



# THE EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

**Ms M Zughbeih**

**v**

**King Fahad Academy**

**Heard at:** London Central

**On:** 9-11, 14 and 15 June 2021

**Before:** Employment Judge Glennie  
Ms T Breslin  
Mr S Soskin

## Representation:

**Claimant:** Ms K Ahmed (Representative)

**Respondent:** Ms G Boorer (Counsel)

## JUDGMENT

The judgment of the Tribunal is as follows:

1. (Unanimously) The complaints of harassment related to race and disability discrimination (all formulations) are dismissed.
2. (Unanimously in all respects bar one, where the decision is by a majority) The complaints of victimisation are dismissed.
3. The complaints of unfair constructive dismissal and breach of contract are well-founded.
4. Remedies for the successful complaints will be determined at a hearing on 11 October 2021 (one day allocated).

## REASONS

1. This hearing was conducted wholly remotely by video (CVP), the parties being agreeable to this.

2. By her claim to the Tribunal the Claimant, Ms Zughbeih, made complaints of constructive unfair dismissal, harassment related to race, disability discrimination, victimisation, and breach of contract. The Respondent, the King Fahad Academy, disputes those complaints.
3. The Tribunal decided to hear and determine the issues as to liability in the first instance.
4. The Tribunal is unanimous in the reasons that follow, save for one aspect of the victimisation complaint.

### **The issues**

5. The issues were identified by Employment Judge Norris at a preliminary hearing on 18 November 2020. Some further clarification of the issues had taken place since then, and the Tribunal identified the issues as at the date of the hearing as follows:

#### **Harassment related to race**

- 5.1 Did the Respondent engage in unwanted conduct related to the Claimant's race that had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? The complaint was that in March 2015 the Claimant was accused of teaching extremist material and that this was related to her Palestinian background.
- 5.2 Was the complaint presented out of time, such that the Tribunal did not have jurisdiction to hear it?

#### **Disability Discrimination**

- 5.3 It was agreed that the Claimant was at the material time disabled within the meaning of the Equality Act 2010 by reason of arthritis in her knees.
- 5.4 In relation to the complaints of failure to make reasonable adjustments and discrimination because of something arising from disability, did the Respondent know or ought it reasonably to have known that the Claimant was disabled?
- 5.5 The matters relied on by the Claimant in relation to each formulation of the complaint of disability discrimination were:
  - 5.4.1 (paragraph 5 of the Particulars of Claim) At the start of the academic year from September 2019, withdrawing the adjustment of a ground floor room to teach in, and moving the Claimant to an upstairs teaching room while providing a key to a lift which repeatedly broke down.

5.4.2 (paragraph 6 of the Particulars of Claim) Placing the Claimant in Block B while the remainder of her department were in Block A.

5.4.3 (paragraph 28 of the Particulars of Claim) A continuing failure to make reasonable adjustments in the light of the Claimant informing the Respondent of the difficulties that the withdrawal of her previous adjustment (the ground floor room) was causing her.

5.6 These factual complaints were relied on with regard to direct discrimination because of disability, harassment related to disability, failure to make reasonable adjustments, and discrimination because of something arising from disability (the “something arising” being hip pain and/or plantar fasciitis causing heel pain).

### Victimisation

5.7 Did the Claimant do a protected act by raising a grievance on 13 December 2019?

5.8 If so, did the Respondent subject the Claimant to detriments in the following respects (paragraphs 22-27 of the Particulars of Claim) because she had raised the grievance:

5.8.1 Failing to complete the grievance process within 5 days.

5.8.2 Not treating the grievance seriously / not recording all of the complaints.

5.8.3 Mr Dunning interrupted the grievance meeting on 26 February 2020.

5.8.4 The grievance meeting notes were taken out of context and important information was omitted.

5.8.5 Dr Aljafari failed to address the complaints in the grievance outcome and threatened the Claimant with disciplinary action.

5.8.6 Dr Aljafari told the Claimant that any appeal against her decision would be to her (Dr Aljafari).

### Constructive unfair dismissal

5.9 Did the Respondent breach the implied term of trust and confidence? The Claimant relied on her complaints about the grievance process.

5.10 If so, was that breach a reason for the Claimant’s resignation?

5.11 If there was a dismissal, what was the reason for it (i.e. what was the reason for the treatment that amount to a breach of the implied term) and was the dismissal fair or unfair in all the circumstances?

Breach of contract

5.12 If there was a dismissal, was this without notice and if so, what notice period was applicable?

Evidence and findings of fact

6. The Tribunal heard evidence from the following witnesses:
  - 6.1 The Claimant, Ms Mariam Zughbeih.
  - 6.2 Mr Stuart McWilliams, Head of Upper School.
  - 6.3 Dr Tahani Aljafari, Director General of the Respondent.
  - 6.4 Mr Mark Dunning, Director of Education.
  - 6.5 Mr James Nevin, Assistant Head.
7. There was an agreed bundle of documents and a supplemental bundle and page numbers that follow in the reasons refer to these (with the letter S to indicate the supplemental bundle).
8. There was a convention within the Respondent's organisation of referring to individuals by their title and first name (e.g. Dr Tahani, Ms Mariam) and this approach was applied intermittently by witnesses in the course of giving their evidence. In these reasons the Tribunal will refer to individuals by their title and surname.
9. The Respondent is an independent school in London. The Claimant identifies as a British Palestinian Arab and is disabled by reason of arthritis in her knees. She began work for the Respondent as a teaching assistant in June 2014 and became a part-time teacher in September 2014, teaching Quran and Tilawa within the Humanities department.
10. At the time of the majority of the events with which this hearing was concerned, the Claimant's two sons were students at the school, having joined in 2015 and 2016 respectively. The Respondent's policy was to give a 50% discount in the case of children of staff members from the fees usually applicable. There was also a practice of allowing fees to be carried over from year to year, with the result that there were substantial unpaid sums outstanding in respect of the children of some staff members. From around May 2018 the Claimant was paying £200 per month on account of her sons' fees, although this did not cover the full amount that was accruing.

