



EMPLOYMENT TRIBUNALS

Claimant: Mr B Randall

Respondents: Trent College Limited (1)
Mr J Hallows (2)
Ms J Rimington (3)

Heard at: Nottingham

On: 5 – 22 September 2022
23 – 25 November 2022 (in Chambers)
7 – 9 December 2022 (in Chambers)

Before: Employment Judge Victoria Butler
Ms F French
Mr J Purkis

Representation

Claimant: Mr R O'Dair, Counsel
Respondent: Mr P Wilson, Counsel

RESERVED JUDGMENT

The unanimous decision of the Tribunal is:

1. The Claimant's claim of direct discrimination fails and is dismissed.
2. The Claimant's claim of harassment fails and is dismissed.
3. The Claimant's claim of victimisation fails and is dismissed.
4. The Claimant's claim of unfair dismissal fails and is dismissed.
5. The Claimant's claim of indirect discrimination is dismissed on a withdrawal.

REASONS

INTRODUCTION

1. The Claimant claims that he was discriminated against on the grounds of his religion and religious/other beliefs and that he was unfairly dismissed.
2. The Respondent is a school, and the Claimant was employed as its Chaplain. In May 2019, he delivered two sermons to children about '*competing ideologies*' which led to his summary dismissal on 30 August 2019. On appeal, he was reinstated subject to compliance with various management instructions. He was subsequently dismissed by reason of redundancy on 10 November 2020.
3. The Claimant presented his first claim to the Employment Tribunal on 28 January 2020 alleging direct discrimination, indirect discrimination and harassment. His amended grounds of claim were submitted on 28 April 2021 alleging victimisation and unfair dismissal.
4. The complaint of indirect discrimination was subsequently withdrawn in the written submissions.

THE HEARING

5. The claim came before us on 5 – 22 September 2020. The first three days were used to read in, and the parties appeared before us for the first time on 8 September 2022. We were unable to sit on 19 September 2022 because of the Queen's funeral.
6. We were presented with agreed bundles of documents running to circa 1500 pages and a small supplementary bundle. The parties exchanged witness statements, agreed a chronology and list of issues in advance of the hearing and both Counsel prepared skeleton arguments.
7. The evidence concluded on 22 September 2022. Given the length of the hearing and the complexity of the issues, we allowed both parties time to prepare and exchange written submissions.

Application for live streaming and live tweeting

8. At the outset of the hearing on 8 September 2022, we heard an application from '*Tribunal Tweets*' for the proceedings to be live streamed and live tweeted. We allowed the parties to make submissions before determining the application.
9. After deliberation, we permitted the hearing to be live streamed with access to the press only, rather than the wider public, and gave permission for the hearing to be live tweeted. Oral reasons for our decision were provided to the parties on the day.

Application for the press to receive and take away a copy of the Claimant's witness statement

10. On 9 September 2022, Mr O'Dair made an application on behalf of the BBC for an order permitting the press to receive and take away a copy of the Claimant's witness statement. The application initially extended to the publication of his witness statement online, albeit this element of the application was subsequently withdrawn.
11. We refused the application and oral reasons were given to the parties and the BBC on the day. In summary, we decided that it was not in the interests of justice to release untested witness evidence into the public domain. The hearing was an attended hearing, and the BBC was present with the facility to inspect witness statements and documents in accordance with Rule 44 of the Employment Tribunal Rules of Procedure 2013 to facilitate fair and accurate reporting.

THE EVIDENCE

12. We heard evidence from the following:
13. For the Claimant:
 - The Claimant
 - Reverend Dr Ian Paul and Richard Andrews (although both statements were unchallenged by the Respondent, so they were not called)
14. For the Respondent:
 - Mr J Hallows – Deputy Head (Pastoral)
 - Mr B Penty – Head
 - Ms F Potter – Head of the Elms
 - Mr D Brumby – Deputy Head (Academic)
 - Ms J Rimington – Designated Safeguarding Lead
 - Mr C Kelly - Teacher and House Parent
 - Mr N Finlay – Governor
 - Ms D Evans – Chair of the Governors
 - Mr J Gregory – Director of Operations
 - Ms M Daykin – HR Manager
15. We had the privilege of finding all the witnesses to be honest and credible and where there was any inconsistency on the factual background (of which there was very little) we found our facts primarily based on the contemporaneous documents in existence at the time.
16. Mr O'Dair objected to the length of Mr Penty's answers in cross-examination. However, we were satisfied that his answers were directly relevant to the questions asked of him and saw no reason to curtail his evidence.

THE ISSUES

17. The issues agreed between the parties for determination are set out below.

“Protected characteristic

18. *It is not in issue that at all material times the Claimant had the protected characteristic of religion or religious or other belief whether actual or perceived as follows.*

a. The Claimant is a Christian and had the protected characteristic of religion or religious or philosophical belief whether perceived or actual within S10(1) EQA 2010.

b. The Claimant holds the religious or philosophical beliefs set out at paragraph 118 of his particulars of claim and as a consequence had the protected characteristic of religious belief within S10(2) EQA 2010.

Harassment (Religion or Religious or Philosophical Belief) (S26 EQA 2010)

19. *Did the Respondent engage in ‘unwanted conduct’ related to the Claimant’s religion and or religious or philosophical belief (whether perceived or actual)?*

20. *The Claimant asserts the following as unwanted conduct:*

a. The failure to include the Claimant in discussions about the implementation of the Educate and Celebrate programme;

b. Referral to Prevent;

c. On 24 June 2019, failing to adjourn or postpone the investigation meeting when the Claimant was visibly upset.

d. Alleged unreasonable criticism of the Claimant’s religious beliefs (see paragraph 34 of the Claimant’s particulars of claim).

e. Mr Hallows voicing his concerns that the Claimant’s view of Church of England rules were out of sync with the School’s ethos.

f. Mr Hallows voicing his concerns that the Claimant was unfit to give pastoral advice or spiritual support to senior pupils.

g. Mr Hallows voicing his concerns that the Claimant looked to Canon Law for guidance

h. Mr Hallows’ concerns that the Claimant’s sermon was ‘narrow in terms of other faiths’ and ‘dressed up’ to hide a damaging underlying message.

i. Ms Rimington voicing her concerns that the Claimant could not be trusted in the role of chaplain.

- j. Referring the Claimant to LADO;*
 - k. Dismissing the Claimant on 30th August 2019 (the Claimant was later reinstated on 26 September 2019);*
 - l. Applying unreasonable conditions upon the Claimant's reinstatement.*
 - m. Failing to reinstate the Claimant's academic timetable after his reinstatement for academic years 2019-2020 and 2020-2021*
21. *If the Tribunal find the Respondent has engaged in acts of unwanted conduct related to his religion or religious beliefs, did these acts have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?*

Direct discrimination (Religion or Religious or Other Philosophical Belief) (S13 EA 2010)

22. *The Claimant relies on the acts outlined in paragraphs 20.a- n above as being less favourable treatment.*
23. *Did the Respondent treat the Claimant as set out in paragraphs 20. a-n?*
24. *With respect to each act found to have occurred, did that amount to less favourable treatment because of the Claimant's protected characteristics of religion, or religious or other philosophical belief (including manifestation of belief or perceived manifestation of belief?)*
- a. The Claimant relies on a hypothetical comparator. What are the circumstances of the appropriate hypothetical comparator?*
 - b. Was the Claimant treated less favourably than a hypothetical comparator would have been treated in the same material circumstances?*

Victimisation (S27 EA 2010)

25. *It is not in issue that the presentation of this claim on 28th January 2020 amounted to a protected act done by the Claimant for the purposes of section 27(1)(a) EA 2010.*
26. *In the alternative, did the Respondent believe that the Claimant had done a protected act with respect to the matters set out at paragraphs 20. a to c?*
27. *Did the Respondent:*
- a. fail to reinstate the Claimant's academic timetable for academic years 2019-2020 and 2020-2021; and*
 - b. artificially orchestrate a redundancy situation applicable only to the Claimant as alleged;*

because the Claimant had done a protected act or because it believed that the Claimant had done a protected act as alleged?

Unfair dismissal (s98 ERA 1996)

28. *What was the reason for the Claimant's dismissal on 30th November 2020? Has the Respondent proven that the Claimant was dismissed for a potentially fair reason within section 98(1)(b) & (2) ERA 1996?*

The Respondent's case is that the Claimant was dismissed because of redundancy.

29. *If so, was the dismissal fair or unfair within the meaning of section 98(4) ERA 1996?*

Section 136 EQA 2010 – burden of proof

30. *The Tribunal will need to consider whether if at any and if so what stage, the burden of proof has pass to the Respondent. The Claimant says the burden passed with respect to the redundancy process by the time of the conclusion of the grievance process; alternatively, by at the latest the Respondent's being put on notice of the first ET in February 2020*

Jurisdiction

31. *Whether the alleged acts of discrimination/harassment which occurred before 30th August 2019 (i.e. the acts in paragraphs 20.a – 2.l above except 20.k) form part of a conduct extending over a period of time, so that the Tribunal has jurisdiction to consider them?*
32. *If the answer to 31 is no, is it just and equitable to extend time?*
33. *Were any of the claims included in the Amended ET1 on 28th April 2021 prima facie out of time because they occurred earlier than 28th December 2020?*
34. *If so, are such claims nevertheless in time by virtue of the doctrine of continuing act?*
35. *If not is it nevertheless just and equitable to extend time?"*

THE FACTS

The 1st Respondent ("the School")

36. The School is an Anglican foundation co-educational, independent day and boarding school based in Derbyshire. It is also a registered charity. When the Claimant became its Chaplain, there were approximately 750 pupils in the senior school (including 114 boarders) and 330 pupils in the Elms, which is the Junior School providing nursery and primary school level education for children aged between 3 and 11.

37. The School was founded in 1866 and its articles of association were first signed on 16 December 1890 which provide that the ‘*Objects for which the company is established are: The advancement of education of boys and girls in England, Wales or elsewhere in accordance with the Protestant and Evangelical principles of the Church of England*’ (page 149). It does not define what those principles are.
38. The School’s ethos is explained in the ‘*Common Room Quick Guide*’ and appears on its website. It was at the material time, and remains:

“We give the highest priority to the quality of our academic provision. We are also proud of our reputation for delivering a fully rounded curriculum, with sport, music, art and drama all being important elements of an education at Trent and The Elms. This, coupled with a focus on the strongest pastoral care, makes us a school that nurtures young men and women to be the best they can be in terms of achievement and character, enabling them to flourish in a changing world. This positive approach to education is what stands at the very core of Trent and The Elms and is embedded into the current strategy and the associated annual development plans” (page 251).

The ISSR

39. The School is bound by the Education (Independent School Standards) Regulations 2014 (“the ISSR”) which are mandatory and should be met at all times. Failure to do so can result in regulatory or enforcement action against the School by the Secretary of State. The Department for Education (“DfE”) produces guidance to accompany the ISSR which explains:

“Inspectors will take this guidance into account when reporting to the Secretary of State on the extent to which the independent school standards are being met, or are likely to be met, in relation to an independent school. The department would also take it into account when taking decisions about regulatory or enforcement action on individual schools.....”

