iii) Whether it is reasonable for the conduct to have that effect (26(4).

    The 'test' therefore contains both subject elements. The subjective part is whether the Claimant did in fact have the requisite perception. (If he or she did not then a claim based on effect will fail). If the Claimant is found to have that perception the resulting question is whether in the circumstances of the case it was reasonable for the conduct to have that effect. The position where the effect flowed from the employees case was considered by a first instance Tribunal in Jones v Logica CMG Ltd & other (ET Case No 1600659/07) and the reasoning of the Tribunal which we find persuasive was that the employers reaction to the discovery that the Claimant had put misleading information on a application form to secure an interview was inevitable and thus the source of the resulting humiliation the Claimant suffered was his own misconduct.

62. At 4(g) the complaint is as follows:-

    On the 17th September Mr Ben Corbett required the Claimant to schedule a lesson observation to determine the need for pre capability without disclosing the concerns that merited this.

    On the Claimant's evidence (Paragraph 250) she was told by a Ms Hanby that the Vice Principal wished to observe one of her lessons. At pages 728/9 we see a letter which states that if there are significant concerns there would be a letter setting targets and detailing the pre capability procedure. At page 839 and she objected and the observation did not proceed at that time,

63. It is right to note that throughout the period covered by this case the Claimant purports to have taken offence at almost every interaction between herself and her superiors. That however is not as we have stated above the test it is not wholly subjective. We do not consider that in these circumstances the Indication by a superior of an intention to observe an employees work by to see whether it was of the required standard would

reasonably be considered to violate C's violating B's dignity or (ii) creating an intimidating, hostile, degrading. Humiliating or offensive environment for her. She has accepted in cross examination that it is proper for a vice principal to concern himself with the quality of teaching and there is no evidence of him having any other intention than to fulfil this obligation. We dismiss this complaint.

64. At 4(h) the Claimant makes the same complaint as in 4(g) with regard to Mr Corbett and adds to it a complaint that Mr Upstone (her line Manager) also scheduled an observation. It is in these terms:-

'Between the 17th September and 4th October 2012 Mr Cobett and Mr Paul Upstone scheduled parallel lesson observations on the Claimant each claiming that it was for a different purpose contrary to the performance management policy.

The Claimants Evidence: At paragraph 263 of her statement she admits that she agreed this observation with Mr Upstone. She has given no evidence of suffering any of the matters in S:26 of the Equality Act 2010. She has been pressed in cross examination to explain why she has claimed that this matter was harassment and has been unable to explain. This complaint is frivolous and is dismissed.

65. Item 4(i) is a repetition of the facts averred in 1(l) save that she now alleges that Mr Upstone accused her that her accent had caused the grades of Student B to drop. This is wholly contrary to the evidence she has given on the point that it was the parent who made the accusation and that Mr Upstone had no power to control the subject matter of any parent's complaint. This is a frivolous complaint and is dismissed.

66. We turn now to S:6 of the list of complaints and the last of the statutory definitons of discrimination; - victimisation. Victimisation is a concept defined in S:27(1) of the 2010 Act in these terms:-

'*A person (A) victimises another person (B) if (A) subjects (B) to a detriment because*

a) B does a protected Act or

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

By virtue of S:27(1) the protected acts are as follows:- bringing proceedings under the Equality Act, giving evidence or information in connection with proceedings under the Equality Act, doing any other thing for the purposes or in connection with the Equality Act or making an allegation (whether or not express) that A or another person has contravened the equality Act. Given that a large number of the complaints in the present case are brought as alternatives and are alleged to be Race discrimination, Sex Discrimination,

Victimisation, and Harassment, it is perhaps important to emphasise that this definition is satisfied by different evidence to complaints of harassment. There is not a requirement for the Claimant to show that the treatment relied upon was less favourable and thus there is no need for a comparator. What has to be shown is that the Claimant suffered a detriment. Whilst the ever crucial '*because of*' question remains present and crucial (as it does in all discrimination claims) it is not addressed by proof of a protected characteristic it is addressed by proof that the Claimant has done a protected act. Detriment exists where in all the circumstances a reasonable employee might take the view that the treatment was to his disadvantage (Shamoon ante).