11. The complaint of harassment related to race arises from events in March 2015. The Claimant's evidence was that the then head of HR, Mr Garrard, accused her of teaching extremist views, and went through her desk in order to extract a student's written work.
12. Mr Nevin's evidence was that there was a safeguarding concern with respect to a report of extremist material, and that he and Mr Garrard investigated and found none. On 18 March 2015 at pages 185-6 Mr Nevin sent an email in which he expressed "concern and sheer disgust at false accusations" that had been made about involvement in or approving of extremism. He stated that a student's project had been taken from the Claimant's desk before she had had the chance to mark it and intervene with regard to the content.
13. Mr Nevin stated that he did not know whether Mr Garrard had taken the materials from the Claimant's desk, and that "the facts were never made clear". He said that a very cautious approach was taken to the matter because some inappropriate material had been found in 2007. He added, "I'm not sure what the Claimant's role was in this", and said that the pressure was on him and Mr Garrard rather than on the Claimant.
14. The Tribunal found it difficult to make findings of fact about this aspect at this distance in time from the relevant events. There clearly had been a report of the use of inappropriate material, probably by a student. Given that such a report had been made, the Respondent was bound to investigate it. The Tribunal considered that the Claimant probably was not accused of teaching extremist views, as if she had been, this would have been investigated and an outcome of the investigation would have been recorded. The Claimant did not raise any grievance or complaint at the time, saying in her evidence to the Tribunal that she took the view that she should get on with her job.
15. It is convenient to record the Tribunal's conclusions on this element of the claim before continuing with the other aspects of it. Section 123 of the Equality Act 2010 provides for a time limit for bringing proceedings of 3 months from the date of the act to which the complaint relates, or such other period as the Tribunal thinks just and equitable. The complaint of harassment was presented approximately 5 years after the date of the acts complained of. It appears that the Claimant made a conscious decision at the time not to take any action about the matter. As has been stated above, there is a difficulty about making findings of fact given the lapse of time. For these reasons, the Tribunal concluded that it would not be just and equitable to apply any different time limit from the primary one of 3 months, and that it does not therefore have jurisdiction to hear this complaint.
16. Evidence concerning a further issue in the case can also be conveniently dealt with as an item before the chronology of events is described. This is question whether the Respondent knew, or ought to have known, that the Claimant was disabled at the relevant time.

17. The documentary information available to the Respondent was as follows. There was a fitness to work certificate at page S20 which stated that the Claimant was not fit for work because of knee pain for the period 1-18 October 2015. At page 47 there was an email dated 13 October 2015 from the Claimant to the former Head, Ms Mahmood, stating that her consultant had told her that she had damage in her ligaments and that it would need nearly 6 weeks more to heal. She was intending to return to work, but asked for a room downstairs. The Tribunal considered that this suggested a short-term effect.
18. A letter from the Claimant's GP dated 31 January 2016 at page S4 read as follows:

"The above named is registered with our surgery. She suffers with right knee pain which has been affecting her activities of daily living including using stairs. She has been referred for specialist investigations. I recommend she avoids using stairs as it really impacts on her symptoms. In the meantime, please do not hesitate to contact the surgery, with patient's consent, if you require any further information".
19. When Dr Aljafari was asked about this document, she said that she had seen this on the Claimant's file after receiving the grievance letter but before the grievance meeting (all described below), and commented that "this is not a medical report saying she was disabled" and "I was looking for the word disabled to tell me she had a disability". While agreeing that the document does not say that the Claimant is disabled, the Tribunal noted the references to activities of daily living" and to a referral, as well as the use of the expression "in the meantime", all of which (unlike the documents from October 2015) suggested a condition that was likely to continue for some time.
20. On 15 November 2017 the Claimant sent an email to a colleague at page 47 which asked for a downstairs room to be arranged for her parents' meeting "due to the lift problem". On 28 November 2017 the Claimant sent an email at page 49 to Ms Mahmood stating that she would not come to work because of sharp pain in her knee and elbow (although suggesting that the main problem was with her elbow).
21. There were further emails about the lift at pages 50-51 in January 2018. In her email of 25 January to Ms Mahmood, the Claimant referred to the problem of not having a fixed room for her teaching, and stated a preference for being on the ground floor in case the lift broke down. She wrote: "I brought to the school a medication certificate from my GP, and I can bring more if needed to make this matter taken more seriously." There was clearly a continuing problem with the lift, as Ms Mahmood sent an email about this at page 52 on 13 February 2018.
22. In paragraph 13 of her witness statement the Claimant said that Ms Mahmood provided her with a ground floor room to teach from in 2018,

because of the problems with the lift. This is borne out by emails of 24 May 2018 at page 53 in which a member of the Respondent's staff stated that the lift engineer had had to attend 7 times in 5 months, and Ms Mahmood stated that the Claimant now had a ground floor room.

23. By the start of the academic year in September 2019 Mr McWilliams had become Head. In an email at page 61, dated 2 September 2019 to a colleague and copied to Mr McWilliams and Mr Dunning, the Claimant raised some queries about her timetable and wrote the following about her medical condition:

“Another issue is that my room is allocated in block B. I have a health and knees problem. I did provide the school with a health report and according to that I have got the lift key. Unfortunately, the lift was not working most of the time in block B which caused me a lot of stress and distress to my bones and joints trying to climb the stairs. As well as that caused a lot of trouble and confusion to the students to were to find me. The ideal solution for my problem is to stay downstairs in my room which was provided to me after a lot of suffering.”

24. The final piece of written evidence on this aspect was an email from the Claimant to Mr McWilliams at page 64, dated 7 October 2019, in which she stated that the lift was not working and:

“As you know I have a health problem and I can't go upstairs. The school has a medical report.  
Can you please manage for my classes to come down stairs any where you choose.”

25. In addition to her comments on the GP's letter quoted above, Dr Aljafari's evidence about the disability aspect in paragraph 17 of her witness statement was that, at the grievance meeting “we discussed the Claimant's health, and the fact that the Senior Leadership did not have any knowledge or evidence of any medical conditions affecting the Claimant”. Dr Aljafari also stated in her oral evidence that she had discussed the grievance with Mr McWilliams. When asked by the Employment Judge what they had discussed, Dr Aljafari stated that Mr McWilliams said that the file had nothing to show disability, and that they discussed the disability aspect in general.

26. The only reference to disability in Mr McWilliams' statement was in paragraph 7, which read:

“I understand that the Claimant has claimed that she is disabled. If she shared any medical information with Ms Mahmood, this information was not shared with me.”

27. When cross-examined on this aspect, Mr McWilliams stated that it was the case that he had no knowledge of the Claimant's disability, and that she said that she had pain in the knees and difficulty with stairs. He said that

she was able to use the lift and that this broke down once in the academic year 2019. He agreed that he had not asked for medical evidence. In answer to Mr Soskin, Mr McWilliams said that he found out about the Claimant's knee pain when she spoke about it in September 2019; that he did not recall seeing the GP's letter on the file, and that it would have been with HR; and that nothing was explained to him about that letter. He added that when she spoke about her knee pain the Claimant did not indicate that she had a long term condition, and that the lift only broke down once (meaning, in the 2019 academic year). Mr McWilliams also said that going to the new room would not involve the Claimant in taking any more steps than when going to the old room.

