



EMPLOYMENT TRIBUNALS

Claimant: Ms Pamela Tipchu
Respondent: London Borough of Redbridge
Heard at: East London Hearing Centre (by Cloud Video Platform)
On: 12 and 13 November 2020 and
(in chambers) 21 December 2020
Before: Employment Judge Jones
Members: Ms P Alford
Mr P Quinn

Representation

Claimant: In person
Respondent: T Wilding (Counsel)

RESERVED JUDGMENT

The claimant's complaints fail and are dismissed.

REASONS

1. *This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was V: cloud video platform. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents referred to were included in bundles of documents sent to the Tribunal by both parties together with their witness statements.*

2. The Claimant brought a complaint of pregnancy discrimination related to the Respondent's decision to reduce the number of classes on her timetable. It was also the Respondent's case that the timetable changes were related to the Claimant's performance and had nothing to do with the Claimant's pregnancy.

3. The Claimant had initially also brought proceedings against 4 individually named Respondents but those complaints were withdrawn at the preliminary hearing conducted by REJ Taylor on 29 June 2020. The only Respondent to this claim was the school's governing body.

Evidence

4. There was an agreed bundle of documents. There were witness statements from the Claimant and from Bradley Mizon, Learning Leader for Science; Deborah Emmanuel, Deputy Headteacher and line manager for Science; and Jane Waters, Executive Headteacher, for the Respondent. The Tribunal had live evidence from all the witnesses.

5. The Tribunal made the following findings of fact from the evidence in the hearing. The Tribunal has only made findings of fact on those matters that relate to the issues in this case.

Findings of fact

6. The Claimant was employed as a science teacher on 1 September 2012. On 1 September 2016, she was appointed as Head of Biology. In her new job description, the purpose of the job was stated as follows:

'To provide the highest quality professional leadership and management of Key Stage 5 Biology, promoting a secure foundation from which to achieve the highest possible standards for all students'

7. Some of the key tasks and responsibilities were - to lead on the planning, delivery and assessment of Biology schemes of learning at Key stages 3, 4 and 5; to take the lead role in the review, evaluation and revision of schemes of learning for Biology; to ensure that they engage students in rigorous, appropriate and creative learning; to act as a role model of exemplary practice for colleagues with the Department; to lead performance management reviews and line management within the department as directed by the Learning Leader; and to monitor the educational progress of all students within Key stage 5 Biology including to use and interpret performance data to evaluate outcomes, set student targets and devise and implement intervention strategies.

8. Among the objectives for the role, the Claimant was expected to contribute to the development of the vision for the Department by promoting and contributing to the ethos of Seven Kings School, demonstrate excellent interpersonal and communication skills, regularly review her own practice including the setting personal targets and taking responsibility for her own personal development, and manage her own workload and that of others to allow an appropriate work/life balance.

9. Seven Kings School is a diverse through school providing both primary and secondary education to pupils and maintained by the London Borough of Redbridge. According to the Respondent, it is consistently rated as outstanding by Ofsted, is a recognised teaching school heading up and provided support to

some 25 schools within the alliance. It has a mixed workforce, consisting of 101 female staff and 35 male staff, with a high representation of female staff in senior positions, a large percentage of whom are the senior management team. It is a teaching school, which means that it trains newly qualified and junior teachers and supports them in their career development.

10. In her role as Head of Biology/Leader of Key Stage 5 Biology, the Claimant reported to Mr Mizon, the Learning Leader of Science; and was line managed by Krishna Thaker, the Associate Assistant Head. There were 16 teachers in science plus 3 technicians. At Key stage 5, there were three smaller teams for Biology, Chemistry and Physics. There were over a hundred A-level Biology students and over 100 A-level Chemistry students.

11. As Learning Leader in Science, Mr Mizon's responsibility was to ensure that the respondent had the best placed teachers teaching students to get the best out of them. It was also his job to provide vision and leadership to the Department.

12. In 2015, the Claimant took part in a Step Up to Leadership development course.

13. In 2015, the structure and specifications of several subject at A-level changed. All parties agreed that this had a knock-on effect on students results and many subjects dropped their ALPs grading and suffered in terms of the grades that students secured. Everyone had to adjust to the exams being evaluated and marked in a different way.

14. In 2016, the Claimant attended a MOTO (Moving to Outstanding) residential course to support her teaching performance. She also took part in a leadership course called Contender Charlie.

15. In the Claimant's performance management review of 2016/17, as Leader of Biology, the Claimant was set targets to improve the quality of lessons across the Key Stage 5 team and to maintain the results in line with school expectation, given the new exam specification. The evaluation form in the hearing bundle stated that the students were not on track to make expected progress in line in school expectations and that they have not met their targets. However, it was noted on the form by her line manager, Ms Clift-Matthews, that it had been a difficult academic year, the Claimant having taken up the role of Key Stage 5 (KS5) Biology lead in September 2016 and that the department lost many strong teachers from the team. At the time that the assessment was done, they had not been enough evidence collected to show how she had impacted the quality of teaching and learning within the Department.