The Secretary of State has also signalled that he will be taking a firmer approach to enforce the standards when there is evidence of non-compliance. This is reflected in the policy statement on regulatory and enforcement action which is published alongside this guidance. All of the standards are mandatory and should be met by independent schools at all times except where they do not apply to particular types of school.....” (pages 170 & 172).

40. The relevant standards provide:

PART 1 Quality of education provided

1. *The standards about the quality of education provided at the school are those contained in this Part.*

2.—(1) *The standard in this paragraph is met if—*

(a) the proprietor ensures that a written policy on the curriculum, supported by appropriate plans and schemes of work, which provides for the matters specified in sub-paragraph (2) is drawn up and implemented effectively; and

(b) the written policy, plans and schemes of work—

(i) take into account the ages, aptitudes and needs of all pupils, including those pupils with an EHC plan; and

(ii) do not undermine the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.

(2) For the purposes of paragraph 2 (1)(a), the matters are

.....

(d) personal, social, health and economic education which—

(i) reflects the school's aim and ethos; and

(ii) encourages respect for other people, paying particular regard to the protected characteristics set out in the 2010 [Equality] Act”

PART 2 Spiritual, moral, social and cultural development of pupils

5. *The standard about the spiritual, moral, social and cultural development of pupils at the school is met if the proprietor—*

(a) actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs;

(b) ensures that principles are actively promoted which—

(i) enable pupils to develop their self-knowledge, self-esteem and self-confidence;

(ii) enable pupils to distinguish right from wrong and to respect the civil and criminal law of England;

(iii) encourage pupils to accept responsibility for their behaviour, show initiative and understand how they can contribute positively to the lives of those living and working in the locality in which the school is situated and to society more widely;

(iv) enable pupils to acquire a broad general knowledge of and respect for public institutions and services in England;

(v) further tolerance and harmony between different cultural traditions by enabling pupils to acquire an appreciation of and respect for their own and other cultures;

(vi) encourage respect for other people, paying particular regard to the protected characteristics set out in the 2010 Act¹; and

(vii) encourage respect for democracy and support for participation in the democratic process, including respect for the basis on which the law is made and applied in England;

(c) precludes the promotion of partisan political views in the teaching of any subject in the school; and

(d) takes such steps as are reasonably practicable to ensure that where political issues are brought to the attention of pupils—

(i) while they are in attendance at the school,

(ii) while they are taking part in extra-curricular activities which are provided or organised by or on behalf of the school, or

(iii) in the promotion at the school, including through the distribution of promotional material, of extra-curricular activities taking place at the school or elsewhere, they are offered a balanced presentation of opposing views.

41. Relevant sections of the Guidance which accompany the Regulations provide:

“2.4 So far as fundamental British values are concerned, the aim is to ensure that the education which it is planned to offer to pupils is in all aspects not in conflict with, or inconsistent with, any of them. A school is unlikely to meet the requirement in paragraph 2(b)(ii) if its policy on curriculum or the supporting plans and schemes of works, for example:
a. include material in history lessons which promotes non-democratic political systems rather than those based on democracy, whether for reasons of faith or otherwise; b. teach that the requirements of religious law permit the requirements of English civil or criminal law to be disregarded; c. are designed to suggest to pupils that some or all religions are wrong and that therefore those who follow them are not worthy of respect. For the avoidance of doubt, teaching that some religions, all religions, or atheism/agnosticism are wrong does not conflict with fundamental British values, so long as it is made clear that adherents of those belief systems should be treated with respect.

2.12 This standard requires that some form of PSHE is provided for all pupils at a school. Because the school’s approach to PSHE should reflect its aims and ethos, there is wide discretion to adjust its content, and this includes provisions for the requirements of a specific faith ethos or the school’s aims.

¹ Equality Act 2010

2.13 The requirement is that the PSHE curriculum must be designed to encourage respect for other people, with particular regard to the protected characteristics set out in the Equality Act 2010. It is not sufficient for a school to say that it meets this standard because its curriculum encourages respect for all people in a general way; that is not paying particular regard to protected characteristics, of which pupils must be made aware (although only to the extent that it is considered age appropriate). However, a school does not necessarily have to address all of the characteristics in every year group because in drawing up its policy, plans and schemes of works relating to the PSHE curriculum, a school is to take account of (amongst other things) the ages of pupils and their learning abilities and deliver the curriculum appropriately. Also, if there were some occurrence or event involving one or more of the protected characteristics which became an issue amongst the pupils, the school should help the children understand the issues, and ensure the children respect all those with those characteristics. See also paragraph 3.17.

2.14 The protected characteristics as listed in section 4 of the Equality Act 2010 are as follows: a. age b. disability c. gender reassignment d. marriage and civil partnership e. pregnancy and maternity f. race g. religion or belief h. sex i. sexual orientation The protected characteristics should be referenced in curriculum documentation, because the requirement in the independent school standards is, in effect, to ensure that such documentation provides for the matters specified in, amongst other things - paragraph 2(2)(d)

2.15 Everyone has at least some characteristics which are included in this list (for example, age and sex). The standard will not be met if, for example, the PSHE curriculum: a. encourages pupils to see those of particular races or religions as being inferior in any way b. suggests to male pupils that women and girls should be treated with less respect than males or that a woman's role is subservient to that of a man - or vice versa c. were to facilitate debate on same-sex marriage, but teaches pupils that the parties to such a marriage do not merit the protection which the legal status of marriage or civil partnership affords in law - although teaching that the faith position of the school is that marriage is only between a man and a woman is acceptable 11 d. teaches that disabled people deserve less equal treatment, for example because of sins they are said to have committed in previous lives e. encourages pupils to believe that women who are pregnant without being married should be punished or not respected. Teaching that the faith position of the school is that sexual activity involving members of that faith should be kept within the bounds of marriage is acceptable

2.16 A school can teach that its particular faith has teachings relevant to these matters, and explain to pupils what those teachings are. However, this does not mean that a curriculum, including that for religious

education, can be planned or teaching provided which advocates or otherwise encourages pupils not to respect other people on the basis of a protected characteristic. In that case the standard will not be met and there may also, depending on the exact facts, be a breach of other standards, for example, paragraph 3(i) or 5(b)(vi).

3.5 The duty to actively promote mutual respect and tolerance of those with different faiths and beliefs does not require schools to 'promote' teachings, beliefs or opinions that conflict with their own, but nor is it acceptable for schools to promote discrimination against or a lack of respect for other people or groups on the basis of their belief, opinion or background. As noted in paragraph 2.13, in relation to the requirement covered there about encouraging respect for others, teaching generalised 'respect' without any regard to any of the protected characteristics is not sufficient to meet that requirement. It should be noted that the requirement that the proprietor actively promotes the fundamental British values is separate from the requirement that the proprietor ensures that principles are actively promoted which encourage respect for other people, paying particular regard to the protected characteristics set out in the Equality Act 2010

5(b)(ii) enable pupils to distinguish right from wrong and to respect the civil and criminal law of England;

3.9 This paragraph of the standard was made more focussed in 2014 so that instead of just referring to respect for law as a concept, it refers to the civil and criminal law of England. The intention is to ensure pupils are encouraged to value the English legal system, and not simply law generally or some other type of law.

3.10 It is expected that pupils should understand that while different people may hold different views about what is 'right' and 'wrong', all people living in England are subject to its law. The school's ethos and teaching should encourage respect for English civil and criminal law, and schools should not teach in a way which would undermine this. If schools teach about religious law, particular care should be taken to explore the relationship between English civil and criminal law, and religious requirements. Pupils should be made aware of the differences between the law of the land and religious law. This is not incompatible with encouraging pupils to respect religious law if the school's ethos is faith-based; and the school should not avoid discussion, of an age-appropriate nature, of potential conflicts between state law and religious law, and the implications for an individual living in England.

3.16 Schools already have obligations under Chapter 1 of Part 6 of the Equality Act 2010, which this requirement complements.

3.17 It is not sufficient for a school to say that it meets this standard because its teaching and other activities encourages respect for all

people in a general way; that is not paying particular regard to protected characteristics, of which pupils must be made aware (although only to the extent that it is considered age appropriate). However, a school does not necessarily have to address all of the characteristics in every year group in its teaching and other activities. If there were some occurrence or event involving one or more of the protected characteristics which became an issue amongst the pupils, the school should help the children understand the issues, and ensure the children respect all those with those characteristics.

42. The Guidance in respect of the quality of leadership in and management of schools (Regulation 8) provides:

The last limb of the leadership and management standard is intended to ensure that the underlying ethos of any independent school should be to develop and nurture the well-being of its pupils, and that therefore, the well-being of pupils should be actively promoted by those who are leading or managing it. It is possible to fail this last limb of the leadership and management standard even though the other standards are being met” (pages 168 – 216).

43. If a school fails a standard, it fails an inspection.

The School’s policies

Equal opportunities policy

44. The School has an Equal Opportunities Policy which provides:

Through the delivery of a PSHE programme, chapel, assemblies, links with the community and the curriculum the school endeavours to educate pupils in the understanding that:

- *every individual has rights and these must always be respected;*

.....
- *They should always be careful of the comments they make about an individual, either directly or indirectly, and certainly such comments must never be derogatory or highlight in an unacceptable manner, any individuals’ protected characteristics under the Equality Act 2010 (page 265).*

Child Protection and Safeguarding policy

45. The School has a comprehensive Child Protection and Safeguarding policy which incorporates its statutory safeguarding duties and provides:

“The school firmly believes that all children have a right to achieve their potential and be protected from all forms of harm, including abuse and neglect, and that school staff have a particularly important role in the wider safeguarding system for children, as they are in a position to identify concerns early and take action to secure help for children who need it.

The Governing Body, the Head and the staff of the School are committed to the physical, emotional and spiritual well-being of all children in their care.....” (page 219).

46. It also provides under ‘radicalism and extremism’:

The school fully recognises its obligations under the Prevent duty. Any concern that a child or young person may be exposed to any form of possible extremism, extremist ideology and or radicalisation (including religious or right-wing ideologies) must be treated as a safeguarding concern and reported to the DSL, CHANNEL, children’s social care or the Police as appropriate....” (page 227).