28. The issue of knowledge of disability arises under section 15(2) of the Equality Act (discrimination arising from disability), which provides as follows:

*Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.*

29. Essentially the same issue arises under paragraph 20 of Schedule 8 to the Equality Act, which provides that:

*(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know –*

*(b) .....that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.*

30. That which an employer could reasonably be expected to know includes that which it could have discovered by making reasonable enquiries based on the information given to it, without being expected to make every possible enquiry.

31. The Tribunal considered that the person whose knowledge (actual or constructive) was to be considered was the Respondent organisation, rather than any particular individual or individuals within it. We considered that, even if no one individual had sufficient information as to amount to knowledge of a disability, the organisation would have knowledge if the sum total of the information known to the relevant individuals was sufficient.

32. The Tribunal concluded that at the time of the relevant events (i.e. from September 2019 onwards) the Respondent at least had constructive knowledge of the Claimant's disability, in that it could reasonably be expected to know of it, for the following reasons:

32.1 The GP's letter of 31 January 2016 indicated an ongoing, as opposed to short-lived, condition.



- 32.2 Ms Mahmood was aware during the period January to May 2018 that the Claimant was suffering pain in her knees, and she acted on this by moving her to a ground floor room – an action which suggests recognition that this was not a short-term matter.
- 32.3 In September 2019 the Claimant wrote to Mr McWilliams referring to her “health and knees problem”. This is, perhaps, an unusual expression, but it suggests something more than a transient injury, which would not normally be described as a “health....problem”. The reference to the existence of a medical report also suggests an ongoing matter.
- 32.4 The Tribunal therefore concluded that the information provided to the Respondent was at least sufficient to indicate that the effects of the Claimant’s condition might well be long-term within the Equality Act definition of disability.
- 32.5 The GP’s letter referred to difficulty with stairs. Ms Mahmood knew that the Claimant’s ability to move between floors depended on the lift working. Mr McWilliams accepted that the Claimant told him that she had pain in her knees and had difficulty with stairs.
- 32.6 The Tribunal considered walking up and down stairs to be a normal day-to-day activity within the Equality Act definition of disability. We also concluded that the information provided to the Respondent was at least sufficient to indicate that the Claimant’s condition might well have a substantial effect on her ability to walk up and down stairs within the Equality Act definition.
- 32.7 As identified in paragraph 25 above, Dr Aljafari and Mr McWilliams had at least contemplated the possibility that the Claimant might have a disability
- 32.8 The Tribunal therefore concluded that it would have been reasonable for the Respondent to have made enquiries into the Claimant’s condition.
- 32.9 Ms Boorer made the point that the Claimant did not co-operate when the Respondent introduced a practice of asking for medical information; but the Tribunal concluded that this did not have an impact on what the Respondent could reasonably be expected to know from the information that it had.
33. Having dealt with these two particular issues, the Tribunal will set out the chronology of relevant events.
34. The Respondent operated a system of observing lessons in order to identify strengths and weaknesses in teachers’ practices. Mr Dunning conducted an observation of the Claimant on 14 November 2018, his notes of this being on a standard form at page 55. This and another observation which

will be referred to below were not directly in issue in the claim, but the Claimant stated that these showed that Mr Dunning wanted her out of the school (although she did not identify what she believed might have been the reason for this). It is not necessary to set out in any detail what Mr Dunning recorded, but there were both favourable and less favourable unfavourable assessments, and the overall rating was “needs improvement”.

35. Mr McWilliams carried out an observation on 1 April 2019. He recorded a range of assessments and noted strengths and areas of development. He also gave an overall rating of “needs improvement”.
36. The Claimant described Mr McWilliams as Mr Dunning’s “friend”, evidently meaning that his similar assessment of her was meant to back up that given by Mr Dunning. The Claimant was clearly troubled by the outcome of these observations and felt that the assessments were not fair or justified. She felt so strongly about the matter that she gave her resignation, but Ms Mahmood persuaded her to withdraw this. It was not possible for the Tribunal to reach a view about whether the assessments were fair, but we noted that the content of the forms did not appear to be obviously unbalanced. Ultimately, we did not find these of any assistance in determining the issues in the case.
37. On 9 July 2019 Mr McWilliams became Head of the Upper School at short notice. At the time, the school was in transition to a co-educational format, having previously operated as separate single-sex organisations. His evidence was that he inherited a “chaotic” situation.
38. As already mentioned earlier in these reasons, the Claimant was allocated a second floor room in block B. The other teachers in the Humanities department were located in block A. The Claimant’s email of 2 September 2019 at page 61 referred to previous problems with the lift in block B and asked for a downstairs room.
39. On 3 September 2019 the Claimant and Mr McWilliams spoke about the timetabling and room issues. Mr McWilliams said that Ms Mahmood had made the decisions about the rooms and had provided the information on which the timetable had been based. In paragraph 11 of his witness statement Mr McWilliams said that on this occasion he reminded the Claimant that the lift had only broken down once in the academic year, and that on that occasion she had been helped with moving her materials to a ground floor room. It seemed to the Tribunal that, in one way or another, this could not be correct, as the Claimant had been teaching from a ground floor room in the 2018-2019 academic year. Furthermore, in his oral evidence Mr McWilliams said that the lift broke down once in the 2019 academic year, which had not begun at this point. It was also apparent that the lift broke down in October 2019, as will be explained later in these reasons. The Tribunal considered it likely that Mr McWilliams had become confused about when he said that the lift had only broken down once.