16. She was also put on the Permission to Lead course and given a coach to support her in her leadership development. The coach was an outstanding teacher and a Key Stage 5 leader in English. This was the Respondent's attempt to embed the skills that the Claimant had been exposed to, on both teaching and leadership courses. However, the Claimant failed to engage with or develop a successful working relationship with the coach.

17. The school regularly used 1:1 coaching to support staff in improving their practice and leadership. There were over 40 coaches within the school. In Miss Waters' experience, although this was an expensive way of promoting improvement and development of teaching staff, it was usually successful. Everyone assigned a coach is expected to engage with the coach and chase them up for support with their development.

18. By the start of the academic year 2017/2018, out of the subjects that the respondent offered at A-level that had been affected by the specification change in 2015; Art, Biology, Chemistry and Physics had still not improved. The A-level results were poor. As a result, the headteacher took over the line management of Science and of the acting Learning Leader of Science to further support improvement in the three subjects, Physics, Chemistry and Biology.

19. The Claimant's appraisal for the academic year 2017/18 showed that she did not meet the targets that year due to the Key Stage 5 underachievement. In answer to the question "*did students make expected progress in line with school expectations*" the assessor had ticked "*no*" and in answer to the question *whether (she) had met targets*, the assessor had ticked "*no*".

20. Miss Waters introduced further methods to support the Claimant and the other leaders in the three sciences. She conducted learning walks which offered the the senior leadership team the opportunity to observe the standards within the classroom and to give immediate feedback and training to teachers. She also set up monitoring and assessment/evaluation meetings with the subject leaders to check their plans were robust, were happening and were impacting on results. She conducted these meetings on a regular basis with the Claimant and separately, with the leaders in Physics and Chemistry.

21. Eventually, in 2018/2019, it became apparent that coaching was not the right strategy for the Claimant and so Krishna Thaker, Lead Practitioner for Science was asked to support the Claimant and they developed a working relationship. Ms Thaker had been Learning Leader of Science and then Specialist Leader in Education the other schools in raising their science results and had supported the Leader of Chemistry in raising their results so it was reasonable for the school to believe that she had the expertise in learning and teaching and sufficient knowledge of Science to be able to provide effective support to the Claimant in raising her standards as a teacher as well as a leader.

22. The Claimant attended the Inspirational Middle Leader course.

23. In the hearing, the Claimant accepted that the A-level results in 2018 were also poor.

24. In September 2018, the Respondent lost its Outstanding grading for the 6th Form. The Ofsted report stated *that 'The variability in the quality of teaching, learning and assessment, and, therefore, outcomes, between some subjects in the sixth form is a key area to improve further'*. The Ofsted inspectors raised questions about assumptions not being tackled and the accuracy of self-evaluation in the Science department and how that compared to the requirements of the new specification. The focus in the removal of the Outstanding status was the performance of the Science departments.

25. On Tuesday, 2 October 2018, Mr Mizon and Ms Waters were conducting a learning walk observing all Biology lessons in KS5 during the relevant period. They were in another classroom when the Claimant walked in to get some books and had a conversation with the teacher. Ms Waters and Mr Mizon went to the laboratory where the Claimant was meant to be teaching. The pupils were there but the Claimant was absent. When the Claimant returned, she was carrying a cup of hot soup. This was against the Respondent's health and safety policy for working within a laboratory and the school as a whole. The Claimant had not been teaching the lesson as she had been out of the room. When the students were asked about their understanding of the work, they complained about the lack of clarity regarding the test they were supposed to be sitting and the Claimant's failure to teach the lesson and revise with them in preparation. There was also a safeguarding issue which arose in large part because the Claimant did not follow the seating plan for the class. This had an adverse effect on two students in the class.

26. Ms Waters and Mr Mizon met with the Claimant on the same day to discuss the issues that arose from the leadership team's observations on the learning walk. A letter to the Claimant dated 8 November 2018 recorded that they discussed the lack of structure or teaching with the lesson, the Claimant's decision to leave the lesson, her decision to return to the lab with a hot drink, the need for structure within the lesson to ensure students feel safe and that learning takes place in line with the school's expectations. It also noted that they discussed the student voice regarding safeguarding concerns. The Claimant was informed that Mr Mizon will continue to monitor these issues and that she should seek the support of colleagues or Ms Waters whenever her days are overwhelming.