67. To a certain extent anyone individual who experiences something contrary to their wishes or desires might consider themselves to have suffered a detriment but perhaps not surprisingly the definition that falls to be satisfied is not as wide as that. In the first instance there is S:212(a) of the 2010 Act which excludes from the definition conduct which amounts to harassment. Such a claim must be brought under S:26 of the Act (The Harassment Provisions).

The accepted definition of a detriment is 'anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. The requirement of reasonableness is an important distinction since it moves the matter from a subjective view (as illustrated in the first two lines of this paragraph) to an objective view. An unjustified sense of grievance would not be enough to establish a detriment.

68. At 6 (a) and (b) the Claimant sets out the protected acts she relies upon. The first is:-

a) On the 4th October 2011, she brought an informal grievance to Mr Davies, of being treated differently on account of her race and to seek an intervention and that this constituted a protected act'.

We have concluded given the cross examination on the point that the veracity of this account can only be established when we have heard Mr Davies' evidence.

(b) that on the 24th July 2012 and the 22nd August 2012 she brought a formal grievance and an employment tribunal claim respectively on account of being treated differently and that this constituted a protected act.

The Tribunal claim is a matter of record but the Claimant's many grievances and appeals are matters upon which have yet to make findings having heard from both parties.

At 6(d) and 6(e) we have the self same allegations as in 4(h) and (i). As we have note S:212 of the 2010 Act bars her from bringing these claims as victimisation and harassment where the alleged conduct amounts to harassment. However for reasons we have given her evidence did not disclose that she suffered any detriment. No reasonable employee would regard an employers wish to ascertain the quality of the work he was paid to perform to be a detriment within the meaning of the relevant provisions. These complaints are dismissed.

69. At 6(f) the Claimant complains that:-

On the 11th July 2013, R upheld a decision of a secret grievance panel meeting.

We have concluded for reasons now well rehearsed not to dismiss at this juncture complaints pertaining to the grievance hearing and we conclude that this must join them.

70. At 6 (g) we have the complaint that:-

On the 26th November 2012 Ms Millard omitted C from an e-mail that was important and relevant to her teaching responsibilities leading to a fall out between C and the Special Educational Needs Department.

The Claimant's evidence: The E-Mail in question is at pages 872/3 it is a routine circular e-mail relating to the timetable for mock examinations in the following year and revision periods. There is no evidence that it required immediate action. The Claimant's name does not appear on the list of addressees. The Claimant accepts that a few days later, the omission having been pointed out to Ms Millard by another teacher she was sent a copy within 15 minutes of the omission being drawn to Ms Millard's attention. There is no cogent evidence of a connection between this matter and the Claimant 'falling out' with the special educational needs department and no evidence at all linking this matter with any protected act. This complaint is frivolous and is dismissed.

71. The next three complaints (with the exception of 6(i) are a sequence and in fact they are set out in the list of complaints out of sequence. We set them out in the correct sequence and deal with them together.

6(j) *On the 4th October 2012 Mr Upstone subjected C to a lesson observation but failed to disclose the criteria to be used and or misapplied the criteria in assessing C's achievement.*

6(k) On the 4th October Mr Upstone decided to seek a direction about a lesson observation outcome from Ms Jane Peskett but misled C that he had lost his notes.

6(h) On 5th December Ms Peskett scheduled a lesson observation without a focus or session when it was due.

The Claimant's evidence: At paragraph 267 of her witness statement the Claimant admits that the lesson observation by Mr Upstone had been agreed with her. At 263 and 268 she states that her performance had been graded as inadequate. She was told that she was being graded against new OFSTED standards. She complained about her grading on the ground that she contended that she had not been told what those standards were. She admits that in cross examination He went to see Ms Peskett (his superior) in accordance with her (the Claimant's wishes) to see if his grading could be removed from her record. She accepts that Ms Peskett's decision to carry out a fresh observation was in pursuit of this matter. It in fact never occurred because shortly thereafter the Claimant went on sick leave from which she has not yet returned.

72. In cross examination she accepts that Mr Upstone lost his notes and indicates that she does not challenge his assertion that this was attributable to a fault with his lap top computer.

73. There is no evidence that the Claimant suffered a detriment and her allegation that she was misled by Mr Upstone when he said he had lost his notes is proven false by her own evidence. These are frivolous complaints and are dismissed.