Other policies

47. The Respondent also has comprehensive disciplinary, grievance and whistleblowing policies (pages 235 – 244).

Valuing All God’s Children

48. The Church of England Education Office produces guidance called “*Valuing All God’s Children*” on preventing homophobic, biphobic and transphobic bullying in schools. Relevant extracts from the guidance in force at the material time are:

“This updated version of Valuing all God’s Children seeks to offer further guidance and support, and places it within this vision. All bullying, including homophobic, biphobic and transphobic bullying causes profound damage, leading to higher levels of mental health disorders, self-harm, depression and suicide. Central to Christian theology is the truth that every single one of us is made in the image of God. Every one of us is loved unconditionally by God. We must avoid, at all costs, diminishing the dignity of any individual to a stereotype or a problem. Church of England schools offer a community where everyone is a person known and loved by God, supported to know their intrinsic value. (page 106)”

“Valuing All God’s Children was written in May 2014 and since then the context of education and the socio-political world in which we educate pupils to live and work has changed..... Church schools must do all they can to ensure that all children, particularly those who may identify as, or are perceived to be, gay, lesbian, bisexual or transgender are kept safe and can flourish.(page 107)”

“Church of England schools have at their heart a belief that all children are loved by God, are individually unique and that the school has a mission to help each pupil to fulfil their potential in all aspects of their personhood: physically, academically, socially, morally and spiritually. Our aim is that all may flourish and have an abundant life. Schools have a duty to try to remove any factor that might represent a hindrance to a child’s fulfilment. We want all pupils to willingly engage in learning in a safe and welcoming environment. Homophobic, biphobic and transphobic bullying, alongside all forms of bullying, is a factor that can inhibit a pupil’s ability to feel safe as well as their foundation for learning. Church of England schools must therefore implement measures to combat it. (page 108)”

“7 Collective Worship

In collective worship the importance of inclusivity and dignity and respect for all should be explored, as well as other themes and values that play a part in challenging all forms of prejudicial bullying, including HBT bullying and language.(page 109)”

“9. Curriculum

Opportunities to discuss issues to do with self-esteem, gender identity, and anti-bullying including HBT bullying should be included in physical, social, health and economic education or citizenship programmes. The curriculum should offer opportunities for pupils to learn to value themselves and their bodies. Relationships and sex education should take LGBT people into account. Sexual orientation should be included within RSE in the secondary phase. The Church of England’s teaching on human sexuality and a range of Christian views should be taught, as well as a range of perspectives from other faiths and world views. (page 109)”

“Why do homophobic, biphobic and transphobic bullying need to be addressed as specific categories of bullying in Church of England schools?

Bullying of any kind can have devastating effects on the personal wellbeing, identity-formation and self-esteem of any child or young person. This can have an impact on socialisation and academic achievements. The statistics for the consequences of HBT bullying on children and young people make for particularly lamentable reading (page 110)”

“Whatever the severity of the bullying, it can have a significant impact on young people. It may result in truancy or cause pupils to leave school early before getting the qualifications they want and of which they are capable. Pupils may become non-communicative, isolated or particularly

badly behaved. If they are treated poorly in schools and colleges this can, in turn, lead to loss of confidence and self-worth, self-harming, and alcohol or drug misuse. Gay, lesbian, bisexual and transgender people who are bullied are at a higher risk of suicide, self-harm and depression. 84 per cent of trans young people and 61 per cent of lesbian, gay and bi young people have self-harmed. 45 per cent of trans young people and 22 per cent of lesbian, gay and bi young people who aren't trans have attempted to take their own life (page 110)"

"Who does the bullying and why?"

There is no one type of pupil who carries out HBT bullying. Pupils may carry out HBT bullying because: they think that gay, lesbian, bisexual and trans people should be bullied because they are 'wrong'..... (page 112)"

There is a breadth of views held about same sex marriage, sexual orientation and gender identity by Christians and people of all beliefs. This needs to be acknowledged in the secondary PSHE/RE curriculum and pupils should be equipped to handle discussion well in this area. When handling controversial issues in a classroom or even a parent or governors' consultation, Professor Trevor Cooling's metaphor of a Bedouin 'tent of meeting' may be a helpful model for Church schools. This strategy asks teachers or facilitators to host a space where different views can be aired and honoured: 'a place of hospitality, welcome and respectful engagement, sacred and mutual, but not neutral to its own Christian values, whilst being genuinely open to the free expression of engagement' (page 114).

"Since the first edition of this guidance the Government has placed a duty on schools to prevent extremism and to teach British Values (this came into effect in February 2015). Schools must now ensure that they promote British Values which include challenging extremist views, understanding the importance of identifying and challenging discrimination and the acceptance of individual liberty and mutual respect. In July 2016, following a rise in hate crime after the Brexit vote, the Government issued Action Against Hate. This plan for tackling hate crime includes the need to challenge homophobic, biphobic and transphobic bullying in schools. If any school is not educating pupils to understand the rights of all people to live freely within their sexual orientation or gender identity without discrimination they would be failing in their duty to prepare their pupils to live in modern Britain (page 115)."

"Preventing HBT bullying

Creating an inclusive school environment

There are steps schools can take to help prevent HBT bullying from occurring in the first place. Creating an inclusive school environment that demonstrates equality and respect is an important measure in preventing

and challenging HBT bullying. The school's Christian vision will play a central part in creating an inclusive environment where all pupils are valued and able to flourish. Speaking clearly about LGBT equality is also important in creating an inclusive environment where all, including LGBT pupils, feel recognised, respected and welcome. Human sexuality and gender identity are currently significant areas where Christians are divided in their opinions and understanding. Members of the school community might hold very different opinions and there may be tension on this subject in some school communities, but this does not mean that issues and questions of sexuality, gender and gender identity should be passed over. Rather, schools should ensure they provide an inclusive curriculum that addresses sexuality, gender, gender identity and LGBT issues in age appropriate ways. Sensitively addressing LGBT issues will help to create a culture of respect towards LGBT pupils and will actively contribute to the prevention of HBT bullying. No matter what the views of school community members, pupils must be protected and bullying must be challenged (page 121)."

"Pupils with a strong family faith background can find navigating perceived home expectations and peer expectations particularly tricky. More than ever, pupils at this time in their lives need to be in a safe environment where exploring their identity can be done in safety without fear of ridicule and in a climate of truth, love and acceptance.....(page 124)"

49. In the 'Further Resources' section in the version in the bundle, Educate and Celebrate appears in the list of suggested resources (page 141).

The Claimant

50. The Claimant was ordained in the Church of England in 2006. He describes his church tradition as liberal Catholic, or more precisely, Tractarian High Church. He is committed to the Christian faith, as expressly embodied in the Church of England but says he maintains a classically liberal approach to all questions on any topic. He says he is committed to freedom of conscience for all people and his liberal stance means he places a high value on the pursuit of truth, through the faculty of reason, aided by freedom of speech. He considers the need to assess differences of belief rationally is one of the main tenets of a liberal democracy.
51. The Claimant commenced employment at the School in the role of full-time chaplain on 1 September 2015. His contract of employment provides that he is "expected to be loyal to the stated aims and objectives of the school and may not engage in any outside activity which, in the reasonable view of the head, might interfere with the efficient discharge of his duties or is in conflict with the interests of the school...". The contract also provides that the Claimant be allocated an academic teaching timetable (page 84)".
52. The Claimant's line manager until circa July 2018 was Mr Cowie, Deputy Head

(Pastoral).

53. In addition to being a Christian, the Claimant holds the following beliefs:

- i. That marriage is in its nature a union permanent and lifelong, for better for worse, till death them do part, of one man with one woman, to the exclusion of all others on either side, for the procreation and nurture of children, for the hallowing and right direction of the natural instincts and affections, and for the mutual society, help and comfort which the one ought to have of the other, both in prosperity and adversity (C of E Canon B30).
- ii. That sexual activity properly belongs only within such marriage and therefore any other kind of sexual activity is morally problematic.
- iii. That all humankind is created “male and female”, and accordingly, one cannot change their gender or sex.
- iv. Lack of belief that (i) gender is independent of any biological factor, (ii) that a person's physiology may need to be changed to match his or her claimed gender, (iii) that gender identity is a matter of individual determination and/ or social conditioning, and (iv) that it is possible to be ‘gender fluid’ or ‘non-binary’.
- v. That truth is important for assessing ideas and their consequences

The 2016 sermon

54. The School's Designated Safeguarding Lead is Ms Rimington, the 3rd Respondent in these proceedings. She has lead responsibility for all safeguarding and child protection matters within the School, including referring cases to the Prevent team where there is a radicalisation concern and referring cases to the LADO where a member of staff or volunteer has behaved in a way that *‘has, or may have harmed a child, or possibly committed a criminal offence against or related to a child, or behaved towards a child or children in a way that indicates they may pose a risk of harm to children’* (para 1 Ms Rimington’s statement). She is, amongst many other things, trained as a Home Office accredited WRAP (workshop to raise awareness of Prevent) trainer and delivers training to all staff and pupils each year. During her career, she has made many referrals to external agencies including social services, the police and LADO.

55. In the first 2015/16 term, the Claimant was aware that the School was looking for ways to ensure that LGBT+ members of its community felt safe, supported, included and valued just as much as any other member of its community. The School’s nurse, Ms Curran, reported to the Welfare Team the need to raise awareness of LGBT+ inclusion after seeing a presentation by Dr Ellie Barnes at a Boarding Schools Association School Nurses Conference. On discussion, Ms Rimington, Ms Curran and Mr Cowie agreed that a well-intentioned but ill-informed approach to such matters could be harmful and, therefore, it was

important to wait until an appropriate training course had been identified for staff.

56. However, the Claimant embarked on a series of sermons delivered to pupils aged 11 to 18 years old focussing on gender equality, gay marriage and LGBT+ rights. His first sermon strongly implied that it is sinful to alter the body given by God, implied that marriage can only be between a man and a woman and that family works best when a woman, with her tone of voice, looks after the children. The School received complaints from pupils and staff who were upset by the underlying message that it is a sin to be LGBT+.
57. The second sermon covered the 'LG' part of LGBT+ rights and gay marriage. The underlying message was that the majority of Christians believe that homosexuality is sinful unless homosexuals remain celibate. The sermon included the following quote from Leviticus: "*if a man lies with a male as with a woman, both of them have committed an abomination; they shall be put to death; their blood is upon them*".
58. The Claimant went on to say: "*so the key question for Christians is whether same sex marriage is possible within a Christian worldview. Clearly it is a legal reality now in this country. But it's worth putting that into some kind of perspective, I think. Because if you think that same sex marriage is obviously right, you'd be in a minority - at least if you consider everyone in the world, and all the people throughout history. Same sex marriage is new and that's worth bearing in mind.... So that's the majority Christian view, as it is around the world at the moment.....*" (pages 273-274).
59. The second sermon also upset staff, pupils and parents and complaints were made as a result.
60. A religious studies teacher who sat in the sermon wrote to the Claimant directly saying she had misgivings about whether the Chapel was the correct context for the content. She said:

"I personally feel that such challenging issues should be dealt with in a classroom, at an age appropriate point, in a context which allows for questions, and for clarification. Without those functions, there is a very strong likelihood of misunderstanding, or misconceptions being firmed up within the student body. Despite your "disclaimers" at the start of each of these controversial sermons, the fact remains that when you wear the gown, at the pulpit, at the front of the Chapel, you are representing the church. The students will find it extremely difficult to distinguish a Christian teaching from your own views, and thus you have a responsibility to present a balanced, clearly understandable view during each Chapel service.

To come back to this morning's Chapel, and the focus on homosexuality and gay marriage, I identified that your takeaway message was along the lines of "we should understand that the scriptures of the Bible can support

a negative view of homosexuality, and thus we shouldn't criticise those who cannot accept gay marriage or homosexuality". Or, to put it even more bluntly; "we should not be prejudiced against those whose faith leads them to be prejudiced."

I was severely concerned by the lack of opposing views that were discussed - though you did mention that the laws of Leviticus contain a number of laws that we no longer punished with the death penalty, I felt that it would have been difficult for a year seven to understand the point you were making. There is no mention of forgiveness, nor of "love thy neighbour".

"The majority Christian view" is a difficult phrase. If we say the majority view is the clearest indication of what is correct, then the Pharisees were correct to take offence to Jesus' new, radical message of God's love. Simply sticking to tradition cannot make a view justifiable.