27. The Claimant accepted in the meeting, that her standards had lowered. In the hearing, she confirmed that the management instruction was accurate and that they had discussed these matters in the meeting. Although she denied that a student had raised a safeguarding concern with her in the lesson, it is likely that this had happened as there was no query from her arising when she received the letter dated 8 October 2018. The written instruction advised the Claimant to ask for any support she needed as a failure to demonstrate an acceptable standard of work and failure to meet these expectations could lead to the need to implement a procedure.

28. As these were serious incidents, the Respondent's leadership team continue to monitor the situation closely. In evidence, the Claimant accepted that the Respondent had raised issues with her over her teaching practice and that there were negative aspects to her appraised performance. She accepted in evidence that the A-level results should have improved over the three years she was the Lead for Biology but had not. She also accepted that during the academic year 2018/19, she had various monitoring and evaluation meetings with Ms Thaker, Ms Emmanuel and Ms Waters regarding intervention and other strategies. She confirmed that she received feedback and support to try and improve her teaching and the KS5 results.

29. Deborah Emmanuel took over line management of the Science department, including the Biology Department, from Ms Waters. She returned to

work from maternity leave in January 2019 and took over line management of Science in April 2019.

30. In May 2019, the Respondent continued to be concerned about the performance of its Science department so it asked the School Improvement Partner designated by the London Borough of Redbridge to review it. Ms Emmanuel's evidence was that the Claimant was teaching KS5 Biology at the time of the review. During the 10minute observation, it was evidence that the students' understanding of what was expected of them was mixed as some understood what they had to do while others were confused as they had not understood the Claimant's initial explanation. The School Improvement Partner noted that the Claimant had not explained '*speciation*' accurately. It was also noted that there was a lack of consistency in the way in which the students organized their folders and conducting independent study. This demonstrated a lack of rigour in the class.

31. Because of this observation, Ms Emmanuel and Ms Thaker who by now was the Claimant's line manager, met with her to discuss her poor teaching performance as demonstrated by the observation and what changes she needed to make. They suggested things that the Claimant could do to improve and develop her teaching practice.

32. In June 2019 the Claimant applied for the advertised role at the Respondent of Learning Leader in Science. The Claimant was not shortlisted for interview as her application showed a lack of experience, granular detail and the strategic vision required for the role. On 9 July, Ms Thaker and Ms Emmanuel met with the Claimant to give her feedback and explain why she had not been successful and was not going to be interviewed for the job. It was at this meeting that she told her managers that she was pregnant. It was agreed between the parties that they responded positively to the news. Ms Thaker and Ms Emmanuel told the Claimant that the Respondent was also looking to advertise for a more junior role in Science, which would be advertised in the summer term and that she could apply for the post.

33. Later that day, Ms Thaker and Ms Emmanuel informed Ms Waters of the Claimant's pregnancy and the Claimant spoke to Ms Waters about it and her plans for her family. Ms Walters was delighted for her. On Wednesday 10 July, the Claimant sent an email to the whole of the Science department informing them of her pregnancy and that her baby was due in January 2020.

34. On or around 15 July, the Claimant has given copy of the proposed weekly teaching timetable for the academic year beginning September 2019. In it, the Claimant was shown as teaching Biology to both Year 12 and Year 13, with 6 classes in Year 13.

35. During the summer holidays, on 27 August, the Claimant emailed Mr Mizon to ask for a copy of the whole department timetable so that she could use it to make her plans for the Biology department. Mr Mizon informed her that his current one was out of date as there were changes that he needed to make to it. The Claimant responded to say that she would wait until they were back at school.

36. 14 August 2019 was A-level results day. Mr Mizon, Ms Emmanuel and Ms Waters were at school. The expectation had been that results for A-level Biology would have improved along with the other Sciences as the Respondent had put in similar strategies for all three departments. The Respondent was disappointed to see that Biology was the only A-level subject to have achieved an ALPS 7 for the third consecutive year running. Chemistry had improved to an ALPS 6 and Physics had improved to an ALPS 5. A-level Biology was now the only subject in Science at the Respondent, to achieve in the bottom 25% nationally for the third consecutive year running. It was the lowest achieving subject of the 8 subjects/departments where the new A-level specification had previously been introduced.

37. In the 3 years prior to the Claimant's promotion to the position of Head of Biology, the Biology ALP grade at the Respondent, improved from 4 to 3. ALPs measure the progress and outcomes for students. Under the Claimant's leadership, it fell to ALP 7.

38. Miss Waters, Miss Emmanuel and Mr Mizon met during the day on 14 August. They were concerned about the situation. They felt that action needed to be taken and that they needed to find out what had gone wrong. Mr Mizon was tasked with the job of assessing the results to work out what needed to be done to halt the Respondent's poor results in Biology. He conducted a detailed analysis of the A-level results between 2015 and 2019. We had the data produced by that analysis in the bundle of documents.