74. This leaves us with 6(i) A complaint that Mr Williams stated he was aware that the Claimant was going into capability. This she has gleaned from papers relating to the grievance procedures and given our earlier decision this matter must join them.

75. There is one final matter at paragraph 6(c) the Claimant seeks to raise each and every other allegation of discrimination set out in her list of complaints as a complaint of victimisation in the alternatives. In respect of those matters which we have not dismissed this can be raised as an argument at the appropriate point in the case.

Time points

76. We have not considered it appropriate to deal with this point at this juncture. It remains a live issue in the case but in order to address the question of whether a 'discriminatory regime' of the kind identified in Hendricks v the Commissioner of Police for the Metropolis it is relevant to know the number and frequency of contributory elements. Accordingly (as indeed was indicated by Judge Bloom during his engagement with the case) it is a task best addressed after all the evidence has been heard.

Costs

77. Rules 76(1) a & b of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 imposes upon us a duty to consider making an order for costs when one of the requisite grounds is made out. Our decision invokes that obligation since complaints where the factual averment is roundly disproved by the Claimant's own evidence in chief have no reasonable prospect of success. However consideration of costs has been inevitable in this case since before we commenced the present hearing it had been raised and put over by other Judges at earlier stages in the case. In addition there have been many breaches of orders. Given the Respondent's indication on the last occasion of the potential amounts involved (which go beyond a provisional assessment) it is likely to be a significant task and one of importance to the parties. We therefore put over this element of that task to be considered with the others at the conclusion of the case.

The remaining complaints

78. We now turn to the complaints that we did not strike out pursuant to the submission of no case to answer. We begin with the complaint at 1(c) of the particulars (as amended). This allegation is framed in these terms:-

'*On the 30th September 2011 Ms Jayne Peskett instructed Mr Davies to pile pressure on the Claimant for under performing'*

The same complaint is made at .4(a) as a complaint of harassment we deal with them together.

As we have indicated earlier this complaint emanates solely from the content of an e-mail which the Claimant obtained pursuant to a discovery order made in one of the four cases before us. The E-mail is at page 452 and it can be seen that the Claimant has not set out its content accurately in her complaint. It actually states:-

'My thoughts are that this needs addressing full on and to make sure she is accountable for the learning in her lesson. She has had a lot of support and I do not want another case like last year. If she is supported and still not achieving we must make her feel that pressure to perform'.

We have already addressed the difficulties we have had with the Claimant's evidence. She has on many occasions during her evidence demonstrated an inability to recall not just facts material to her complaint but also what complaints she has brought and is pursuing. In complaints such as this which do not emanate from her experience but rest solely on her construction of a document she had not seen prior to disclosure that is perhaps not overly surprising. However what is of greater concern is the

fact that in her witness statement (which was her evidence in chief) She mis states it. It does not state that:-

'*She (the Claimant) has been given too much support and had failed to improve'.*

'If she is supported and still not achieving we need to make her feel the pressure to perform'.

79. As we indicated in our decision on the submission of no case to answer we were concerned to understand the context in which this e-mail was sent. We are entirely satisfied from the evidence before us that the Respondents had genuine and real concerns about the Claimant's performance as a teacher. Ms Millard (who was at that time the Claimant's mentor) had observed problems with the Claimant's performance. She had observed the Claimant in July 2011 as part of the review and development process and the Claimant had been awarded an overall rating of 'good'. Which we understand was acceptable at that stage in the Claimant's career. This is recorded in the documents at pages 411 and 412 of the bundle. It has been explained to us that even when attained, qualified status is properly and responsibly regarded from within the profession as a starting point rather than a 'finish line' and that it is necessary for members of the teaching profession to continue to develop and improve their skills and performance. It appears that Ms Millard's concern was that when she observed the Claimant the following September her performance had dropped from good to satisfactory in a number of categories pages 416–419). Although she retained an overall marking of good we accept Mr Davies evidence that this was evidence of regression rather than progression and would (and is) addressed in all situations of this nature. Ms Millard had reported her concerns to Ms Peskett and as we have seen from the e-mail she did not simply instruct Mr Davis to 'pile on the pressure' (as was put to him in cross examination) she alerted Mr Davies to the fact that she had suggested that Ms Millard and he should have a chat about it. That in fact is what they did.