I was personally offended, and hurt by what I heard in Chapel today, and moreover extremely concerned that you felt it was appropriate to use your position to take on such challenging views with students who already have numerous other pressures in their life. Although each biblical point you referenced is accurate, to see a priest, standing in church, airing a negative view of my personal life commenting on my marriage, and my identity, was surprisingly difficult for me. It felt a betrayal of everything that I have done during my teaching career to represent the Christian faith as a tolerant, forgiving, and loving faith.

You may say that in order to be fair and accurate to scripture then it would be incorrect to avoid the trickier, less palatable areas of the Bible. If this is the case then I implore you to avoid these "difficult" areas altogether. The students who are asking you these questions will have already undoubtedly raised them in the classroom, and if that doesn't satisfy them they can come and speak to you personally... I cried after your service today. I did not expect to, but to hear that the "majority Christian view" is against gay marriage is surprisingly difficult. I also cried from frustration at the suggestion that the government has moved too fast towards tolerance, as though gay marriage is somehow damaging to our society. I finally cried for the students who have sat through your Chapel on this topic feeling nervous, uncomfortable, upset, and left with the impression that they are hated by God, and hated by the Christian community. Whilst I know this that is not what you said, I know that that is what they heard. It is not what the final year 11 Chapel should have been on ..." (page 278-279)

61. The Claimant responded directly to the teacher concerned and, in essence, said it was his duty to present Christian teachings to the pupils and that he had to 'bear in mind the potential hurt to those Christians who would feel betrayed by a Christian minister propounding views which simply tried to ignore or propound the majority view" (pages 621 – 627).

62. The teacher forwarded her letter, and the Claimant's response, to Mr Penty, the School's Head, and commented: "*I would like to note that, to my knowledge, none of the scripture points that Father Bernard states are incorrect, and I am happy to concede that Father Bernard has a more in depth understanding of the Bible than myself. I would still question whether it is correct for this topic matter to be covered in Chapel, and whether such an approach is ignoring some of the pastoral concerns that we would have about members of our school community...*" (page 620).
63. The Claimant's sermon prompted circa 90 pupils to sign a gender equality petition. It presented to Mr Penty by a 6th form student who complained that the sermon was pitched too high for younger pupils and the content was offensive (pages 277, 280).
64. Furthermore, Mr Cowie received complaints from two parents in which one asserted: "*perhaps he could choose to dedicate his time to teaching the message of tolerance and forgiveness that Jesus spoke so much about and remember he is preaching to children who are already struggling to make sense of the world. He is purposely choosing to teach in such an inflammatory way despite the possibility of upsetting many of the children and this is an abuse of his position ...*" (pages 616-617)
65. Mr Cowie shared the concerns from pupils and parents with the Claimant and asked him to avoid '*anything controversial*' with immediate effect. He also asked the Claimant to refrain from giving the second part of his sermon and said in an e-mail dated 19 May 2016 that: "*it is clear that only part of the sermons are being heard but the impact and effect is damaging and we now need a period of calm and non-controversy ... I know the sermons were given with the best of intentions, however, we must be sensitive to our audience and to the concerns expressed...*" (page 616).
66. The Claimant responded to Mr Cowie confirming that he would drop mention of bisexuality the following day but commented that he "*would hardly have thought that presenting the ideal of fidelity in marriage/intimate relationships was controversial. Whilst I know that people have not heard what I said very clearly, I have to say I am upset by the intolerance and prejudice of anybody who finds it "outrageous" or "extreme" for a Church of England priest, in a school with the Church of England foundation and tradition, talking (in actually quite watered-down terms) about official Church of England teachings because I was asked to do so. It makes me wonder if I can touch on any church teachings at all*" (page 616).
67. Mr Cowie asked Ms Rimington to speak to the Claimant about the sermon. She explained the following in a meeting in his office to try and help him understand that LGBT+ pupils were statistically far more vulnerable to suicide, self-harm and emotional distress than the rest of the community:
 - i. That the message from his service, irrespective of his intended

meaning, was that it was wrong to be gay:

- ii. That the message most people took away from his sermon had caused harm by increasing vulnerability of the School's LGBT+ pupils:
 - iii. She had recently attended a local safeguarding training session at which the results of a study by Metro revealed that out of 7000 16–24 year olds who identified as LGBT+, 42% had sought medical support for depression or anxiety; 52% had self-harmed and 44% had considered suicide; and
 - iv. That a recent Serious Incident Learning Review looked into the suicide of a formal pupil and, whilst the School was not found to be culpable in any way, the pupil's struggles with their sexuality was a contributory factor.
68. The Claimant explained to her that his next sermon was the 'BT' part of LGBT+ rights and gay marriage. Ms Rimington stressed her belief that there was real risk to pupils who were gender questioning if the subject is not approached in the right way and that he should not deliver the sermon.
69. Mr Cowie also asked Ms Curran to speak to the Claimant about the negative effect some of his sermons were having on students, as was Ms Braine, the School's counsellor (page 282).
70. The concerns from pupils, parents and staff were discussed with the Claimant in the course of his performance development review which was signed by the Claimant and documented that: *"the previous services that covered controversial topics including the church view on gay marriage & bisexuality upset many. We had complaints from pupils, parents and staff. This was not the intention but it was the effect and this is not good for the Chapel, Chaplain or the school. We must avoid such upset being caused in the future"* (pages 81 – 83).
71. The School did not implement any disciplinary action against the Claimant or put in place any formal performance measures. Rather, it took a pastoral approach to support him in understanding the impact of his sermons on pupils and staff alike.
72. Accordingly, the Claimant was well aware by this point that:
- i) the topics of orthodox Christian beliefs on marriage concerning sex, sexual orientation and gender identity were not appropriate topics for Chapel sermons, rather that they could be dealt with safely through PSHE or in the classroom:
 - ii) that he should not address those issues in sermons:

iii) that the content of his sermons needed to be age appropriate; and

iv) that dealing with these issues in Chapel risked not only upset to pupils and staff but also real distress and the risk of psychological harm to vulnerable LGBT+ students who were coming to terms with their sexual identity.

The Claimant's job description

73. In June 2018, Mr Cowie emailed the Claimant because he was unable to locate a job description for him. He said: "*we may have to write one up - unless you have one, which would be great...*" (page 289). The Claimant responded and said that if he could not find anything, he would write something up and asked for a standard format so he could do so (page 290).
74. In July 2018, the Claimant wrote his own job description which although seemingly approved by Mr Cowie, was not signed off by Mr Penty who had ultimate responsibility for such matters. The job description was somewhat unusual in that it referred to the School's articles of association and described his role as prophetic, pastoral and priestly (page 80). It was in stark contrast to the job description written later by the School in 2020 (pages 513 – 515)

Educate and Celebrate ("E&C")

75. Towards the end of the 2017/2018 academic year, Mr Kelly, teacher and house parent, was approached by Mr Cowie, Ms Rimington and Ms Curran about using Educate and Celebrate ("E&C") in school. E&C is an Ofsted and DfE recognised best practice programme with the aim of '*taking a whole-school approach to tackling homophobic, biphobic and transphobic bullying and ingrained attitudes in schools*' (page 95). It is also approved by the Boarding Schools' Association.
76. Mr. Kelly had experienced incidents of homophobic language within the School and felt that utilising E&C would be a sensible step in the School's desire to ensure that its focus on addressing homophobia was done in a considered, structured way and as part of the wider focus on inclusion more generally. The School's Child Protection, Welfare & Boarding Governor Sub-Committee supported the proposal (page 14 SB) and it was signed off by the School's Governors and Executive. The programme itself had five pillars covering training, policy, curriculum, environment and community with targets for each one and three levels of accreditation, namely bronze, silver and gold.

The Claimant's view of E&C

77. The Claimant was aware that E&C would be attending the staff inset day in September 2018 and visited its website beforehand. On viewing the content, he formed the view that E&C went beyond a neutral stance of inclusivity into active promotion of ideas which he believed amounted to identity politics. He found E&C's reference to the phrase "*smashing heteronormativity*" as "*alarming*".

78. The Claimant also felt that much of the programme appeared to be contrary to Christian teaching, in particular that identity politics (as he considered it) tend to promote division as people are divided into small groups based on their particular characteristics whereas Christianity promotes inclusion based on all people's universally shared humanity as everyone is made in the image of God. Furthermore, identity politics tend to promote the idea that certain groups are oppressed by others and has profound Marxist roots and, therefore, has an atheist foundation. In his view, it was revolutionary and well beyond the stated aim of eradicating bullying.
79. He took particular exception to the fact that it listed "gender" and "gender identity" as protected characteristics instead of "sex" and "gender reassignment".

The E&C training day

80. The training was delivered by Ms Barnes, E&C's CEO. At the outset and by way of an enthusiastic warm-up, Ms Barnes encouraged attendees to chant '*smash heteronormativity*', an activity that some staff found '*cringeworthy*'.
81. The Claimant found some elements of the programme unproblematic or positive but considered some areas impossible to reconcile with Christian principles, and therefore the stated objects of the School. The Claimant commented to Ms Barnes that "gender identity" was not a protected characteristic and she replied "*well, it should be*". Despite the term being commonly used to refer to transgender, the Claimant took the view that because Ms Barnes used it, she was a liar.

After the training day

82. After the training, the Claimant spoke to Mr Hallows and expressed his concerns about the E&C programme stating that it was contrary to the School's ethos. Mr Hallows disagreed but encouraged him to share any insights or views at their scheduled meetings.
83. A steering group was formed comprising Mr Kelly and a colleague who run the School's Pride Youth Network pupil group, Ms Curran, Ms Rimington and the two Deputy Heads (Pastoral). They met to consider each element of the award framework to identify and implement activity to meet the criteria at different award levels. In reality, the implementation involved a '*soft touch*' approach to ensuring that the School's policies and the curriculum were LGBT+ inclusive, along with conducting events in LGBT+ month in assemblies and PHSE and a wider focus on promoting acceptance and inclusion more generally. The pupils were never told that they had to accept certain beliefs and the phrase '*smashing heteronormativity*' was not a phrase that was recognised or adopted by the School.
84. The Claimant was not a member of the steering group since no aspect of the framework required any review of the School's faith provision. At no point in their

discussions did the group identify a need for the Claimant's input from a faith perspective.

85. The Claimant approached Mr Hallows and asked to be a member of the group. However, Mr Hallows had formed the view after their discussions that he was too angry about E&C to be involved. Nonetheless, he reassured the Claimant again that he could raise any matters in their scheduled meetings and his views would be welcomed. By way of example, on 19 January 2019, Mr Hallows e-mailed the Claimant after such a meeting saying: "*I'm happy to look in more detail at the E&C programme with you to identify any areas of potential concern next week*" (page 789). Mr Hallows did not, however, reassure the Claimant that he would be a part of the steering group.
86. The Claimant did not approach the steering group after its formulation to talk about any aspect of the implementation of the E&C programme.