40. Mr McWilliams continued that he acknowledged that the Claimant was in a different block from the rest of her department, and said that this had arisen from a decision to create subject areas, the planning of which had been imperfect and had left two teachers, one being the Claimant, in a different location from their departments. He said that it was not practical to change rooms “mid-year”, but that he would address it in the next academic year.
41. The Tribunal did not consider that 3 September could fairly be described as “mid-year” when referring to the academic year, which starts in September. However, the sense of what Mr McWilliams was saying, both at that meeting with the Claimant, and to the Tribunal, was that changing the room allocations at that point would be impractical. The Tribunal could understand why he would take that view, and accepted that this was the reason why he did not allocate a different room to the Claimant at this stage. We also accepted his explanation of why the Claimant was in block B, while the other members of her department were in block A.
42. Reference has already been made to the Claimant’s email to Mr McWilliams of 7 October 2019, at page 64. It seemed to the Tribunal that this indicated when was the one occasion in the academic year that the lift broke down and the Claimant’s class had to be moved downstairs, as referred to by Mr McWilliams. Although the Claimant spoke in her evidence about the lift breaking down many times, this seemed to be a reference to earlier years. This email does not suggest that this was only one in a series of breakdowns. We concluded that the lift in fact broke down once during the autumn term 2019, on this particular occasion.
43. During this term an issue arose about the payment of the fees for the Claimant’s sons, and their continued attendance at the school. This was not an issue as such in the claim, but it gave rise to one of the events of significance. Dr Aljafari’s evidence, which was not challenged and which the Tribunal accepted, was that the Respondent’s trustees had required the school to cease the practice of allowing parents to carry over arrears from one year to the next.
44. Although not all of the exact dates involved are clear from the documents, it is apparent that the Respondent’s accountant informed the Claimant that there were arrears from previous years of £8,300 which had to be cleared, in addition to the fees for the 2019 academic year. He had proposed taking payments of £600 per month. Seemingly on 8 November 2019 he had sent an email at page 75 to the Claimant stating that her sons would not be allowed to attend school as from Monday 11 November. The Claimant replied on the morning of 11 November 2019 protesting against this and saying that she needed time if the previous arrangements involving a payment of £200 per month were going to be varied. She also sent a complaint about this to Dr Aljafari at page 76.
45. During the morning of 11 November 2019 Mr McWilliams asked the Claimant to remove her children from the school at lunch time. There followed an incident involving the Claimant, two members of the

Respondent's security staff, and Mr Dunning. The Claimant's account was that she found her sons sitting in the corridor, having been removed from their classes. She sought to take them home, but was prevented from doing so by the two security officers who said that she was not permitted to take them out of the school. The Claimant raised her voice and said something to the effect of, "you allowed me to take them every day, why not today", and was told that she did not have the necessary permission note. Mr Dunning then arrived and asked "how can I help you?" with a smile and in a manner that the Claimant interpreted as mocking her. She made reference to emails to him and Dr Aljafari and subsequently left with her children.

46. This account was substantially similar to that given by one of the security staff in an email at page 86. This said that the Claimant did not have an exit slip and that they had received no information that the children were permitted to leave the premises. The Claimant started shouting and saying that they were stupid and so was their system. Mr Dunning came to speak to the Claimant, who said "who called you to help me" and "why are you here". He gave the permission necessary for the children to leave.
47. Mr Dunning's account in paragraphs 5-6 of his witness statement, and in an email at page 84, was that the Claimant did not have the necessary permission slip due to an administrative oversight. He said that he noticed a disturbance and, having understood the situation, gave the necessary permission. He stated that, while he was seeking to resolve the situation, the Claimant started shouting at him in the sort of terms described by the security officer. In his email of 12 November 2019 to Mr Garrard, Mr Dunning said that he found the Claimant's behaviour unprofessional and unreasonable, and he asked for an appropriate response from the school.
48. The Claimant was asked to attend an investigatory meeting about this incident. She contacted her union representative, Mr Simms, and there followed some correspondence between him and Mr Garrard concerning dates of availability of himself and the Claimant. A disciplinary meeting was set for 5 December 2019, but this did not take place as the Claimant was signed off from work sick on 2 December 2019.
49. On 13 December 2019 the Claimant sent to Dr Aljafari an email at pages 105-106, asking for help resolving a situation which was causing her depression and anxiety. She referred to the timetable changes and the change of room, saying that she felt isolated and targeted by being put in block B when her colleagues were in block A. The Claimant referred to her health issues, including knee problems, which did not allow her to climb stairs easily. She said that she had raised concerns on 7 October about the lift being broken, and that she felt discriminated against and put at a disadvantage because of her health issues.
50. The Claimant also said that she was excluded from department meetings by timetable clashes. She referred to the exclusion from school of her sons and said that her request to be accompanied by a union representative at

the fact-finding meeting had been refused. There was also a complaint of being given a witness statement in connection with the investigation while teaching a lesson. The email concluded with the statement that these matters were being raised as a formal grievance.

51. Dr Aljafari's evidence was that she did not immediately arrange a meeting to discuss the grievance because she was unsure whether this could or should be done while the Claimant was absent sick. The Tribunal accepted this evidence, which was consistent with emails passing between D Aljafari, Mr Dunning, Mr McWilliams, Mr Garrard and others at pages 108-109 on 16 December 2019.
52. On 2 January 2020 the Claimant sent an email to Mr McWilliams, copied to Dr Aljafari and others, at page 111, in which she said that her doctor would be signing her off for a further month until 29 January. Dr Aljafari wrote on 7 January 2020 saying she was looking forward to meeting the Claimant when she had recovered.
53. The Claimant remained off sick; on 4 February 2020 Dr Aljafari sent her an email at page 121 asking whether, notwithstanding this, she wished to meet to discuss the grievance. The Claimant replied on 12 February 2020, saying that she would attend a grievance meeting and suggesting 13 or 14 February.
54. In the event the meeting took place on 27 February 2020, conducted by Dr Aljafari. The Claimant was accompanied by Ms Alagami, a colleague and union representative. There were notes of the meeting at pages 114-117. The section of the notes at page 116 was incompletely copied, and a full copy was provided separately.
55. At the beginning of the meeting, Dr Aljafari observed that the Claimant had taken legal advice, and that this would lead the Respondent to do the same. There was discussion of the issue about unpaid school fees, on which point Dr Aljafari said that the Claimant had not been singled out and that the position had been the same for other parents. The Claimant admitted that she had been emotional and had raised her voice on 11 November, to which Dr Aljafari said that things would have taken a different course if she had come to her and apologised the following day. There was discussion of the timetable issues. In relation to the Claimant's teaching room, the notes recorded that she had been given a lift key; that she felt hurt that her room had been taken away; that she was having to move from room to room in different corridors, but all on the ground floor; and that when the Claimant asked Mr McWilliams about this, he replied that the world did not rotate around her, and for this reason she felt discriminated against.
56. There was then discussion of the Claimant's medical condition and the information made available about this. Dr Aljafari referred to a recent document sent to staff members asking for medical information, and the Claimant confirmed that she had not completed this. The Claimant

identified the relevant condition as arthritis in her knee. Dr Aljafari said that she was unaware of this, but had seen the GP's letter from around 2015 (in fact, January 2016). The notes concluded with Ms Alagami apologising, saying that nothing was intentional, and that she would like to see the Claimant back in employment.