80. Mr Davies obtained copies of the Claimant's pre-prepared lesson plans which he found to be good. However on his own observations he did not find the Claimant to be following the plans she had prepared. The Claimant has not advanced any evidence that she was actually put under pressure. She has adduced no evidence whatsoever from which we could conclude or infer that the email that is the subject of her complaint was written for any reason related to her race nationality or ethnic origin. She was treated in the same way as any new and inexperienced teacher would be treated in the same circumstances. The claim of direct race discrimination and the claim of harassment are not made out on the facts.

81. The complaint at 1(d) is in the following terms:-

'Being threatened on the 4th October 2011 by Mr Davis Deputy Head of Faculty that I would not be granted Qualified Teacher Status.

This complaint is also brought in like terms as a complaint of harassment at 4b. We deal with them together.

The Claimant assets in her evidence in chief that on the 4th October 2011 at about 12.30 pm she approached Mr Davies to informally place a grievance about Ms Millard She says Mr Davies looked irritated and shouted at her that she must improve her pace, that she must allow observations and that she should still remember that she was an NQT and that he may not sign her off unless she complied. In cross examination Mr Davies denies that this alleged conversation ever occurred.

Mr Davies evidence that he no connection with the award of qualified teacher status and that this was a process managed by a Mr Bundy has not been challenged and we accept it. The Claimant has accepted in cross examination that this complaint did not appear in her original claim form, that whilst she referred to the fact of a threat in her first set of further and better particulars in March 2013 the first time she produced details of it was in April 2013 in her second set of further particulars. She has admitted that she made no mention of this matter in the grievance she brought against Mr Davies in July 2012. In her final NQT appraisal she commented that she had received 'good support'. Questioned on why she had not taken this opportunity to comment on her concerns she said that it was pre typed on the form. In re-examination she retracted that statement thus accepting that it was not true.

82. There is nothing to corroborate the Claimant's case on this point and Mr Davies faces the well versed difficulty of proving a negative. We have found the Claimant's evidence to be unreliable on many occasions throughout this case but have found Mr Davies to be straightforward and reliable. On a balance of probabilities therefore we prefer his evidence and do not find him to have made the alleged comments. The complaints of direct discrimination and harassment therefore fail on the facts.

83. The Complaint at 1(h) is that:-

'She was assaulted by two pupils K & G on the 6th March and the 19th April 2012 and that no or insufficient action was taken against them. The comparator is Ms Millard.

The Claimant had problems keeping good order in the Class room. On the 6th March 2012 a student K threw a book which did not hit anyone. He was dealt with by the school he was removed from the Claimant's class and he spent the rest of the year in Mr Davies class. On the 19th April 2012 the

Claimant was trying to take a mobile telephone off of a student. The Claimant has admitted in cross examination that G was verbally aggressive, that G's aggression was directed towards Ms Millard, that G did not assault her but did physically assault Ms Millard.

She accepts that G was punished with exclusion. As we have already stated the Claimant's own evidence establishes the premise of this complaint to be false. We were however concerned when addressing the matter at the time of the submission of no case to answer to have evidence on the question of whether the sanction imposed by the school in respect of G's behaviour was disparate. (Ms Millard is not a comparator for the purposes of the K incident). On Mr Davies unchallenged evidence we find that G was excluded in respect of her behaviour throughout the incident. Thus it included the Claimant and was not just related to the physical assault on Ms Millard. We accept that exclusion is a very harsh sanction reserved only for serious incidents. We accept the Respondents evidence that a change of class was a proportionate measure in respect of K's misdemeanor. We do not find the complaint to be supported by the evidence.

84. The complaint at 1(i) is:-

That on the 21st May 2012 During a lesson observation feedback session Mr Davis gave the Claimant negative feedback and suggested that she find other employment with the allegation being that such employment would be of a menial nature. The Claimant relies on a hypothetical comparator.