The 2019 Sermon

87. In June 2019, the Claimant was in a religious studies lesson and was asked by a year 10 pupil ("Pupil A") "*how come we are told we have to accept all this LGBT stuff in a Christian school?*" Pupil A subsequently told his teacher that the request arose following a comment made by the Claimant about not agreeing with people being transgender (page 327).
88. The Claimant was angered by some elements of the E&C programme and his exclusion from the steering group and used the student's question as an opportunity to deliver his next two sermons called '*competing ideologies*'.
89. He was fully cognisant of the fact that the content he was going to deliver was potentially sensitive and '*might ruffle a few feathers*'. So much so, that he scripted it in full and sent it to Reverend Dr Paul, a prominent Church of England theologian, to confirm that it was a truthful reflection of Church of England teaching. The Claimant wanted the full text available because "*if anything [he] said was misreported to a parent, or any concerns raised, the school would easily be able to confirm that [he] had said nothing inappropriate*" (para 49 C's statement) and it "*might be helpful in handling parental complaints, should there be any*" (para 1 Dr Paul's statement).
90. Despite his acute awareness of i) the sensitive content of the sermon: ii) the impact on and potential harm that it might cause vulnerable pupils; and iii) that it might be misreported and generate complaints, the Claimant did not share the content with Mr Hallows or any other member of the School's faculty. Given the reaction to the 2016 sermon, he knew that if he did, he would have been prevented from delivering it. The Claimant was determined to deliver the sermon come what may and his decision to do so, and in the manner in which he did, was in retaliation to the School's decision to implement the E&C programme.
91. On 19 June 2019, the Claimant first delivered his sermon to years 7–8 which comprised 11–13 year olds. The sermon lasted circa ten minutes and was

delivered at the start of the school day. The Claimant read from his script and the very nature of Chapel services prohibited the possibility of question, debate or clarification by the pupils.

92. Within the sermon (which we do not set out in full), the Claimant told pupils that they did *'not have to accept the ideas and ideologies of LGBT activists'*; that anyone who said they did was jeopardising the School's charitable status; that there were many areas where many or most Christians are in disagreement with *'LGBT activists'*; that they might *'reasonably notice'* that some *'LGBT activists'* will happily lie about gender identity being a protected characteristic; that no one has the right to tell them to lie – that is the tactic of totalitarianism and dictatorship; and, if they held concerns that they would be attacked and accused of homophobia for taking a religious view on matters they should remember that religious belief is just as protected as in law as sexual orientation. He also referred to a Muslim community being concerned, and even angry, about LGBT+ ideology. His use of language was persuasive in saying *"you may perfectly, properly believe"*, *'you might reasonably notice'*, *'you might be concerned'*, *'you may think'*..... (pages 295 – 299).
93. Whilst the Claimant caveated his sermon with a generalised need for respect and *'love thy neighbour'* at the beginning and the end, the pupils heard the fundamental message that, in essence, it was wrong to be LGBT+ and religious belief allowed them to discriminate. This was borne out in the subsequent complaints.
94. Immediately after the sermon, a number of students went to Mr Kelly's office, clearly upset about the content. Mr. Kelly was able to calm them down and ask them to reflect further and come back at break time if they remained upset. At break, the students returned to explain how upsetting it was to hear that they, their parents and their family members were being disparaged in such a way and in such a setting.
95. Mr Hallows had not attended the first sermon but received immediate complaints from four members of staff and two pupils. Accordingly, he e-mailed the Claimant explaining that he had been approached by staff and pupils who had raised concerns regarding the theme of his sermon to the lower school pupils. He said:

".....I want to give you the broad feedback to help ensure that it goes well tomorrow.

- 1. 2 pupils were worried that the sermon could be interpreted as "it's okay to be homophobic" and you don't have to change your views*
- 2. 2 members of staff were uncomfortable by the way that aspects of LGBT/ gender identity were referenced.*
- 3. 1 member of staff reported feeling uncomfortable at part of the sermon that referenced dictatorships.*

4. 3 members of staff did not feel that the sermon was appropriate for the age group or that the theme was consistent with the school's ethos.

Their views have come to find me - I haven't been looking. You will know yourself that listeners will pick up on themes and strands in any sermon rather than following the whole narrative. It is clear that there is scope in the chosen theme for upset, discomfort or misinterpretation....."

96. Mr Hallows went on to say that he hoped his advice and feedback was helpful and taken in the manner intended. He also offered support if the Claimant wanted to speak to him (page 310). His intention was that the Claimant would moderate his next sermon taking into consideration the concerns raised.
97. The Claimant replied that night and told Mr Hallows that he had tried very consciously to use language which was as moderate as possible and that much of the point was that there are things that people legitimately disagree about, but that people can treat each other with respect and love their neighbours (page 311).
98. The Claimant delivered essentially the same sermon on 21 June 2019 to years 9, 10 and 12.

Complaints

99. Following the sermons, the School received an unprecedented number of complaints. A common theme was that although the sermon was littered with caveats, the message appeared to be that it was wrong to be LGBT+ and okay to discriminate. Comments from teachers included:

"I felt so concerned for the children in the room who might have felt targeted by the message of the sermon"

"Because of this vagueness, this morning's message could easily be misconstrued by some as encouraging our students to judge and vilify others, which is somewhat opposed to our school's ethos. At the very least, the intellectual level of the sermon was, in my opinion, too high for our students, and I should imagine that the majority will have missed any subtle nuances in Father Bernard's message. With all this considered, I feel that the message of the sermon was unclear and potentially very harmful."

"There are very vulnerable students who are looking to the school to protect them and reassure them that their worries over their gender or sexuality are normal and do not make them different or unable to fit in with a Christian School, and those pupils' needs were not met this morning."

“If the central message of this sermon was intended to be something concerning “the right to have your own opinion”, then this is certainly a worthwhile topic. It was a shame that the opinion it focused on (and validated) was one that may have alienated some of those attending (despite all the hard work delivered by pastoral staff working within this space).”

“I teach a number of students who I know are quietly wrestling with the concept of their own sexuality, and this is a very difficult process, they are sensitive and vulnerable, and I am genuinely very concerned about their responses to this message, in their young minds.” (pages 312 – 319).

100. One teacher said that whilst the sermon was ‘book ended’ by statements that appeared to be in line with the School’s ethos, the content in between was ‘a provocative series of statements that appeared to promote homophobia, Islamophobia and intolerance and that the tone was dismissive and disrespectful’ (page 318).

101. A year 9 pupil wrote to Mr Hallows expressing the following:

“I believe that this school is a place where all students should feel included and welcomed, but most importantly safe. Having a well-respected member of staff, stand in a place of religious importance (which is a place of safety for many of the students) and speak about LGBTQ+ people in a dehumanising and demoralising manner is something that I, and many others, believe is the definition of unacceptable.

During the Chapel service on Friday, I felt uncomfortable in my own skin. All I could hear from the Reverend was why I was wrong, why my beliefs were wrong. Why the community I identified with was OK not to be accepted. His message suggested that I was to be tolerated and no person should feel tolerated. The impact of his words made me feel physically sick. I wanted to leave...

I understand Trent is a Christian School however, having eleven and twelve year olds with impressionable minds listen to a view that is only expressing negativity towards a large group of people is disappointing. The message however subversive it is can be interpreted in many ways and needs to be age appropriate to the audience.

Chapel could have a positive effect on many pupils, on a spiritual level or just a break from hectic school life. Unfortunately, students are not given the opportunity to consider their belief; there is no room for contemplation whilst being preached to.....

Expressing that Christian beliefs contradict the rights of the LGBTQ+ community and that followers of Christianity can disagree with activism

to realise equal rights is important if shared in the correct way. The Reverend's attempts at this was poorly done, he was repetitive in portraying Christian beliefs against the LGBTQ+ community and never once underlined the importance of acceptance and no discrimination to take place in our school. He was only explaining the victimisation of Christians. This is dismissing the continuous struggles of many LGBTQ+ identifying people. For example, coming out to an extremely religious family, or how to deal with being kicked out of home for being gay. His message was to help religious believers who disagreed with the LGBTQ+ community's activism and fighting for rights, not LGBTQ+ who need the support or acceptance that could be given by someone with power or an influential status such as Reverend Bernard.

Whilst everyone has the right to their religious beliefs and freedom of speech, I believe every student in this school should have the right to feel safe and not walk out of Chapel feeling victimised and undermined by a member of staff" (pages 320 – 322).

102. On 21 June 2019, Mr Kelly convened a special Pride Youth Network meeting out of concern for the well-being of its pupil members and submitted their feedback to Mr Hallows which included:

"Comparing LGBT activists to totalitarian dictators – are they comparing us to Hitler? This statement really bothered me. You can't compare these two groups of people"

"the general message that it's okay not to be accepting of the LGBT community – that's like saying if your religion is against it, you can be racist"

"saying this to year 7s isn't appropriate. It could have been put across in a nicer way. If he felt he has to say it, it could have been done so that people didn't feel disregarded because of who they are"

"His speech itself was very confusing. I couldn't work out where he was going with it"

"Some people listening might be coming to terms with their sexuality. They may now think they're not 'right' or may feel even more uncertain. People might also feel afraid to come out. It creates a hostile environment" (page 323).

103. Mr Penty asked Mr Hallows to take stock of the situation, gauge the depth of reaction and meet with the Claimant to understand the thinking behind his actions.

104. Accordingly, in the afternoon of 21 June 2019, Mr Hallows e-mailed the Claimant and asked him to send a transcript for the sermon along with the rationale behind it. He said *"it would be fair to say that it has provoked a strongly*

negative reaction from a range of colleagues and pupils. I am worried about the consequences on a number of levels" (page 324).

105. The Claimant duly replied and explained that he had been asked to address the topic, that he wanted to give reassurance to those who had been upset or made to feel uncomfortable by the E&C programme, that it was his job, that he had been moderate, and he made no substantive point that he had not done already in chapel without negative reaction (page 326). Mr Hallows was concerned at the Claimant's response given that he expressed no apparent concern for the impact on the School's pupils or any intention to rectify any harm, distress or misconception caused.
106. Later that day, Mr Hallows e-mailed Ms Rimington and asked her to consider the sermon in light of the School's Prevent duties (page 649).
107. In the meantime, it was agreed that Mr Hallows would prepare an assembly the following week in the allocated Chapel time to calm the feelings of upset caused by the sermons.

The meeting on 24 June 2019 (pages 331 – 334)

108. On 24 June 2019, Mr Hallows and Ms Rimington met with the Claimant to understand his rationale behind the sermons, to help him understand the strength of complaint and possibly plan together how to formulate a response. It was not a formal investigation meeting.
109. At the outset, Mr Hallows made it clear that the meeting was not a matter of the Claimant's faith. Rather, it was to understand his motives behind the sermon and whether he had reflected on it and the subsequent feedback. The Claimant responded by saying "*what did I say that wasn't true? I didn't come down hard on the Church's views... marriage is of a man and woman, end of story*". He explained that he took his authority from Canon law and that the diocese and Archbishop of Canterbury have no doctrinal authority.
110. The Claimant maintained that nothing he had said was inappropriate or wrong. When Mr Hallows asked him how they had arrived at a toxic situation with upset staff and pupils the Claimant responded: "*well, somebody invited Educate and Celebrate in*".
111. It appeared to Mr Hallows that the Claimant was angry and bemused. The Claimant agreed he was and explained his upset that he had been excluded from guiding the direction of the E&C programme. Mr Hallows repeated his earlier view that the Claimant was not involved because he was too angry.
112. Mr Hallows asked the Claimant the purpose behind the sermon and he replied that it was '*to set the record straight*' regarding what people feel they can and cannot believe.
113. The Claimant was handed a copy of the anonymised complaints, albeit did not

have opportunity to read them in any detail in the meeting. However, he understood the sentiment behind them. The Claimant did not express any concern or regret about the impact of his sermon on the safety or wellbeing of the School's LGBT+ community, nor did he express any desire to address the distress he had caused. Furthermore, he did not engage with the possibility that his sermon was unacceptable for an audience of children.