39. The data shows that classes taught by the Claimant achieved ALPS 8 whereas classes taught by the other teacher, on average, achieved ALPS 5 and 6. The data was in the hearing bundle. It showed that the students taught by the Claimant achieved an average ALP score of 8 in 2018/19 and 7 in 2017/18 whereas the students taught by her colleague, achieved an average ALP score of 6 in 2018/2019 and 5 in the previous year, 2017/18. That meant that she would be doing 60% of the teaching for that class and she would have taught Paper 1. This allowed the Respondent to assess the individual performance of both teachers. Although they both taught Year 13 classes, the Claimant was the lead teacher for all three of the classes that achieved ALP scores of 7 or 8 in 2019/19. The students taught by the Claimant's colleague achieved 7% better than those taught by the Claimant. They both delivered the same course content to the students.

40. Having studied the content of Mr Mizon's analysis of the exam results, Ms Waters decided that given that this was the third year of poor results, it would be in the best interests of the new Year 13 students that the Claimant be removed from teaching Year 13 A-level Biology classes and that those classes should be given to the teacher who had achieved better results. The other teacher had also achieved the highest attainment in Biology in the school for the last two academic years. She suggested to Ms Emmanuel and Mr Mizon at a meeting in her office on the afternoon of 14 August. At the same time, she also suggested that Mr Mizon should come off A-Level classes in Chemistry. Mr Mizon agreed that this would be in the best interests of the school's pupils. This was a decision of the Learning Leader in Science and not a decision that the Claimant would have been involved in.

41. Ms Waters had been reluctant to do this previously and had stuck to her mantra that all teachers have it within them to improve. Her evidence was that she would not move a teacher from a class straightaway but would support them to improve while they continued to teach the class. But she was clear that the pupils and their life chances must come first.

42. The effect of Ms Waters' decision was that the Claimant would be removed from teaching Year 13 Biology. She would continue to be the Head of Biology and she would continue to teach Year 12 Biology. There would be no effect on her salary or her status within the school.

43. The Respondent went through this process for other teachers in other disciplines in the school. Biology was not the only area affected. Although the results for A-level Chemistry improved, the Respondent wanted to optimise the progress made and Ms Waters decided to remove Mr Mizon from teaching A-level Chemistry at Year 12. The deputy head of Science who was also Head of Chemistry, took that class and Mr Mizon took a Year 10 Separate Science class from her. In all, eight members of staff had their timetable altered at the beginning of 2019 academic year across all three Key Stages, due to exam results.

44. This was also not the 1st year that the Respondent had changed teacher allocations to classes and year groups because of examination results. In 2016/17, Head of Biology, the Claimant, in agreement with Mr Mizon, took another teacher off A-level classes because of her poor results.

45. On 28 August, Mr Mizon had a conversation by what's app messaging with Ms Thaker in which he told her that he would be going in on Friday, 30 August to make changes to the timetable. We had evidence of their conversation in the hearing bundle. The changes to the timetable at the beginning of the academic year 2019, including taking the Year 13 Biology off the Claimant's timetable, were made on Friday 30 August.

46. The 1st day back at school was on Monday 2 September 2019, which was an INSET day. This this meant that the pupils were not in school and that staff would spend most of the day in training, completing admin tasks and preparing for starting classes the following day. There was a whole school meeting in the morning. Mr Mizon had planned to have a conversation with the Claimant and give her new timetable as he was aware that it would be different from the one that she had seen in July. He did not have time to do so as the Claimant went on to the Respondent's computer system shortly after the meeting ended and discovered the timetable changes. The Claimant's colleague who had been given the Year 13 classes was with her at the time.

47. Mr Mizon immediately asked the Claimant to come to his office for a meeting. There is a dispute between the parties as to what Mr Mizon said to the Claimant in that meeting. We find it likely that he told the Claimant that the timetable changes had been made due to the poor results of the Biology department and her own poor individual results. He was clear in the meeting that the reason for the change was that the school believed that other members of staff would improve the outcomes for A-level Biology students and therefore, it was the best way to move forward for everyone. He confirmed that the Claimant

will still be Head of Biology and that she was still teaching Year 12 Biology. We find it highly unlikely that he told the Claimant that reason change was because of her pregnancy. It was the Claimant who expressed her view that the change had been made because she was pregnant, which Mr Mizon refuted.

48. The Claimant produced notes of the meeting of 2 September 2019. We find that those notes were not contemporaneous and that they were written from the Claimant's memory, sometime after the meeting. It is likely that they were influenced by her upset about what had happened. The Claimant accepted in the hearing that she had amended the notes after she first wrote them to include her reflections on the meeting and subsequently to add her further reflections as the dispute with the Respondent continued. The notes contain a lot of emotion and detail of the Claimant's feelings about the changes. They were not disclosed to the Respondent until the grievance process. They do contain some of what was said in the meeting but, they are not an accurate or reliable record of the discussion the Claimant had with Mr Mizon on 2 September.