As we have indicated earlier this complaint engages what is the central theme in this case. The Hypothetical comparator would be a teacher recently out of their Induction year as a newly qualified teacher. Mr Davies does accept that the meeting occurred and that the principal topic was the Claimant's performance. He and Mr Corbett who was at the material time a newly appointed vice principal did observe the Claimant pursuant to Mr Corbett's desire to observe all teachers who had received additional support throughout the year. The Claimant was one of a number thus selected and the date of her observation was 18th May 2012. Mr Davies was himself under some scrutiny as Mr Corbett wanted to see how he conducted observations. They observed for 20 minutes (which we are told is or was the OFSTED standard) and then left to discuss their observations. They both considered the standard of the lesson to be inadequate. At pages 641–645 we have the observation record sheet which records the observations. Mr Davies did discuss these findings with her he was obliged to do so. He accepts that he indicated that a failure to improve may result in the Claimant being subject to the performance process. We find that to be both truthful and inaccurate representation of the position that the Clamant was in on that occasion. We prefer Mr Davis evidence that he said nothing at all about the Claimant giving up teaching

in favour of menial work. His comment was that she might fare better in a school with less challenging pupils. The Respondents do have a percentage of students whose behaviour is difficult to manage and the Claimant did have difficulty coping with that. We find the advice to be apt and not detrimental to the Claimant it was advice which an experienced teacher might give to any teacher experiencing the difficulties manifested by the Claimant. We do not find it to be discriminatory.

85. The complaint at 1(k) is that:-

'on an unknown date in September 2012 Mr Otchere asserted that the Claimant had 'failed to adapt from her African Way which he knew himself'.

This matter is also raised as a complaint of harassment at 4(d. We are able to address both matters quite shortly. Mr Otchere is like the Claimant an African teacher (although not Kenyan). He was trying to offer support to the Claimant by sharing his own experience of arriving to teach in a UK School. He explained to us that in his experience students in African schools are pleased to be there, keen to obtain an education and treat teachers with great respect. He shared with the Claimant his own feelings of shock and distress when he arrived in a English school and found the pupils to be badly behaved, rude and disinclined to work. He denies making the comment stated by the Claimant. We have each independently found him to be a straightforward and compelling witness who was at pains to give accurate evidence despite the long lapse of time since the incident. His concern for the Claimant's position was still present and evident during his evidence. His was a kind offer of support to a colleague in difficulties and does not amount to less favourable treatment. The Claimant was not subjected to the proscribed treatment and the complaint of harassment is not made out

86. We turn next to the complaint at 1(m) which takes us to a different chapter of events which arise in the following context. The Claimant pursued a number of complaints under the Respondents grievance procedure. The procedure which is at pages 214–216 is entirely conventional; it provides the opportunity for an informal resolution and a formal process. The latter provides for investigation, hearing and a single right of appeal.

The first grievance was against Mr Davies, it was submitted (a little piecemeal) between the 16th and 24th July 2012. Between the 4th September and the 2nd October 2012 Ms Rhodes conducted the investigation. On the 17th October 2012 the Claimant was invited to attend the hearing on the 26th October 2012 but she asked for it to be rescheduled. It was rescheduled for the for the 3rd December 2012. The Claimant attended with her Trade Union representative Ms Richards. On the 12th December the Claimant appealed. She was invited to attend a hearing on the 10th January 2013 but stated that she was not well enough

to attend. The hearing was rescheduled for the 17th January 2013 The Claimant did not attend and the appeal proceeded in her absence. She was notified of the outcome on the 22nd January 2013. On the 24th February 2013 the Claimant raised a grievance (the second grievance) against Mr Otchere a witness who made a statement during the inquiry into her first grievance. On the 6th March 2013 she raised further grievances (the third grievance) against Senior members of staff Mr Williams, Ms Peskett and Mr Corbett. On the 9th May 2013 she lodged a grievance against Mrs Wolf (the fourth grievance. She did not attend any of the hearings which took place on or around the 11th July 2013) and appealed each outcome. On the 21st July 2013 she appealed the fourth grievance, on the 23rd July she appealed the second grievance, on the 25th July 2013 she appealed the third grievance. The Claimant was invited to attend the appeal hearings but did not do so. She was aided at this time by either her trade union, her husband or both and they in turn indicated that they did not intend to attend either. Documents submitted by her or on her behalf were accepted and considered. Having exhausted her right of appeal in respect of the second and third grievances the Claimant sought to raise her dissatisfaction with the outcomes by submitting a further grievance in which she objected to those decisions. This was readily (and we find) reasonably rejected on the basis that it was an attempt to further appeal.