114. Mr Hallows had no cause to adjourn the meeting which was conducted in a professional, sensitive and courteous manner. The Claimant did not appear to be upset or confused at any point, nor did he request an adjournment.
115. The meeting concluded when it became clear to Mr Hallows that no progress would be made in addressing the upset caused by the sermons. After the Claimant's departure, Mr Hallows and Ms Rimington discussed the Claimant's responses which had shocked them both. They recorded in the meeting notes that:

"Both JLR and JHM Felt that it was rare to encounter beliefs that were so deeply ingrained. Both were concerned about BCR's state of mind given the lack of reason, unresolved anger, unrepentant approach as highlighted by BCR's stated "there was nothing in the sermon that was untrue". Worries were heightened by BCR's responses"

116. These concerns were not about his beliefs. Rather, they were about his lack of care for the welfare of the School's pupils, his belief that Canon law took priority over their welfare, his strong view that his ideas about gender identity were correct, his negativity towards E&C and lack of reflection or regret that his sermons had caused distress.
117. Mr Hallows and Ms Rimington reported their concerns orally to Mr Penty who felt that the matter warranted a full investigation.
118. On 25 June 2019, the Claimant was suspended pending such investigation and was invited to attend an investigation meeting on 1 July 2019. He was advised that the School's concerns stemmed from i) the content of the sermons he had delivered and the distress it had caused both staff and pupils; and ii) that he had disregarded advice from senior pastoral staff in light of concerns about the impact of the content (pages 346 – 347).

The referral to Prevent

119. The role of Prevent is to provide specialist advice to ensure that pupils are protected from extreme or radical doctrines.
120. Ms Rimington reviewed the sermon and, in isolation, did not feel that it met the threshold for a referral to Prevent. However, her meeting with the Claimant on 24 June 2029 significantly heightened her concerns, more particularly his anger about the E&C programme, his entrenched views which had been voiced in Chapel, his lack of empathy for pupils affected by the sermons and his lack of

reflection or regret over the distress caused. Furthermore, she was concerned that the Claimant's deeply held belief that Canon law took precedence over the welfare of pupils and staff fell under the remit of Prevent.

121. It is normal practice to take advice from relevant professionals if a safeguarding concern is not clear cut and Designated Safeguard Leads are taught this in training. Given that Ms Rimington was uncertain whether the threshold for a referral was met, she sought advice from the Local Authority which, on 24 June 2019, advised her that Prevent had suggested that she make the referral – *“it may not be progressed but better to do the referral”* (page 683).
122. Ms Rimington followed that advice and e-mailed the referral to Prevent later that day (page 354). The referral itself contained the script from the sermon and an explanation of its impact:

“The reaction to this sermon has been one of outrage and distress. The school embarked on the Educate and Celebrate programme for schools in September in order to raise awareness, understanding and inclusivity of and for the LGBT+ members of our community. This programme has been discrete and effective. However, Father Bernard is strongly opposed to it and felt the need to balance the programme with his sermon.

Mr Hallows and I met with Father Bernard on Monday after school to discuss the complaints that have been received and the tone of the sermon. In that meeting Father Bernard showed no remorse or regret for distress caused. He stressed that his views were in line with Canon law and the book of common prayer, in that ‘marriage can only be between a man and a woman, end of story’. He stated that he believes that the diocese has no influence in these matters and that the Archbishop of Canterbury doesn't have any doctrinal authority.

There have been complaints about the comments relating to the LGBT community, and the implication that Muslims are anti-LGBT. The school is conducting an investigation into the matter and Father Bernard has been suspended from duties whilst that internal investigation is underway. The Bishop of Derby has been informed and has passed the matter to her safeguarding team” (pages 939 - 940).

123. On 1 July 2019, Ms Rimington was contacted by Prevent which said:

“Although the messages that Mr Randall is putting out to the students contradicts what the school and society are saying, it has been assessed that there is no Counter Terrorism risk, or risk of radicalisation. We receive many referrals from schools and colleges across the county and we would rather receive the referral than not as it's always good to get our professional opinion in these circumstances” (pages 353 – 354)

The investigation

124. Prior to the investigation meeting, Mr Hallows contacted the Bishop of Derby to request pastoral support for the Claimant (page 672).
125. Ms Potter, Head of the Elms, was appointed to conduct the investigation.
126. On 28 June 2019, Ms Potter met with Ms Rimington and Mr Hallows. Ms Rimington explained the referral to Prevent and her concerns: i) for the wellbeing of vulnerable pupils who were at risk of self-harm and suicide: ii) for the wellbeing of staff: iii) that the Claimant had not shown any empathy or regret on learning of the complaints; and iv) that he had previously been spoken to about the impact his previous sermons had on pupil wellbeing. Ms Rimington also expressed her view that the Claimant could not be trusted to carry out the role of Chaplain in a satisfactory manner and should not be working in any school (page 348).
127. Mr Hallows shared similar concerns and, in particular, that i) the Claimant's view of Church of England rules were out of sync with the School's ethos: ii) that the Claimant was unfit to give pastoral advice or spiritual support to senior pupils: iii) that he looked to Canon Law for guidance: iv) that the sermon was '*narrow in terms of other faiths*' and '*dressed up*' with Brexit and love thy neighbour references but the underlying message was damaging: v) the Claimant's view that he said nothing wrong; and, vi) his lack of regret or willingness to discuss was worrying (page 349).
128. Again, Mr Hallows' concerns were not based on the Claimant's beliefs. Rather, they were borne out of manner in which he had articulated his views and the subsequent impact on the School's pupils. He felt that the sermons displayed a lack of empathy with children generally and specifically those who were LGBT+. Given the unprecedented number and vehemence of the complaints from staff and pupils, it was clear to Mr Hallows that the sermons had caused concern and distress and left them with the view that the Claimant held a negative view of LGBT+ matters and was against the E&C programme.
129. On 1 July 2019, Ms Potter met with the Claimant who was accompanied by Reverend Cannon Andrews.
130. Broadly, the Claimant remained adamant that he had done nothing wrong. When Ms Potter asked him if it was appropriate to deliver the sermon to years 7 and 8 and if they were able to understand he said: "*I think they should have been able to, I don't believe in dumbing down, I don't believe their intellectual faculties are the same as that of a 3 year old - possibly it would be difficult for some to get their head around but not impossible ...*"
131. Ms Potter asked him if he taught years 7 and 8 and his response was "*I do, yes - if the school thinks that teaching them educate and celebrate is appropriate for year seven and eight then it is appropriate*".
132. In respect of the complaints received he said:

“some people think that they have a right not to be offended and that this is a greater right than free speech - there is something wrong when sensitivities come before truth speaking. These complaints are saying you've offended my sensibilities and you are not allowed to do this. I am sorry I have upset you, but you are not entitled to have a go at me because I have upset you, it's not how it works.”

133. The Claimant expressed his belief that they would not be having the meeting if the school had received written complaints from Christian staff and pupils if he said that gay marriage was okay. He said:

“if people are complaining as they don't share the beliefs that I talk about then we are dealing with prejudice and bigots - bigots do not listen to reason. In my worst moments that is what I feel that I am dealing with. I thought that the school would protect me from discrimination, and it hasn't. I feel that it has inflicted discrimination upon me.”

134. Ms Potter asked the Claimant how he would be able to move forward and what he would like to happen. He said:

“what I would like to happen is an apology from the people who have not supported me, who have discriminated against me. The educate and celebrate programme should be put on hold to work out which bits are fine and which bits might be problematic, some of it's absolutely right - there needs to be more education that there are religious viewpoints that have legitimate reasons. Education is how you deal with prejudice. Religion is a protected characteristic - perhaps people don't understand this and in that way I made a mistake saying what I said. People need to understand right and wrong, there are two legitimate points of view. There are reasons”.

135. Ms Potter asked the Claimant about Mr Hallows' e-mail to him after the first sermon. The Claimant was dismissive of it saying it had no substance and, because Mr Hallows had not specifically said that he wanted to talk about matters, he did not take it more seriously (pages 364 – 376).

136. Ms Potter considered the Claimant's responses. Overall, she was concerned that the Claimant believed that speaking freely came before the welfare of pupils in the context of the Chapel where discussion and questions could not be easily addressed in a supportive environment. Furthermore, the Claimant showed no regret or empathy for the distress his sermons caused.

137. Ms Potter was also concerned that the content of the sermon and language used was inappropriate for the age of the pupils, especially those in years 7 and 8. She had further concern that the Claimant had delivered the sermons in the way he did, despite previous conversations about the impact that such sermons could have on vulnerable students. It was also troubling that Ms Rimington in her role of Safeguarding Lead and Mr Hallows as pastoral Deputy Head had

concerns about his ability to carry out his role. In addition, the Claimant had disregarded Mr Hallows' e-mail before delivering the second sermon, therefore she felt he did not want to accept supervision.

138. Taking all these matters into account, Ms Potter felt that the matter was worthy of progressing to a disciplinary hearing (pages 362 – 363).

The disciplinary hearing

139. The Claimant was invited to a disciplinary hearing on 5 July 2019 and was advised of his right to be accompanied (page 378 – 379). Mr Penty and Mr Matthews (Deputy Head Co-Curricular) formed the panel and Mr Penty was the chair. Ms Potter attended to present her investigation findings and answer any questions from the Claimant.
140. The Claimant was accompanied by Reverend Dr Paul who also provided a statement in support of the Claimant.
141. The Claimant's position was that he had not said anything that was untrue, and the content of his sermon was factually accurate. It was his job to speak the truth and relay the doctrines of the Church of England. He felt it was unfair that people had taken offence to only part of the sermon and that it should be read as a whole. He said that he should be judged on what he actually said as opposed to what people chose to hear. The Claimant also explained his upset at being excluded from the E&C working group and that '*non-binary*' and '*gender identity*' are not protected characteristics (pages 392 – 395, 357 – 361).
142. The Claimant was firmly of the view that he was entitled to deliver his sermons because it was his duty to act in accordance with his job description and the School's objects which state that the aim of the School is the advancement of education in accordance with the Protestant and Evangelical principles of the Church of England.
143. The Claimant read a pre-prepared closing statement justifying his actions. He reiterated that in his own mind he had been carrying out his duty both in terms of his job description and his Christian calling. He also said: "*I am passionate about justice. I know that traditionally minded Christian or Muslim or Jewish pupils and staff are in a minority, but the point of Equality laws is precisely to protect minority groups of whatever kind, including religious ones. There's a reason why religion is a protected characteristic and there's a massive injustice if in the name of protecting one minority we oppress another minority. That isn't what respect and tolerance for each other's beliefs is supposed to mean*" (pages 380 - 382).
144. Reverend Dr Paul's statement contained an explanation of Canon law and referred to case law in respect of the protected characteristic of religion or belief. In summary he said: "*In sum, it seems to me that what Dr Randall said was entirely in accord with the Church's teaching. This teaching is something that Dr Randall, as an ordained clergyman in the Church, has an obligation to*

understand, teach, and uphold in his own lifestyle. To in any way prohibit him from expressing and explaining this teaching might easily be construed as a breach of his own rights to freedom of speech and freedom of religious belief, rights that are enshrined in international law, and I think it would certainly qualify as an example of direct discrimination on the grounds of religion under the Equality Act 2010. In addition, a straightforward reading of the foundation of the College would suggest that, in his role as chaplain, he is in fact mandated to ensure that pupils understand this teaching and consider its historical, social and theological foundations and importance” (pages 383 – 387).