57. Mr Dunning came into the room in the course of the meeting. The Claimant's evidence in paragraph 52 of her witness statement was that he made eye contact with her and showed the same mocking smile as she had observed on 11 December: he then spoke privately with Dr Aljafari, after which she seemed more hostile to the Claimant as the meeting continued. When cross-examined about this aspect, the Claimant said that she could not remember if Mr Dunning had said anything in front of her, but that she believed that his reason for entering the room was that he wanted to provoke her.
58. Dr Aljafari and Mr Dunning both stated that the reason for his interrupting the meeting was that the first suspected cases of covid-19 in the school had just been reported. Mr Dunning said in paragraphs 8-10 of his witness statement that he was not aware that the grievance meeting with the Claimant was taking place that morning. When the suspected covid cases were reported to him, he believed that Dr Aljafari should be informed immediately. When he arrived at her office, her PA told him that there was a meeting in progress. He felt, however, that the matter was sufficiently serious to require interrupting the meeting. He asked to speak to Dr Aljafari privately, and they had a brief conversation outside the room.
59. The Tribunal accepted the evidence of Dr Aljafari and Mr Dunning about this aspect. There was no reason to doubt that the first suspected cases of covid-19 had been reported on that occasion, and in the circumstances it was understandable that Mr Dunning would wish to inform Dr Aljafari of this immediately. The Tribunal considered that, if Mr Dunning did show a facial expression that reminded the Claimant of the events of 11 November, there was no significance to that.
60. In paragraph 18 of her witness statement Dr Aljafari described a "peaceful solution" (as it was referred to in the hearing) to the matter suggested by Ms Alagami. This was that the Claimant would withdraw her grievance if the Respondent would agree not to pursue the disciplinary proceedings. Dr Aljafari continued that she regarded this as a sensible solution, and agreed, whereupon she considered the grievance process closed.
61. The Claimant did not mention the peaceful solution in her witness statement. When asked about it in cross-examination, the Claimant said that she did not agree that this was the withdrawal of the grievance and of the disciplinary process; she said that it was that Dr Aljafari should investigate the grievance and that there was "no agreement".
62. The Tribunal found that emails over 4-9 March 2020 between the Claimant and Mr Simms of the union cast some light on this aspect. It is not

necessary to set out their content in any detail, but it is apparent that the Claimant had come to the view that the union was not representing her effectively, and even that Mr Simms was “siding with” the Respondent. He in turn said that Ms Alagami was aggrieved by some of the Claimant’s comments.

63. The Tribunal concluded that what had probably happened in relation to the peaceful solution was that Ms Alagami had proposed this on her own initiative; that Dr Aljafari had welcomed it and agreed with it; but the Claimant (without saying so at the meeting) had not agreed with it.
64. On 5 March 2020 the Claimant sent an email to Dr Aljafari at page 128 asking: “Following my grievance meeting with you last week, can you please tell me what the next step is?” Dr Aljafari replied the following day suggesting that she thought that Mr Simms had informed her of the next step. The Claimant wrote again on 9 March at page 127 saying that the union was no longer representing her, and repeating the request for an update about the grievance. There followed an exchange about whether the Claimant had solicitors acting for her, and on 11 March 2020 the Claimant sent a further email to Dr Aljafari at page 126 pressing for information as to the next stage of her grievance. She sent another on 24 March at page 135.
65. Dr Aljafari sent the grievance outcome letter on 25 March 2020 (pages 136-138). She did not uphold any aspect of the grievance. Dr Aljafari said that, in relation to the school fees, the Claimant had been treated fairly and the same as all employees. She said the same in relation to the exclusion of the Claimant’s sons.
66. In relation to the incident on 11 November 2019, Dr Aljafari wrote that the Claimant’s conduct appeared to have fallen below the standard expected of an employee, and added: “As you appear to have rejected our agreement for a peaceful resolution, the disciplinary process will continue. It is therefore not appropriate for me to respond to this matter as it will form part of the disciplinary process”.
67. Dr Aljafari gave the following outcome under the heading “Timetable”:

“I have investigated this matter and am satisfied that, although there was an error with timetabling, this was corrected within a reasonable period of time.

“I also understand that due to the teaching duties of you and others, it is not possible to include the department meeting in your timetable. You are not the only employee in this situation. The Academy is willing to arrange regular meetings with your Head of Department as a compromise

“In relation to room changes, I find that errors were made that affected you and another employee being in a different location to your department; these errors cannot be undone mid-term as to do so would be too

disruptive to pupils, however the Academy is committed to exploring a solution in the next academic year.

“As to the location of your teaching room on the third floor, I understand that the lift was broken on one occasion during which you were allocated a room on the ground floor. I do not accept that the Academy acted unfairly in adjusting your working arrangements to enable you to work on the ground floor when the lift was broken.

“I therefore do not uphold your grievance. I have seen no evidence to suggest that you were treated in a particular way because of your health or any other reason. I do not accept that you have been victimised by anyone at the Academy.”

68. Under the heading “Health”, Dr Aljafari wrote:

“As described above, I believe the Academy has behaved reasonably in accommodating your health needs. I would encourage you to complete the recent medical document. If there are other ways in which the Academy can support your health I would be happy to explore these with you.”

69. Dr Aljafari then gave the following conclusion:

“In conclusion, I do not uphold your grievances.

“The Academy remains committed to the peaceful solution offered at the end of the grievance meeting, and to the extent that timetabling and room allocation cannot be resolved this year, to address these matters in the new academic year.

“If you do not accept my findings and do not wish to accept the peaceful solution previously agreed, then you have the right to appeal the matters at 4, 5 and 6 [having previously stated that the other items affected the Claimant as a parent and so could not be the subject of an appeal]. If you wish to appeal, you must submit your appeal in writing to me within 7 days of the date of this letter. You should state the grounds for your appeal in full and explain what action you believe should be taken in respect of the matters raised in your grievance.

“Please note that we will consider any appeal against this grievance outcome to be a rejection of the peaceful solution. In consequence, the disciplinary process will resume, once the school reopens”.

70. On 31 March 2020 the Claimant sent an email to Dr Aljafari giving her resignation. She wrote as follows:

“Do not threaten me with that you will continue with disciplinary action against me if I appeal your shambolic grievance outcome.....I have every right to. If your fictitious disciplinary was anything other than a final plan to



bully me out of the school then you would've continued with it despite my raised grievance.

"I resign from my position with the school and terminate our contract with immediate effect. Your actions have force me to make this decision for the following reasons;

"I have endured so much from being harassed and intimidated whilst I taught my classes by Mark and Stuart and of course Phil's behaviour ever since he accused me of teaching terrorism material and his hostility towards me as result of my Palestinian background ever since: and his influence on others to join the witch hunt. Then followed by other behaviours intended to make my working conditions even more unbearable by changing my teaching rooms despite knowing about my disability and changing my timetable to isolate me and then dirty tricks tactics like the use of my children to get to me without any moral compass to care about the psychological impact of what these so called teacher's actions would do to children.