49. In the hearing, she agreed that Mr Mizon told her that the reason for the timetable change was due to the poor A-level results for the academic year 2018/19 in addition to the previous years.

50. The Claimant was unhappy with the Respondent's decision that she was no longer teaching A-level biology to the Year 13 classes. She expressed that unhappiness in the meeting. We find Mr Mizon did not say that she had been removed from the classes to enable a smooth transition following her maternity leave. We find that such an arrangement would not have made sense as it did not address the needs of the Year 12 students who the Claimant also taught. In her notes, the Claimant shows that she reflected on the issue of disruption in relation to her going on maternity leave but that was recorded under a section headed '*Final thoughts upon reflection of this meeting*'. Mr Mizon apologised for the way the changes had been handled and stated that he had intended to speak to her earlier but had not had a chance to do so before she discovered the changes. He also stressed that the decision had been made in the best interests of pupil outcomes.

51. Even though she was Head of Biology, the Claimant had not highlighted any issues in her performance to the Respondent or asked for assistance in improving her teaching practice. Despite this being the 3rd consecutive year of poor results, the Claimant did not appear to appreciate that there was an issue with the A-level results and, with the results achieved by the classes she personally taught. She had not done any analysis of the A-level results as would be expected of her as head of Biology.

52. Mr Mizon's outlined the following changes to the Claimant on 2 September. That two Year 13 A-level Biology classes, one hour of Year 8 and 1 hour of Year 10 would be removed from her timetable. These would be replaced by three Year 7 classes, one hour with Year 9A and one Year 12 A-level biology class; which would be added to her timetable. These changes resulted in 8 hours of classes being removed from the Claimant's timetable and 8 hours being added to it.

53. The new timetable on page B17 of the hearing bundle was given to the Claimant on 3 September. The other changes had already been made. It is likely that the handwritten addition of 9A Science on Wednesday, was done on 4 September.

54. The Claimant produced notes from meetings on 3 September and 4 September. We find that there was no pre-arranged meeting on 3 September but there were discussions with the Claimant as the Respondent sought to cover the classes and balance the timetables between all the teachers for that academic year. The Claimant was not asked to organise cover for the Year 13 classes as she had just been removed from teaching them and had expressed her upset about that decision. She had not been asked to teach the Year 12 class as there was another member of staff, a new A-level teacher with more experience, who's timetable allowed the Respondent to place her in the year 12 class that required cover.

55. On 4 September, there was also no pre-arranged meeting. The Claimant asked Mr Mizon whether he had a minute, to which he answered yes. When he walked into the Science staff room, he saw that Kashif Mallick, a former trade union official was waiting. Mr Mizon asked Ms Thaker to attend so that he could have a witness present as he was not sure what was going to be discussed. He believed that as the Claimant was not a union member, Mr Mallick was attending as her friend. However, when they started talking, he felt that Mr Mallick's tone changed and he began to act as a trade union representative. It is likely that in this meeting the Claimant expressed her hurt and upset at the changes made to her timetable, the way that it had been handled and the impact that it had on her, both emotionally and mentally. It is likely also that she became upset during the meeting. Ms Thaker apologised to the Claimant for the way in which the timetable changes had been handled and stated that it had not been Respondent's intention to upset her but that the changes were justified. The Claimant was reminded that she was a valued member of the school.

56. We find it highly unlikely that either Mr Mizon or Ms Thaker told the Claimant that the timetable changes had been done to make life easier for her as a pregnant employee.

57. The Claimant was off work due to illhealth between 6 and 13 September due to '*work related stress*' as indicated on the GPs fit note in the hearing bundle. Term began on 4th September.

58. On 18 September, the Claimant met with Ms Emmanuel so that she could conduct a risk assessment for the Claimant, as a pregnant employee. Once again, the Claimant has produced notes from that meeting which she describes as minutes but which during the cross-examination, she agreed were not minutes but were notes that she made after the meeting. Ms Emmanuel was not aware that she was going to make a note of their discussions.

59. Ms Emmanuel was aware that the Claimant had asked for details of the Respondent's grievance policy and procedure. We find that in their meeting, Ms Emmanuel asked her about her grievance. The Claimant stated that that she believed that the changes had been made because she was pregnant and that this was unfavourable treatment. Ms Emmanuel confirmed that the Claimant's

pregnancy had nothing to do with the timetable changes and that it was because of the poor performance which was demonstrated by the ALP results. Miss Emmanuel advised her of the Respondent's grievance procedure. She stated that any hurt caused to the Claimant by the changes had been unintentional and she agreed that the way in which the Claimant had been notified of the timetable changes had been badly handled.