Mr Penty’s decision to dismiss

145. Mr Penty initially told the Claimant that the panel’s outcome would be delivered to him within five days. However, Mr Penty wanted to extend the time over the summer holidays given the complex arguments and seriousness of the allegations requiring contemplation. The Claimant agreed to this approach.
146. Mr Penty spent considerable time over summer giving fair consideration to the more complex theological and doctrinal arguments that had been presented by the Claimant and Reverend Dr Paul. Ultimately, he concluded that the Claimant was guilty of gross misconduct and explained the following findings in a letter dated 30 August 2019:
 - i. He found that the Claimant had acted with wilful neglect or refusal of duty by not putting the pupils’ welfare first. The Claimant had been advised by senior pastoral staff in the past of the potential harm that the content of his sermons had or potentially might have had on pupils in the School’s care who are more vulnerable. Despite this advice, he chose content for his sermons that caused considerable upset to pupils and staff. Mr Hallows had sought to dissuade him from repeating the sermon a second time but he delivered it again regardless.
 - ii. The Claimant held a position of trust and Mr Penty explained that it is essential in such a role to *“accompany our young people in their exploration of their spiritual spirituality without causing anxiety, distress or forcing particular views on them”*.
 - iii. Furthermore, Mr Penty considered that the Claimant, as a member of staff, was expected to support the School’s policies and initiatives and had used his position and a time of collective worship to impose a particular and undermining stance on LGBT+ and other matters upon the staff and children. Furthermore, Mr Penty felt that the Claimant’s assertion that the School’s stance on LGBT+ undermined the School’s Anglican foundation and threatened its charitable status was both inaccurate, inflammatory and inappropriate in front of the School’s pupils.
 - iv. Mr Penty explained that the School has a responsibility within the ISSR to encourage its pupils to have respect for other people and their beliefs, paying particular regard to the protected characteristics of the Equality

Act 2010. He said: "*it can easily be argued (and was certainly interpreted this way by pupils in your audience) that it sought to achieve an opposite effect in its apparently intended message that same sex relationships/marriages are inappropriate and that any change to gender is problematic*". Further, the Claimant's use of certain terminology was pejorative (e.g. 'LGBT activists' and 'all this LGBT stuff').

- v. Mr Penty also felt that the sermons were '*pitched at a conceptually complex and intellectually challenging level that was too high, using ideas and terminology that were inaccessible to, at the least, [the School's] younger pupils. It is a member of staff's duty to ensure that the content of delivery is age appropriate*'. This was an issue that had been raised with the Claimant before, but he had shown an inability to respond to advice in this regard.
 - vi. Mr Penty considered that the Claimant's lack of empathy for the feelings of pupil and staff amounted to offensive behaviour. He said: "*it is clear from the unprecedented amount of complaints and concerns raised by both pupils and staff that your most recent sermons that your words caused considerable offence. There is also evidence of offence and upset caused on other occasions.*"
 - vii. Finally, Mr Penty considered that the Claimant's conduct was likely to damage the School's reputation. He said: "*to have taken a stance which asserts a fixed, and in today's terms, controversial standpoint might easily have invited critical attention from outside constituencies seeking to find fault with the school, its position and its ethos*".
147. Mr Penty took no issue with the Claimant's beliefs. However, his primary concern was that the Claimant's sermon was delivered to pupils in a manner which caused them distress, and therefore potential harm, and led to an unprecedented level of serious complaints.
148. Mr Penty would not have discouraged debate on the premise of the Claimant's sermon, but it needed to be done in the right way. He felt that if sexuality was being explored from a religious or Christian perspective, it should not be done in a sermon which is short and one-sided with no room for reply or debate. Rather, it should be done in a safe environment such as PHSE, with plenty of time and careful use of age-appropriate language, opportunities for pupils to ask questions, time to think, discuss and debate and think through pros and cons and the impact on other people of different views.
149. Mr Penty was convinced that the Claimant had used his position of authority to undermine School policies that he did not like, including the E&C programme. The Claimant had not responded to advice and feedback from senior colleagues and as such, had lost the trust and respect of staff, pupils and parents.
150. Mr Penty was also concerned that the Claimant did not see himself as part of the staff team and was only answerable to Canon law. This was not, in Mr

Penty's view as the School's head, in the best interests of the School, its pupils or its wider community.

151. He considered alternative sanctions to dismissal but given the seriousness of his conclusions, he felt that summary dismissal was the only appropriate outcome.
152. Mr Penty confirmed that the Claimant was dismissed with immediate effect (as of 30 August 2019) on the grounds of gross misconduct and advised him of his right to appeal (pages 396 – 398).

The referral to LADO

153. In September 2019, Ms Rimington was collating material from the 2016 sermon and associated complaints as part of the disciplinary process which prompted her to revisit the question of whether a referral to LADO was necessary. As with the referral to Prevent, she did not think that the sermon alone warranted a referral. Nor did she consider it warranted a referral after her meeting with the Claimant on 24 June 2017, particularly given she had already made a referral to Prevent, and the investigation was ongoing.
154. However, on recalling her previous conversations with the Claimant about the potential harm of his sermons, she formed the view that he had delivered another potentially harmful sermon to vulnerable students in full knowledge of a significant risk of harm. In her view, he posed an on-going risk if he were to deliver sermons in the same way in the future.
155. Accordingly, she spoke to a child protection manager and LADO at Derbyshire County Council to seek guidance. She was clear that the Claimant had not caused any physical harm, and nor did she think he would. However, she wanted to check whether the content of the sermons amounted to emotional harm. The LADO agreed that this would be the category of harm that applied but confirmed that as the school had already dismissed the Claimant, a LADO conference would not be convened. He advised her to make the referral if the School wanted feedback.
156. Ms Rimington made the referral on 19 September 2019 but received no feedback.

The Claimant's appeal and subsequent re-instatement

157. The Claimant appealed the decision to dismiss him and submitted comprehensive grounds of appeal (pages 399 – 413). An appeal panel was convened comprising Mr Finlay, School Governor and Reverend Fenton, also a Governor.
158. An initial appeal hearing was held on 11 September 2020 and reconvened on 20 September 2019.
159. Ultimately, the Panel agreed with Mr Penty's reasons for dismissal but elected

to downgrade the sanction to a final written warning because the Claimant had not received formal warnings for the earlier incidents. They wanted to give him one final opportunity to improve and work with him to promote the School's ethos and create an inclusive environment.

160. However, the panel made the Claimant's return conditional on his adhering to twenty management instructions to prevent repeat behaviour which included being supportive of the School's faith provision as agreed by Mr Penty and the Governors and his sermon texts being reviewed by Mr Hallows in advance of their delivery. Other measures included:

- *“Each sermon must be age appropriate in terms of levels of language and conceptual difficulty...”*
- *You will not broach any topic or express any opinion (in Chapel and more generally around the school) that is likely to cause offence or distress to members of the school body*
- *You will not publicly undermine any aspect of the school's provision or initiatives through words or actions, either in Chapel or more widely. Where you disagree with any aspect of provision you will first raise your concern to the appropriate member of the executive and ensure that the deputy head (pastoral) of the respective end of school is informed.*
- *You will not publicly express personal beliefs in ways which exploit our pupils' vulnerability*
- *You must take all necessary steps to ensure that pupils of every sexual orientation, gender identity, religion and belief feel that their beliefs are valued and nurtured by you, either in Chapel or more widely.”*

161. The outcome was confirmed to the Claimant by way of letter dated 26 September 2019 (pages 441 – 442). The Claimant returned to work on 14 October 2019 and worked closely with Mr Hallows in accordance with the management measures.

The Claimant's academic timetable

162. Mr Brumby, Deputy Head (Academic) was responsible for the teaching timetable from September 2018. In the initial planning of the 2019/20 academic timetable, the Claimant was allocated teaching of some Religious Studies and some Classical Civilisation.

163. However, given that the Claimant had been dismissed before the start of the new academic year, Mr Brumby reallocated his teaching timetable for Religious Studies (11 hours per fortnight) to other qualified and experienced teachers. Only one pupil had opted to study Classical Civilisation but subsequently changed their mind so there was no need to re-allocate this. This was Mr

Brumby's decision alone and not influenced in any way by Mr Penty.

164. Teaching had been in progress for circa six weeks when the Claimant was reinstated in October 2019. On his return, the Claimant spoke to Mr Brumby to understand how his time would be used. Mr Brumby explained that he wanted to avoid disruption to pupils' education and, rather than changing assigned teachers, the Claimant would provide cover where required and supervise pupils who were undertaking Extended Project Qualification ("EPQ"). The Claimant covered 2-3 classes per week and assisted with the combined cadet force. He also continued to deliver Chapel services.

Whistleblowing complaint

165. On 18 October 2019, the Claimant raised a whistleblowing complaint that, in essence, he had been discriminated against (pages 443 – 452). The complaint was heard by Mr Brumby who, after a thorough investigation, did not uphold it (pages 457 – 481 and 486 – 488).
166. The Claimant appealed the outcome which was heard by Mr Penty but not upheld (pages 499 – 503).
167. On 28 January 2020, the Claimant issued his first claim in the Employment Tribunal.

The School's review of its faith provision

168. In November 2019, the Governors initiated discussions about the strategic provision of faith in the School more generally and tasked the Heads with seeking feedback from staff and pupils alike to inform the debate. The Claimant was involved in these discussions and prepared a briefing paper accordingly (pages 1124 – 1132).
169. A student survey revealed that there was a desire to reduce the Christian bias, that the existing content was sometimes inaccessible, that consideration should be given to whether Chapel should be compulsory and that the hymn repertoire needed to be accessible. The staff survey produced similar themes (page 1238).
170. A slide presentation was prepared for use at the March 2020 Board meeting, but faith provision was not discussed because covid-related matters took priority (pages 1233 – 1239).
171. Faith provision was discussed more generally at the June 2020 Board meeting but given the onset of the covid pandemic, any decisions were placed on the back burner. However, these discussions ultimately formed part of the strategic decision making about restructuring the Claimant's role later in the year.