"I saw myself as weak and hence why I thought I could not stand up to any one of you in response to the treatment I have received so far, but I am not weak – I just had so much depending on my job and why I had hoped something would change or maybe that these people would get bored and leave me alone. But things got worse – first, you ignored my grievance for so long, then you threatened me at my own grievance hearing and then Mark deliberately disturbed the meeting as a way to intimidate and belittle me and the reason why I got emotional.

"Now, you bring fictitious report of my grievance – where you have not even bothered to interview anyone whatsoever and to top it off by threatening me with consequences if I decide to appeal your decision. Your actions are not surprising but unjust and constitutes unreasonable breach of the contract and therefore I cannot come back to that environment. To do so would continue to make my working condition unbearable and I have no faith in anyone there anymore.

"Any work / teaching material that is needed of me I can email them through."

71. In her oral evidence the Claimant was taken to the various matters that she raised in this email, and she confirmed that all of them were reasons why she resigned.
72. Dr Aljafari replied by email on 1 April 2020 at page 140. She referred again to the peaceful solution and said that the Claimant had chosen not to accept that. She said that the Respondent had simply explained the next steps, which included continuing the disciplinary action. Dr Aljafari asked the Claimant to reconsider her resignation, and said that if she did so, an appeal hearing would be arranged. She concluded that, if she had not heard otherwise by 8 April, she would assume that the Claimant stood by

her resignation. The Claimant did not reply, and on 9 April 2020 Dr Aljafari wrote confirming that she understood that the Claimant wished her resignation to stand.

73. In relation to the time taken to conclude the grievance process, Dr Aljafari said in paragraph 25 of her witness statement that, while the grievance was not dealt with as quickly as it could have been, the delay was contributed to by various factors. These were the Claimant's absence due to ill-health, Dr Tahani's own absence, school holidays and the impact of the first national lockdown. Dr Tahani was not challenged about this aspect, and what she said about it seemed to the Tribunal to be plausible. We therefore accepted that these were the reasons for the time taken.

### **The applicable law and conclusions**

74. The Tribunal has already set out its conclusions on the complaint of harassment related to race and on the issue of the Respondent's knowledge of the Claimant's disability.

75. The Tribunal reminded itself of the burden of proof provisions in section 136 of the Equality Act, namely:

(1).....

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

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

76. In **Igen v Wong [2005] IRLR 258** and **Madarassy v Nomura [2007] ICR 867** (both confirmed by the Court of Appeal in **Royal Mail Group v Efobi** as remaining applicable under the Equality Act) the Court of Appeal identified a two-stage test under the burden of proof provisions. At the first stage, the Tribunal would ask whether the facts were such that, in the absence of any other explanation, it could properly find that the facts were such that discrimination had occurred. In **Madarassy**, the Court of Appeal emphasised the requirement that this be a finding that can properly be made. A difference in protected characteristic and a difference in treatment would not, by themselves, be sufficient: there would have to be something more. The "something more" might not in itself be very significant, but it would have to be present. If the facts were of such a nature, the burden would be on the Respondent to prove that discrimination had not occurred.

77. In **Heward v Grampian Health Board [2012] UKSC 37** Lord Hope made the following observations about the burden of proof provisions:

"They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer

where the Tribunal is in a position to make positive findings on the evidence one way or the other.”

As the Tribunal will indicate, there are some instances where our findings of fact are applicable in this way.

78. As indicated above, there were four formulations of the complaints of disability discrimination (direct discrimination, harassment, discrimination arising from disability and failure to make reasonable adjustments), all referring to the same factual complaints. The Tribunal considered that the most natural approach to this aspect was the complaint of failure to make reasonable adjustments, and considered this formulation first.
79. Section 20 of the Equality Act 2010 includes the following provisions about the duty to make reasonable adjustments:
- (1).....
- (4) *The duty comprises the following three requirements.*
- (5) *The first requirement is a requirement, where a provision, criterion or practice [PCP] 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.*
- (6) *The second requirement is a requirement, where a physical feature 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.*
- (7) .....
80. The Tribunal reminded itself that the duty is not that of taking reasonable steps, but that of taking such steps as it is reasonable to have to take.
81. The first matter relied on was taking the Claimant away from the ground floor room which had previously been allocated to her, and allocating a room on the third floor to her.
82. Ms Boorer submitted that the allocation of the upstairs room did not amount to a PCP (which involves some element of repetition) as it was a one-off action which was not likely to be repeated, given that Mr McWilliams had said that the problem could be resolved the following year. The Tribunal was not convinced by this argument: the Claimant was required to use the room concerned on every day when she was at work.
83. The Tribunal did not, however, consider that the PCP put the Claimant at a substantial disadvantage in comparison with persons who were not disabled. The Claimant's disability caused her to have difficulty using

stairs. She did not, however, need to use the stairs so long as the lift was working. There was one occasion in the autumn term 2019 when the lift did not work, and on that day the Claimant was given assistance to move her teaching materials and equipment to a different room. If there was any disadvantage to the Claimant on that day, or in some way through having to use the lift rather than not having to travel between floors at all, the Tribunal concluded that this was not a substantial disadvantage.

84. The Tribunal considered that, had there been the need to do so, a change of room could have been organised before the beginning of the autumn term. We noted that Mr McWilliams described this as impractical, as opposed to impossible, but were satisfied that this would have caused disruption and extra work. The Tribunal therefore additionally concluded that making this adjustment was not one that it was reasonable for the Respondent to have to make.
85. The second aspect was placing the Claimant in block B while the rest of her department were in block A.
86. The same point as to whether or not this was a PCP arose, and the Tribunal reached the same conclusion as set out above. There was not, however, any evidence that this PCP put the Claimant at a substantial disadvantage in comparison with persons who were not disabled. The Claimant's complaint about this aspect was that she was isolated from her colleagues, rather than that she was put at a disadvantage for reasons connected with her disability. Block A and block B were only a short distance apart. In any event, the evidence about the effects of the Claimant's condition all pointed to difficulty with stairs, rather than with walking on the flat.
87. Additionally, and essentially for the same reasons, the Tribunal concluded that moving the Claimant from block B to block A (and, presumably, moving another teacher from B to A) was not an adjustment that it was reasonable for the Respondent to have to make.
88. The Tribunal considered that the third aspect in reality added little to the first, as it was a complaint of a continuing failure to make (or re-make) the adjustment of providing the Claimant with a ground floor room. The Tribunal reached the same conclusions as those regarding the first aspect, for the same reasons.
89. The Tribunal found that, in none of the three aspects of the complaint, were the facts such that, in the absence of any other explanation, it could properly find a breach of the duty to make reasonable adjustments. The complaint of failure to make reasonable adjustments was therefore unsuccessful.
90. Section 15 of the Equality Act provides as follows:  
  