60. On 1 October 2019, the Claimant met with Ms Waters to discuss her grievance. Ms Waters reiterated the Respondents position that the reason for the change was because of the exam results. Steve Carter (HR) attended the meeting to explain the grievance procedure that the Claimant should follow if she was not satisfied with Ms Waters' response.

61. On 7 October, Ms Waters wrote to the Claimant to notify her that the Respondent was about to advertise for a Lead Practitioner (Biology) for the teaching school to cover the Claimant's maternity post in the 1st instance. The Claimant was informed that she can apply for the post, if she wanted to. In her response, the Claimant confirmed that she thought that having this post was a good idea and she thanked Ms Waters for letting her know about the advert.

62. On 10 October 2019, the Claimant raised a written grievance to the chair of governors. As the decision to remove her from the timetable had been made by the headteacher, it was appropriate to raise her grievance with the chair of governors. The grievance centred around the changes made to her timetable. She alleged that there had been pregnancy and maternity discrimination and that the Respondent had breached the duty of implied mutual trust and confidence in her employment contract. She highlighted that they had been no attempt to communicate the changes to her prior to 2nd September and she outlined how she found out about the changes. She queried why she was the only teacher who had been removed from teaching year 13 classes when they had been poor performance at A-Level Biology which is taught by other teachers in addition to herself. She stated that she had been told that the decision had been made to minimise disruption to pupils, to allow smooth transition to other teachers to oversee A-level Biology on the start of her maternity leave and to reduce her workload and physical and mental stress as a pregnant employee. She stated that the way in which the matter had been handled affected her confidence in the classroom, motivation and her trust in the school. She felt that the allegations of poor performance had made her feel powerless and that it had been hurtful to know that the school that she had been loyal to and proud to be a member of over the last 7 years have made her feel demotivated and devalued due to her pregnancy.

63. The Claimant met with the chair of governors on 5 November 2019. Mr Carter, the Respondent's HR adviser also attended as did Mr Malik to assist the Claimant. On 15 November, the chair of governors wrote to the Claimant with an extensive detailed response to her grievance. In that response, the chair of governors stated that the evidence that she had seen was that the timetable had been changed in late August following the examination results. The governors believed that if the timetable had been changed in response to the Claimant's pregnancy, the changes would have happened before the A-level results were known and the fact that it was changed after the A-level results came out, added

weight to the school's assertion that it is because of the poor performance and unrelated the Claimant going on maternity leave during the academic year.

64. The chair noted that the school had been able to produce examples of teachers in many departments, including Science who had been removed because of low ALP scores. The school had been able to explain to the chair of governors, why the teachers on the list provided by the Claimant had continued to teach Year 13. The governors were convinced that the data showed that the Claimant's ALP results but have been consistently poor between 2016 and 2019. This had not been replicated in any of the examples of other staff that the Claimant had produced in her list.

65. The chair's decision was not to uphold the Claimant's grievance or her assertion that she had been discriminated against by Ms Waters, Mr Mizon, Ms Emmanuel or Ms Thaker by their decision to remove her from teaching classes that Year 13. The governors found no evidence that substantiated the Claimant's view that anyone deliberately or intentionally made the decision to remove the Claimant from teaching Year 13 classes because she was pregnant or would be going on maternity leave in the new academic year.

66. The Claimant was informed that she could appeal to the governors committee and that she needed to do so in writing within 10 school days of receipt of the decision letter. The Claimant did not pursue the process any further but issued the claim within the employment tribunal.

67. The Respondent provided some statistics for the Tribunal in relation to staff who have been on maternity leave over the last 5 years. We were informed that the school has 2200 pupils with 1500 being in the secondary school. There are 250 members of staff of which 80 are teaching staff. There are 500 pupils in the 6. There were two other teachers pregnant at the same time as the Claimant. One teacher was the Learning Leader for Sociology and Psychology who taught her Year 13 classes right up until the day she left to start her maternity leave. She has returned to the school. The second teacher was the SEN teacher who interviewed for her post of Leader for Year 7 a week before she began her maternity leave. She was appointed to the post.

68. At the Tribunal's request, the Respondent produced figures for other staff who had taken maternity leave between 2017 and 2020. During that period the Respondent had 23 members staff on maternity leave. At the time of the hearing, 21 of those members of staff were still employed by the Respondent. Of the two who were no longer employed, the Claimant resigned and the Learning Leader of Science returned to school at the end of her maternity leave but then found employment at another school, which was her reason for leaving the Respondent's employment.