The complaint at 1 (m) is in these terms:-

On 18th October 2012 Ms Michelle Rhodes, a vice principal, sent the grievance investigation report to C in which C's grievance was reduced to a Peer/Mob trial of her capability to perform her professional duties. The comparator is said to be a hypothetical comparator. As we have noted at paragraph 40 above this relates to a grievance submitted against Mr Davies. The Claimant did not attend the hearing and was sent a copy of the report. It is in the bundle at pages 818–813. We have found there to be nothing improper in it; it is an entirely conventional report which has annexed to it the witness statements taken during the investigation. The Complaint made was (as the Clamant put it in cross examination) that 'Mr Davies was trying to manage her out of her career' and it was his contention that he was addressing performance issues in accordance with his obligation to do so as a head of department. The subject matter addressed was critical to the point in issue. The Claimant does not appear to understand that investigation of a grievance if dealt with properly does require evidence to be obtained. We are satisfied that the Claimant's grievance was handled, in this respect, in the same way as any other grievance would have been.

87. The Complaint at 1(o) is that:-

Mr Eric Otchere during a grievance hearing said he was helping C to learn to mould and adapt from my African way to western life, British system and/or the ways of the British students. Comparator is hypothetical.

On the 24th February 2013, having received the report into her grievance she lodged a further grievance in essence complaining about the evidence Mr Otchere had given to Ms Rhodes at that time. That hearing was conducted by Mr Williams. The Claimant did not hear what Mr Otchere said during the grievance process – she did not attend. She bases this complaint solely on the copy of the grievance report she was sent and misquotes and misrepresents what was said therein. The complaint relates to the same matter as 1k and this was Mr Otchere giving his explanation in response to the complaint she made against him. The account he gave was consistent with the evidence he gave to us. It was believed by his employer as indeed it was believed by us. He had an absolute right to put forward his account of the matter in response to the Claimant's complaint against him and we are satisfied that he did so truthfully. The Claimant did not suffer less favourable treatment.

88. The Complaint at 1(p) is that:-

On the 11th July 2013 Mr Williams decided that C would need to mould and adapt to Western Life, British System or ways of the English Students Comparator is hypothetical. She makes essentially the same complaint at 1(s) and we are able to deal with them together.

The Claimant did not attend this hearing either. She admits that this (and the attendant complaints she makes about Mr Williams are base solely on the minutes and the outcome letter relating to that process. She has mis-stated and misrepresented those documents. Mr Williams did not make a decision that the Claimant would need to 'mould and adapt' to western Life. The comment attributed to Mr Otchere appears nowhere in either of the two documents. Mr Williams recorded the evidence as was incumbent upon him. He did not 'require' the Claimant to mould or adapt. Such requirement as there was upon the Claimant is common to every other teacher in the UK. Teaching is a regulated profession, there is a national syllabus against which examinations are set and teaching is monitored against set criteria by OFSTED. There has not been one shred of evidence that there was any different requirement imposed upon the Claimant at all. We find these complaints to fail on the facts.

89. The Complaint at 1(q) is that:-

On the 11th July 2013 Mr Williams decided that it is appropriate to discuss C's culture because the cultural difference between the countries impacted on C's ability to do her job. Comparator is hypothetical.

This same complaint is expressed in similar terms at 4(f) as a complaint of harassment. We deal with them together

As we have said these are complaints that rest solely on the two documents pertaining to the grievance heard by Mr Williams. The assertion made by the Claimant does not appear in either document. Given the opportunity to locate the passage during cross examination she was unable to do so but referred to page 1060 of the bundle. This was a reference to Mr Otchere's point that in his experience children in African schools are much better behaved than children in the UK. It was therefore essentially a favourable comment. It is significant to note that the Claimant's representative during cross examination spent a great deal of time putting to Mr Otchere that as the Claimant was Kenyan and he cane from a different country on the African continent they did not have a shared culture. The Claimant did not however give evidence that Kenyan school children are not better behaved than children in the UK. The contentions in both complaints are not supported by the evidence and they fail on the facts.

90. The Complaint at 1(r) is that:-

On the 12th July 2013 Mr Williams dismissed the Claimant's grievance against Mr Otchere without considering the evidence Comparator is hypothetical.