*(8) A person (A) discriminates against a 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.*

91. The something arising in consequence of the Claimant's disability relied on was the condition of plantar fasciitis. The Claimant asserted that this arose from her arthritis, but there was no medical evidence to show that this was the case. The Tribunal was not convinced, as a matter of probability, that the one condition arose in consequence of the other.
92. Although the claim was not put in this way, the Tribunal considered whether the something arising in consequence of the disability might better be thought of as the Claimant's difficulty with stairs. In either case, however, the Tribunal found that the facts were not such that it could properly find that any of the treatment concerned was done because of the Claimant's plantar fasciitis, or because of her difficulty with stairs. There was nothing in the evidence to suggest that the Claimant was given a third floor room, or was placed in block B, because she had plantar fasciitis or because she had difficulty with stairs. The Tribunal could understand that the timetabling difficulties, the move away from the ground floor room, and the problem with the school fees left the Claimant feeling beleaguered, but there was no reason to believe that the Respondent allocated the room concerned to the Claimant because of either of the things arising in consequence of her disability. Indeed, providing her with a key to the lift so that she did not have to use the stairs ran counter to this.
93. Alternatively, if the Tribunal is wrong and the burden of proof has passed to the Respondent in this respect, we would find that the Respondent has shown that it did not discriminate against the Claimant, and that the reason why she was allocated the room concerned was that this was believed to be the best use of the rooms available.
94. The complaint under section 15 was therefore unsuccessful.
95. Section 26 of the Equality Act includes the following provisions about harassment:
- (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*

(2).....

(3).....

(4) *In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account:*

(a) *The perception of B;*

(b) *The other circumstances of the case;*

(c) *Whether it is reasonable for the conduct to have that effect.*

96. The Tribunal found that the conduct concerned (i.e. giving her an upstairs room; placing her in block B; and not returning her to a ground floor room) was unwanted by the Claimant. Essentially for the reasons already given in relation to the section 15 complaint, the Tribunal found that the facts were not such that it could properly conclude that the conduct related to the Claimant's disability. The "related to" test does not require as strong a causative link as the "because of" test, but it does require some causative connection. There was nothing in the evidence to suggest this. Alternatively, the Tribunal would find for the same reasons that the Respondent had shown that the conduct was not related to the Claimant's disability.
97. The Tribunal also concluded that it could not properly find that the conduct was done with the purpose of harassing the Claimant, again for essentially the same reasons as given with regard to the "because of" test in relation to the section 15 complaint. The Tribunal accepted that it was the Claimant's perception that the room allocated to her had the effect of creating a hostile or humiliating environment for her, as she felt that she was being singled out and felt isolated from her colleagues. We did not, however, consider that it was reasonable for the conduct to have that effect. Mr McWilliams had explained how the allocation to block B had come about, and that there was another teacher apart from the Claimant who was affected.
98. The complaint of harassment related to disability was therefore unsuccessful.
99. Section 13 of the Equality Act provides as follows with regard to direct discrimination:
- (1) *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*
100. The Tribunal has already found that the relevant treatment was not conduct related to the Claimant's disability. The same reasoning leads it to conclude that the treatment concerned was not because of the disability. The complaint of direct discrimination was therefore unsuccessful.

101. The Tribunal then considered the complaint of victimisation. In that regard, section 27 of the Equality Act makes the following provisions:
- (1) *A person (A) victimises another person (B) if A subjects B to a detriment because –*
- (a) *B does a protected act.....*  
(b) *.....*
- (2) *Each of the following is a protected act –*
- (a).....  
(b).....  
(c).....  
(d) *making an allegation (whether or not express) that A or another person has contravened this Act.*
- (3) *Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*
102. The protected act relied on was the grievance of 13 December 2019. This made at least an implied allegation of contravention of the Act because it asserted that the Claimant had been discriminated against because of her health issues, which the Tribunal considered was sufficient to indicate an assertion of disability discrimination.
103. Ms Boorer submitted that this contained false allegations and was made in bad faith. As examples of the former, she referred to the assertion that because of the lift malfunction the Claimant had had to take the stairs, and that she had had to adapt to change because of the timetable issues, when there had in fact been an amendment to this. The Tribunal considered that it would be harsh to regard the assertion about the lift as false, given the problems with breakdowns that had occurred in 2018. Whether the Claimant had had to adapt to change with regard to the timetable was debatable, in that ultimately it was not identical to that of the previous year; and this point did not appear to be connected to any issue about disability. In any event, the Tribunal did not consider that the Claimant had acted in bad faith. At most, she was bringing into play matters that might fairly be regarded as past history.
104. The Tribunal therefore found that the grievance was a protected act. With regard to the suggested detriments, we found as follows:
- 104.1 (Failing to complete the grievance process within 5 days). The Tribunal has made findings as to why Dr Aljafari took the time she did to conclude the grievance. These exclude the possibility of this being an act of victimisation.

104.2 (Not treating the grievance seriously / not recording all of the complaints). The Tribunal found that all of the complaints were recorded in some way and none were omitted from the grievance outcome. There was nothing in the evidence to suggest that Dr Aljafari had not treated the grievance seriously. She had held a meeting with the Claimant and her union representative and had discussed the complaints with Mr McWilliams. The Tribunal concluded that the reality of this suggested detriment was that the Claimant was dissatisfied with the outcome of the grievance, and that the detriment had not been made out on the facts.

104.3 (Mr Dunning interrupting the grievance meeting). The Tribunal's findings as to why this occurred exclude the possibility of this being an act of victimisation.

104.4 (Grievance notes taken out of context and important information omitted). The Tribunal concluded that this complaint was much the same as number 2 above, and found that the complaint failed on the facts.

104.5 (Dr Aljafari failed to address the complaints in the outcome and threatened the Claimant with disciplinary action). On the first element, the Tribunal found that Dr Aljafari had addressed the complaints (albeit not in a way that the Claimant found satisfactory) and that this part of the complaint failed on the facts. The Tribunal was not unanimous on the second element, as will be explained below.

104.6 (Dr Aljafari said that any appeal would be to her). The Tribunal found that this complaint was based on a misreading of the letter. Dr Aljafari said that any appeal should be sent to her; she did not say that the appeal would be to her, in the sense of heard by her.