Law

69. The Claimant's complaint was of pregnancy and maternity discrimination contrary to section 18 of the Equality Act (EA) 2010 as follows:

“(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably –

- (a) because of the pregnancy, or
- (b) because of illness suffered by her as a result of it.
- (3) A person (A) discriminates against a woman if A treats her unfavourably compulsory maternity leave; and
- (4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.
- (6) The protected period, in relation to woman's pregnancy, begins when the pregnancy begins, and ends (if she has a right to ordinary an additional maternity leave) at the end of the additional maternity leave or if earlier, when she returns to work after pregnancy."

70. The burden of proving the discrimination complaint rests on the person bringing the complaint. Section 136 of the Act states that:

"If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the court must hold that the contravention occurred [but] if A is able to show that it did not contravene the provision then this would not apply."

71. There is a substantial volume of case law that provides guidance on the burden of proof. Cases such as *Igen v Wong* [2005] IRLR and *Madarassay v Nomura International Plc* [2007] IRLR 246.

72. In the case of *Laing v Manchester City Council* (EAT) ICR 1519 the EAT spelt out how the burden of proof provisions should work in practice:

"First, the onus is on the complainant to prove facts from which a finding of discrimination, absent an explanation can be found. Second, by contrast, once the complainant lays that factual foundation, the burden shifts to the employer to give an explanation. The latter suggests that the employer must seek to rebut the inference of discrimination by showing why he has acted as he has. That explanation must be adequate, which as the courts have frequently had cause to say does not mean that it should be reasonable or sensible but simply that it must be sufficient to satisfy the tribunal that the reason had nothing to do with race."

73. In the same case tribunals were cautioned against taking a mechanistic approach to the proof of discrimination in following the guidance set out above. In essence, the claimant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent had committed an unlawful act of discrimination against her. The tribunal can consider all evidence before it in reaching a conclusion as to whether or not a claimant has made a prima facie case of discrimination (see also *Madarassay*).

74. In every case the tribunal must determine the reason why the claimant was treated as she was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572: “this is the crucial question”. It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment then that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial.

75. *Harvey* advised that a claimant must establish more than a difference in status (e.g. sex) and a difference in treatment before a tribunal will be in a position where it 'could conclude' that an act of discrimination had been committed (*Madarassay*). There does not have to be positive evidence that any difference in treatment was on a prohibited ground in order to establish a *prima facie* case, but even if the tribunal believes that the respondent's conduct requires explanation, before the burden can shift there must be something to suggest that the treatment was due to the claimant's possessing a protected characteristic.

76. However, as Elias J stated in the case of *Laing*, in some cases it is still appropriate to go right to the heart of the question of whether or not the protected characteristic was the reason for the treatment.

“The focus of the tribunal’s analysis must at all time be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a tribunal to say, in effect, ‘there is a nice question as to whether or not the burden has shifted, but we are satisfied here that, even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race’. Whilstit will usually be desirable for a tribunal to go through the two stages suggested in Igen, it is not necessarily an error in law to fail to do so.”

Applying law to facts

77. The tribunal will follow the list of issues agreed between the parties and set out in the case management minutes from the hearing conducted by Regional Employment Judge Taylor on 29 June 2020.

Did the respondent treat the claimant unfavourably by doing the following thing: removing teaching responsibilities for Year 13 classes from her, on or about 15 to 30 August 2019 on the alleged grounds of poor performance?

78. It is this tribunal's judgment that the Respondent did remove teaching responsibilities for Year 13 A-level Biology from the Claimant, on or around the 30 August 2019.

79. The Tribunal does not agree with the Claimant that this was to her detriment. The Respondent frequently replaced or changed teacher allocations to classes and Year groups, following exam results. After the exam results were published in August 2019, eight members of staff had their timetables altered, across all three Key Stages. That included Mr Mizon, Learning Leader in Science who had Year 12 A-level Chemistry class removed from his timetable because the headteacher considered that the Deputy Head of Science, was better placed to take this class as she was a stronger A-level Chemistry teacher than he was. Mr Mizon was given a Year 10 Separate Science class instead. He did not consider that this was a detriment to him.

80. It is this tribunal's judgment that on the publication of the A-level Biology results in August 2019, Miss Waters, the headteacher reflected on the continuing decline in the school's results and determined that it was appropriate to remove the Year 13 classes from the Claimant and give her other classes instead as the Claimant's teaching practice had not improved despite the support put in place for her. The pupils who attained the poorest A-level Biology results had been in the Claimant's classes.

81. The Claimant continued to teach the same number of classes. She continued in her position as Head of Biology and her wage was unaffected by this change. It did not affect her standing within the school as she was one of many teachers who had their timetables changed following the publication of the exam results. There were no other procedures implemented along with this change in the timetable. It is therefore the tribunal's primary judgment that the removal of the Year 13 A-level Biology classes from her timetable at the beginning of the academic year 2019/20, was not unfavourable treatment towards the Claimant.