This complaint is also brought in like terms as a complaint of sex discrimination. We deal with both together. We have heard evidence from Mr Williams and have been taken to the minutes and the outcome letter. Notwithstanding the fact that the Claimant submitted her written comments outside of the required time scale and very late in the day (P1050 -1060) Mr Williams considered them carefully. Neither in her evidence in chief or during cross examination has the Claimant been able to provide any detail or substance to her allegation. No specific deficiency has been put in cross examination of Mr Williams. We find his evidence to be wholly supported by the documentary evidence and find that he carried out a full and careful consideration of the evidence. These complaints fail on the facts.

91. The Complaint at 1(t) is that:-

On the 9th September 2013 C was told that the Governors had declined to accept C's grievance against Mr Williams for consistently refusing / failing or omitting to uphold campus policies, procedures or practices. Comparator is hypothetical.

This complaint is another which has not had the benefit of much in the way of evidence or cross examination on the Claimant's part. That which has been forthcoming arose during cross examination. The Claimant had

appealed Mr Williams decision. The Respondents procedure provides for a hearing and a single appeal The Claimant had appealed and had thus exhausted her right to appeal. Her further grievance was reasonably identified by the Respondent as an attempt at a further appeal where there was no right to do so and they rejected it on that ground. We are satisfied that the procedure was applicable to all of the Respondents teaching staff and that it would have been applied to any member of staff in the same way. The Claimant was not as a fact treated less favourably.

92. The Complaint at 1(u) is that:-

On the 26th November 2013 the staff appeals committee changed the time for the grievance from 5pm to 9pm without alerting the Claimant.

These alleged facts have not survived just three questions put in cross examination. In respect of the first the Claimant admits that she was never informed by the Respondent that the hearing would be at 5pm. She was taken to page 1181 which is a letter from her Trade Union representative in which the rep states that she *assumes* that the panel will convene at 5.00pm. She has no other evidence on the point and thus has not and cannot counter the Respondents contention that the time of the meeting was ever changed. This complaint fails on its facts.

93. We arrive at the complaint at 3.1 a *Decision by Carol Wolfe on the 28th January 2015 to restrict my visa sponsorship certificate to twelve months instead of 3 years because of my depression driven disability and or to cover employment tribunal case instead of basing it on my permanent contract with the Campuses was the case before I raised a grievance and made a claim at the employment tribunal.*

We have dealt with this point at paragraph 48 above. In respect of this particular complaint we have differed on a point of construction with Ms Gordon Walker who construes the complaint as being one of reasonable adjustments (a complaint which we have already dismissed pursuant to the submission of no case to answer). We have construed the facts as giving rise to a complaint of disability related discrimination contrary to S:15 of the Equality Act 2010. The Claimant's representative has not been able to assist us a great deal with an understanding of how the point is put but it appears to be based in error to an extent. The misunderstanding appears to be that the Claimant considers the fact that she is a permanent employee obliges the Respondents to sponsor her stay in this country permanently. The position is of course the conventional one and the Claimant's contract is determinable by notice either given by her or by the Respondents. She had at this time been absent for two continuous years. The reality of that was that it was well within the range of responses open to a reasonable employer to consider dismissal on grounds of capability. Mrs Wolf (HR) has given evidence that she had formed the opinion that

the resolution of these claims before us might resolve the question of the Claimant's long term absence.

94. The Respondent has statutory obligations in respect of sponsorship which Mrs Wolf is obliged to observe. Sponsors are licensed and from time to time are inspected by compliance officers. Mrs Wolf had discussed the Claimant's absence with a compliance officer in 2014. A sponsor can only continue to sponsor a particular employee whilst they remain in their employ. Mrs Wolf explained that the Respondent (at that) time would observe the status quo until the Tribunal hearing that was at that time scheduled but that what lay beyond it was uncertain. The advice she received on that occasion was to only extend sponsorship to a point just past the expected hearing date. That was some 9 months hence and he agreed that a twelve month extension would be satisfactory in those circumstances. As we have noted this case has been delayed by the Claimant submitting further claims, an appeal on a preliminary matter, non compliance with orders and a stay. In any event that hearing did not go ahead when planned. In 2015 the Claimant again sought an extension and again Mrs Wolf sought guidance from the Home Office. She did not find it particularly helpful but it certainly did not contradict the advice she had received previously. She applied it for a second time again extending sponsorship for 12 months that being the longest period for which there was any certainty of continued employment. It as this juncture the second misunderstanding in the Claimant's argument (as put) arises. The Respondent does not have an obligation to retain the Claimant in employment pending the cases being heard. It is a decision that they made at the point of each renewal. We are entirely satisfied that the Claimants actions fall within S:15(1) b of the Equality Act 2010 extending the sponsorship for only for such time as there was some certainty was a proportionate means of achieving a legitimate aim. That aim was to achieve compliance with the statutory regime. We dismiss this complaint.