105. With regard to the second element in paragraph 102.5 above, there was a "threat" of disciplinary action in that Dr Aljafari said that an appeal would be regarded as a rejection of the peaceful solution and (in a slightly confusing sentence that followed) that, in consequence, the disciplinary process would resume. The Tribunal considered that the latter must have been intended to mean that the disciplinary process would resume if the Claimant appealed, which was how she understood it.
106. The Tribunal was unanimous in regarding this as a detriment because the Claimant reasonably interpreted this as putting pressure on her not to exercise her right to appeal, whether or not this was what Dr Aljafari in fact meant. The members of the Tribunal differed as to whether or not Dr Aljafari wrote this because the Claimant had done the protected act of making allegations of breach of the Equality Act in her grievance.
107. All three members of the Tribunal agreed that the essential question in this regard was as to whether Dr Aljafari was acting on the past event of the raising of the grievance, or was looking to the future and trying to restore the "peaceful solution". We were also agreed that the burden was on the



Respondent to show that it was the latter, and that the former was not any part of the reason for the detriment.

108. The majority (EJ Glennie and Ms Breslin) considered that the Respondent had shown that the reason for the detriment was an attempt to restore the peaceful solution, and that the fact that the Claimant had raised the grievance and had thereby done a protected act was not any part of the reason for the detriment. EJ Glennie considered that the words in the grievance outcome “if you do not wish to accept my findings and do not wish to accept the peaceful solution previously agree.....” showed that Dr Aljafari was looking to the future rather than to the past. Ms Breslin considered that the words “the Academy remains committed to the peaceful solution.....” showed that Dr Aljafari was acting on a wish to restore the peaceful solution, if possible.
109. The minority (Mr Soskin) considered that looking back to the raising of the grievance itself was an element of the reason why Dr Aljafari said that the disciplinary action would resume if the Claimant appealed, and would find that the complaint of victimisation was well-founded in this respect.
110. In the event, this element of the victimisation complaint failed, based on the findings of the majority.
111. The Tribunal then turned to the complaint of constructive dismissal. The Claimant relied on the implied term in the contract of employment that the employer will not, without reasonable cause, do anything calculated or likely to destroy or seriously damage the relationship of trust and confidence between itself and the employee.
112. As already stated, the Claimant relied on her complaints about the grievance process as amounting to a breach or breaches of the implied term. In the course of her oral evidence the Claimant gave answers which could be understood as expanding the reasons for her resignation beyond these, saying that the failure to make reasonable adjustments was “part of” the reason for her resignation, and that the ground floor room was “a factor” in her resignation. These were, of course, elements of the grievance. In her closing submissions, Ms Ahmed referred to the handling of the grievance as a “last straw”, which was not how the complaint had been characterised when the issues were agreed. The Tribunal considered that the complaint should be determined according to the way in which it had originally been formulated, i.e. by reference to the complaints about the grievance.
113. The Tribunal’s findings in paragraphs 104-109 above in relation to the complaint of victimisation are applicable here. With one exception, the reasons for the Tribunal finding that the matters complained of did not amount to acts of victimisation also lead to the conclusion that these were not breaches of the implied term.

114. The exception is the complaint that Dr Aljafari threatened the Claimant with a resumption of the disciplinary process if she were to appeal. The Tribunal is unanimous in finding that this was the meaning of the words that Dr Aljafari used, and that the Claimant reasonably interpreted them in that way.
115. Ms Boorer submitted that what Dr Aljafari wrote was a “reminder” that continuing with the grievance process (i.e. appealing) would indicate a rejection of the peaceful solution and that the disciplinary process would continue. The Tribunal considered that the words used amounted to more than that. As we have found above, the Claimant reasonably interpreted what Dr Aljafari wrote as putting pressure on her not to appeal. The Tribunal concluded that this was at least likely to seriously damage trust and confidence: an employee would lack confidence in both the grievance process and the disciplinary process if, having rejected the proposed solution, she found herself being pressured into not appealing by having this specifically linked to a resumption of the disciplinary action. This was, therefore, a breach of the implied term.
116. The Tribunal then considered the question of causation. Ms Boorer submitted that the Claimant had said in cross-examination that the reason why she resigned was not simply the grievance process, and argued that the real reason for her resignation was that she did not accept the decision. It is correct that, at one point, the Claimant answered Ms Boorer’s question about the reason or reasons for her resignation saying, “Number one was the outcome of the grievance, number two the way I was treated. I lost trust in them”. A little earlier, however, the Claimant had said in relation to the grievance outcome: “She didn’t want me to appeal. I felt the last paragraph was a threat, she was pushing me out. I didn’t want to appeal to Dr [Aljafari]. She didn’t take me seriously. At that time I had lost trust either way. It did cause a breakdown in trust and confidence.”
117. The Tribunal reminded itself that to be causative, a reason need not be the reason, but only a reason for the resignation. (It must be a substantial reason). The Tribunal found that what was written about appealing and the disciplinary process was in this sense a reason for the resignation.
118. The Tribunal also found that the Claimant had not affirmed the contract by delay before resigning. The period from the grievance outcome to her resignation was 6 days, which in the circumstances did not indicate an intention to continue to be bound by the contract. An employee in this situation would reasonably take some time to consider her position.
119. The Tribunal therefore found that there was a constructive dismissal. The reason for this was, on the majority’s finding, Dr Aljafari’s wish to revive the peaceful solution; on the minority’s finding, it additionally included the fact that the Claimant had raised the grievance. In either case, the Tribunal found that this did not amount, as submitted on behalf of the Respondent, to a substantial reason of a kind such as to justify the Claimant’s dismissal. The peaceful solution might, in itself, reasonably be regarded as a

desirable outcome. That did not, in the Tribunal's judgement, mean that pressuring the Claimant into accepting it when she did not want to do so was justified.

120. The remaining question is that arising under section 98 of the Employment Rights Act 1996, namely whether the Respondent acted reasonably or unreasonably in dismissing the Claimant (in the context of a constructive dismissal, in doing what it did that amounted to a breach of the contract). The reasons that the Tribunal has given for finding that what Dr Aljafari amounted to a detriment, and to a breach of the implied term, lead us to conclude that the Respondent acted unreasonably.
121. There was an additional point, in that Dr Aljafari invited the Claimant to reconsider her resignation. The Tribunal found that this did not alter its conclusions, as Dr Aljafari had not offered or proposed to change her stance on the appeal / disciplinary process
122. The complaint of unfair constructive dismissal therefore succeeds.
123. The dismissal was without notice, and it follows from the above that the complaint of breach of contract also succeeds.
124. The issues as to remedies for the successful complaints will be addressed at a further hearing on 11 October 2021, unless the parties are able to reach agreement before then. The Tribunal notes that the issues on remedy will include any arising as to the principle in **Polkey**, and contributory conduct, which have not as yet been addressed.

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Employment Judge Glennie

Dated: .....9 September 2021.....

Judgment sent to the parties on:

...10/09/2021...

For the Tribunal Office