Did the unfavourable treatment take place in a protected period?

82. The Claimant considered that she had been unfavourably treatment by the removal of those classes from her timetable.

83. It is our judgment that this happened within the protected period as the decision was made within her second trimester.

Was the unfavourable treatment because of the pregnancy?

84. The Claimant was pregnant at the time that the decision was made and implemented. However, the Claimant failed to prove any facts from which the tribunal could infer that the reason for the change in her timetable was her pregnancy.

85. The Respondent accepted that the way in which the Claimant found out about the timetable change was unfortunate and not how it had been planned. Respondent understood that the way in which the Claimant found out about the change was upsetting for her. It was not the Claimant's case that the Respondent meant for her to find out about the change in timetable in that way, because of her pregnancy. If it is, we do not uphold such a complaint. In our judgment, the way she found out about the timetable change was not planned,

was because of everyone being busy and because the Claimant went on to the computer and looked at the timetable before Mr Mizon had an opportunity to talk to her about it. The fact that he had not yet done so was not because of her pregnancy or her impending maternity leave.

86. In our judgment, there had been issues with the Claimant's teaching over the previous three years and this had been commented on in her appraisal forms. The evidence was that there were poor ALP grades for Biology in 2017, 2018 and 2019. The Respondent put in strategies to support the Claimant in her development as Head of Biology and as a classroom teacher, especially as it related to Years 11 and 12 A-level Biology. Some of that support included assigning her an experienced coach, the senior leadership team attending her class as part of their learning walks and the monitoring and evaluation meetings that she attended with the headteacher. There was also the visit by the School Improvement Partner and the meetings held with her afterwards to address the issues raised in that visit.

87. The Respondent would have expected the Claimant, as Head of Biology, to have herself analysed the exam results and have an awareness of where there were gaps in her teaching practice and that of her colleagues. Although there was another teacher who also taught A-level Biology, the evidence showed that the poorest results could be traced to the pupils where the Claimant was the lead teacher or where she taught most of the classes. The other A-level Biology teacher had achieved excellent results with her classes or the classes where she was the lead teacher.

88. In our judgment, Mr Mizon made it clear to the Claimant in their conversation on 2 September that the change in her timetable happened because of the poor A-level Biology results 2018/19 and the fact that this was the third consecutive year of poor A-level Biology results for the school. This was confirmed in her conversations with Ms Waters and with Ms Emmanuel.

89. Over three years following the change in the A-level specification, the Respondent put strategies in place to support all science subjects to improve their results. Between 2017 and 2019 the Respondent put in supportive measures to assist the Claimant to improve her classroom teaching and organisation and her ability to carry out assessment and evaluation. By 2019, Chemistry and Physics had improved but Biology still had not. The Respondent's practice was to support teachers to improve, in the first instance. The Claimant accepted that she had not passed her appraisals as there were issues with the KS5 Biology. In 2019, Chemistry and Biology A-Level results had improved while Biology had not. On closer examination and analysis, the classes in which the Claimant had been the lead teacher had performed the poorest. Mr Mizon, Ms Emmanuel and Ms Waters gave clear, cogent evidence that the decision to remove the Year 13 A-level Biology classes from the Claimant was due to the A-Level results. It is our judgment that the decision to do so was not made until the A-Level results were published. The decision had nothing to do with the fact that the Claimant was pregnant.

90. It is our judgment that the burden of proof did not shift to the Respondent.

91. It is also our judgment that the reason the Respondent altered the Claimant's timetable to remove the Year 13 A-Level Biology class was because of the Biology A-Level results published in August 2019. The Claimant's pregnancy was not part of the decision.

92. The Claimant remained Head of Biology and did not experience a reduction in her status or pay. The Respondent made a reasonable and non-discriminatory decision to use the strongest teachers from the ALP grades to teach all science classes, including Biology and Chemistry. This meant that both the Claimant and Mr Mizon and at least 6 other teachers had classes taken off their timetables and given to others. This was done to give pupils the best possible chance of attaining good grades at A-Levels at the end of the 2019/20 academic year.

93. The Respondent has a good record of enabling women to take maternity leave and to return to school.

94. The Claimant's complaint that the Respondent's decision to remove responsibility for teaching Year 13 A-Level Biology from her in August 2019 was because of her pregnancy, fails and is dismissed.

95. The decision to remove the Year 13 classes from the Claimant's timetable was made because of poor ALP grades and because there were other teachers in the department who had secured better grades or were more likely to do so. The Claimant would continue to teach Science and Year 12 Biology and as Head of Biology. The proposal was that she would continue to benefit from leadership training and support.

96. The claim fails and is dismissed.

Employment Judge Jones
Date: 1 March 2021