95. The Complaint at 4(c) is in these terms:-

'that on the 2nd February 2012, 23rd February 2012, 5th April 2012 and the 3 May 2012 T a pupil verbally abused her stating 'impatient bitch' 'I hate you' 'everyone hates you' 'no one wants you here' go back to your country' go die in a hole'.

As we have indicated in paragraph 53 above the Claimant has made no mention of an incident on the 5th April 2012 in her witness statement and could not explain in cross examination why she had referred to this date in her complaint. We have found no evidence that the Claimant at any time referred to a complaint in the terms she has referred to in this complaint. T is a child with problems, she is in care, did not enjoy a good home life and presented behavioural problems to many if not all of the teachers who taught her. Dealing with difficult children like this was part of the Claimant's job. The Claimant addressed three e-mails to Mr Davies referring to her. They are at

pages 537, 542 and 593 of the bundle. They are in essence reports of this pupil's disruptive behaviour in class. The first e-mail does not give any indication that the behaviour is directed towards the Claimant because of her race and does not give any indication that the claimant was not in control of the situation. The second again does not state that she felt personally threatened and in this email makes the first and only reference to race being relevant by making reference to the comment 'go back to your own country'. Given that this was the first and last reference we accord with Ms Gordon Walker's submission that the Respondent was not on notice and thus this complaint fails on that ground. We note for the sake of completeness that the Respondents were pro-active in dealing with these matters. They removed T from the Claimant's class, they contacted her carers and they excluded T for a period. At page 593 the Claimant indicates that she was aware of the exclusion.

96. S:5 is a complaint of unlawful deductions from wages it is in like terms to the complaint at 19n). We have set out the facts of the matter in paragraphs 39 -42 above. The Claimant did not provide the requisite medical evidence to establish an extension of sick pay. The provisions were correctly applied by Ms Wolfe and there was no deduction from the Claimant's wages. This complaint is dismissed.

97. At 6(f) the Claimant complains that:-

On the 11th July 2013, R upheld a decision of a secret grievance panel meeting.

This is the first of two remaining complaints of victimisation. It can be disposed of very briefly. At paragraph 357 of her witness statement the Claimant admits receiving from a Ms Farrow the Clerk to the governors) an invitation to attend the grievance hearing meeting on the 11th July 2013. That was evidently not a secret meeting. At paragraph 383 she refers to pages submitted in support of the appeal and concludes from this that there must have been some other hearing (albeit that it was patently not the hearing of the 11th July). At page 1170 we can see that Ms Farrow issued a letter of explanation she had, in error used the wrong template on the Respondent's computer system to generate the letter. There was no other secret hearing. This complaint fails on its facts.

98. This leaves us with 6(i):-

A complaint that Mr Williams stated he was aware that the Claimant was going into capability. This she has gleaned from papers relating to the grievance procedures. This is a matter which the Claimant has gleaned from the minutes of the appeal hearing relating to her grievance. She has mis-quoted the reference. Mr Williams quite clearly indicated that because she was resisting efforts to attain the required standard there was a potential for the matter to be addressed through the formal performance

management procedure. No steps had been taken in that regard it was wholly a matter of a potential means of progressing the matter. It was an accurate and truthful statement of the position.

99. Thus we dismiss this claim in its entirety.

100. As we indicated at the conclusion of our decision on the submission of no case to answer Rule 76(1)b of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 obliges us in cases where we have concluded that a claim had no reasonable prospect of success to consider making an order for costs. We were satisfied that the grounds for so doing exist in respect of the matters struck out at that point and we reach the same conclusion in respect of the remainder of the case. In essence the Claimant has taken ordinary and explicable occurrences and has formulated complaints about them which rest substantially on her own misstated and inaccurate accounts. However we have discretion as to whether to make that order and on the basis that the Respondent has chosen not to pursue their application for costs we make no order.

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Employment Judge D Moore

Date: 12/12/2017

Sent to the parties on: .....

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For the Tribunal Office