Furlough

172. At the beginning of March 2020, the covid pandemic was beginning to impact the UK and, following government announcements, the School implemented several safety measures, including cancelling assemblies and Chapel services (page 1154).
173. On 23 March 2020, the first lockdown was announced. All teaching provision was moved online, and other services and functions were limited or suspended. Shortly thereafter, the government introduced the furlough scheme which the School considered to be a short-term relief to its immediate financial concerns.
174. Mr Penty convened a meeting of key managers from all areas of the School to consider the essential needs of the School and which staff should be considered for furlough. Given that Chapel services had been suspended and the Claimant did not have an allocated teaching timetable, he was one of circa 170 staff furloughed, albeit he was the only one that objected.
175. On 28 March 2020, the School's Board met to discuss the expected financial impact of lockdown. The School's EBITDA was decreased by £0.6m and free cash by £0.2m. There was also a recommendation to reduce fees for both boarding and day pupils given that many services had been limited or suspended (page 1176).
176. An Extraordinary Board of Governors' Meeting was held on 5 April 2020, and the subsequent minutes documented the continuing negative financial impact of covid and by this stage, teaching staff were being furloughed (pages 1199 – 1202).
177. The Claimant continued to object to being placed on furlough maintaining that he could deliver essential provision. Given his repeated objection, Mr Penty wrote to him on 17 April 2020 explaining:

"...Firstly, I would say that your letter seems to underestimate the scale of the furloughing that has taken place across the school. You accept that 'some staff' may rightly be furloughed. You say that there are some staff at Trent who might fit into this category - catering is an obvious example'. Well, to be clear to you on the reality of things, we have furloughed over 170 staff, including some teaching staff. There are clear reasons for this:

- 1. We have needed to deliver significant fee reductions to parents at this time when they can reasonably claim that they are not receiving the full educational experience that they would expect for the fees that they pay.*
- 2. This clearly reduces our income considerably, when parents' fees are our major, and at present, only source of income.*
- 3. To be able to afford this reduction and remain a going concern, the financial support from the Coronavirus Job Retention Scheme is crucial to the school as a business.*

I know that you will understand these points, but of that number of furloughed staff, only you have seen fit to resist. Others have understood the need for the measure to support the school through this difficult period.

I have therefore carefully read your list of jobs that might be done by you, and I must echo what I believe has already been said by HR to you in saying that they do not constitute an essential service while the current extraordinary circumstances continue, and when supporting the financial welfare of the school as a business presents a greater priority.

Parents have made it very clear to us in their feedback on the fee position that they do not expect or want a full replication of the normal school experience. Rather, they expect us to consider what is essential and deliver that, and then make a priority of ensuring an affordable and cost effective experience at a time when many of them are experiencing significant financial challenges themselves” (pages 507-508).

178. The Claimant finally agreed to furlough on 20 April 2020.
179. By June 2020, it was evident that the impact of covid had adversely affected the School’s ability to recruit new joins for the following September during the key recruitment period. This resulted in a material reduction in EBITA, free cash and the ability to fund strategic capital expenditure. It was further identified that without significant corrective action to increase future pupil numbers and/or a significant cost base restructure, the School would be on the limit of being able to meet future loan repayments (page 1213 – 1217).
180. In June 2020, the following roles were placed at risk of redundancy: 1 full-time physics teacher (page 1220), 1 part-time teaching assistant (page 1223), Head of Catering and Hospitality (page 1225), 1 Administrative Support Assistant (page 1231) and 0.8 full time Drama teacher (page 1229).
181. The Claimant remained on furlough during this period.
182. In May/June time 2020, Mr Brumby prepared schedules and class timetables for the 2020/21 academic year. At the time, circa 191 – 212 staff were on furlough. Pre-covid, the School ran with some spare staffing which was used to cover additional activities outside the scheduled timetables. However, given the ongoing financial uncertainty, the School considered it prudent to dispense with any spare staffing.
183. The Claimant had not had an academic timetable for the 2019/20 school year and Mr Brumby’s review of the teaching requirements for the following academic year confirmed that all teaching could be covered by qualified and experienced teaching staff. As such, the Claimant was not allocated a timetable for 2020/21.
184. Whilst on furlough, the Claimant chased Mr Brumby about his academic timetable. Mr Brumby did not reply as he was instructed by HR that the Claimant

should not be accessing e-mails or contacting the School whilst on furlough in case it was perceived as work. However, HR corresponded with him in August 2020 to advise that he would remain on furlough at the start of term, that Chapel services were still suspended and that he had not been allocated a teaching timetable (p.1257, 1250)

Restructure

185. In September 2020, Mr Penty and the Executive team were tasked with making further costs savings. By this time, seven teaching posts had been made redundant. As part of this process, they identified that there would be a reduced need for the Claimant's role when the furlough scheme came to an end. A revised job description was produced estimating the requirements of the role to be equivalent to 7 hours per week (approximately 0.2 full time equivalent) and they felt that the proposed duties would be sufficient to meet the faith needs of the School (513 – 515). Accordingly, the decision was made to restructure the chaplaincy.
186. On 5 October 2020, the Claimant was advised of the proposal to restructure his role to a part-time position. He was provided with a full explanation of the rationale behind it, including how his previous teaching requirements were being covered. The Claimant was invited to a first consultation meeting on 9 October 2020 and advised of his right to be accompanied (pages 516 – 517).
187. On 8 October 2020, the Governors' Finance and Estates Committee met, and the minutes reflect that the School's full year forecast was expecting a significant shortfall (page 1262). The minutes recorded the Governor's instruction that the School '*should consider cost savings and headcount savings to reduce the £350k gap. The school is smaller than it was twelve months ago in terms of pupil numbers and there may be opportunities to save on headcount, particularly in terms of the pupil numbers to employee ratio*' (page 611).
188. The Claimant's first consultation meeting took place as scheduled on 9 October 2020, chaired by Mr Hallows. The Claimant challenged the proposal to significantly reduce his role and Mr Hallows agreed that he could suggest revisions to the job description. The Claimant was advised that the second consultation meeting would take place on 16 October 2020 (pages 520 – 522).
189. In the meantime, the Claimant was provided with a formal response to his questions asked during the first meeting (pages 526 – 529).
190. The second consultation meeting took place as scheduled and further discussion ensued. The Claimant raised objections and concerns with the revised job description and consequently Mr Hallows agreed further changes. The meeting ended with agreement that the Claimant would provide details on how many hours he thought it would take to fulfil the job description with a further meeting to take place if necessary (pages 530 – 533).
191. On 19 October 2020, Mr Hallows submitted the revised job description to Mr

Penty and relevant School Heads and HR for approval noting his view that '*it's been improved by discussion*' (page 534 – 537).

192. On 26 October 2020 (during the half-term break), the Claimant was advised that the furlough scheme was coming to an end with effect from 31 October 2020 and that he could return to work on 1 November 2020 on full pay or stay at home pending completion of the restructure consultation (page 538). The following day, the Claimant confirmed his wish to return to work (page 539).
193. However, on Saturday 31 October 2020, the government announced that there would be a second lockdown and the furlough scheme would be extended.
194. On Monday 2 November 2020, the Claimant attended a third consultation meeting at 8.45am (p.1296) to discuss his concerns about the proposal for the job to be undertaken in seven hours per week. As a result, Mr Hallows agreed to consider the Claimant's proposal to increase it to ten hours (page 544).
195. Mr Hallows observed more generally that during the entirety of the Claimant's absence, there had been no requests for Chapel services or for him to be available for ad hoc support. The School's pastoral managers felt that during this time, the faith needs of pupils had been met by other staff and pre-recorded services from the Church of England.
196. On 2 November 2020, the School advised the Claimant that he would be furloughed again to which he objected (pages 545 – 546).

Redundancy

197. Whilst the restructure consultation process was underway, Mr Penty came under more pressure to make further costs savings and deliver the Governor's instruction on 8 October 2020 to consider headcount reductions to reduce the budget shortfall.
198. Over the two-week half-term holiday (which commenced on 19 October 2020), he gave serious thought about how to achieve further savings. Redundancies had already been made and in his words, '*the towel was wrung dry*'. The second lockdown was announced on Saturday 31 October 2020 two days before the start of the term, and it was clear that the impact and challenges posed by covid were not going away. Mr Penty felt that the only place left to make savings was the Chaplaincy.
199. In contemplating this and following on from earlier discussions about faith provision in the School, Mr Penty spoke with colleagues in the sector about their approaches to faith provision. He heard of examples where it was being achieved successfully without a Chaplain and Mr Penty felt that the School could achieve the same.
200. Given the continuing financial pressures faced by the School, the lack of need for the Claimant to undertake teaching and the consideration of how faith

provision could be provided in the future, Mr Penty felt that the School could function without an employed Chaplain and took the decision to convert the restructure consultation to a redundancy consultation. He talked his proposal through with the School's bursar on the first day back after the holiday on Monday 2 November 2020 who supported it. Coincidentally, whilst they were having this conversation, the third consultation meeting regarding the restructure with the Claimant was underway.

201. On Tuesday 3 November 2020, the School wrote to the Claimant to advise of the change of circumstance and the rationale was explained to the Claimant as follows:

“As you are aware, the school has faced significant unanticipated financial challenges due to the COVID-19 pandemic. A range of measures have already been implemented in an effort to reduce the school's cost base. Since the decision was made to enter into consultation regarding the role of chaplain, a further review has taken place, and it has become apparent that further savings in operational costs need to be achieved. The majority of our costs relate to staffing. There has also been a further evaluation of our provision to pupils.

The school has also considered the extent of its duty to maintain the Chaplaincy element of provision. Also of relevance is the recent announcement by the government of a further period of lockdown, which will continue to limit our ability to hold Chapel services for the foreseeable future.

It has been decided that faith provision can be delivered in a way that does not require a Chaplain to be employed by the school. We are, therefore, terminating the current re-structure consultation relating to your post. Instead, we will now consult with you on the new proposal which is to make the role of Chaplain redundant” (pages 547-548)

202. The Claimant was advised that he was in pool of one given only his role was affected and invited to attend a first consultation meeting on 9 November 2020 chaired by Mr Hallows. He was advised of his right to be accompanied.
203. In response to the School's letter, the Claimant complained to Ms Evans, Chair of Governors. His complaint was twofold, namely that (1) he had not been allocated any teaching without explanation and this was because of his beliefs and (2) the decision to restructure his role and then make it redundant was also discriminatory. He also expressed the view that the School was subverting the Governors and asked that the redundancy consultation be postponed (pages 550 – 551).
204. Ms Evans investigated the grievance but found no grounds to uphold it. She explained in detail the impact that covid had had on the School's finances and the Governor's desire to modernise its faith position. She was satisfied that the School was not acting inappropriately in any way and confirmed her conclusions

in a letter dated 17 November 2020 (pages 552 – 555).

205. On 9 November 2020, the Claimant attended his first redundancy consultation meeting (pages 556 – 558). The Claimant challenged the decision to make his role redundant and requested that he remain on furlough instead. He did not request a further consultation meeting.
206. Given the School's view that it could deliver its faith provision without a Chaplain, the need to make costs savings, and in the absence of any suitable alternative role, it took the decision on 10 November 2020 to dismiss the Claimant by reason of redundancy (pages 559 – 560).
207. On 15 November 2020, the Claimant appealed the decision to dismiss him and provided substantive grounds in support. In summary, he challenged the decision to place him in a pool of one; maintained that the School could not provide an excellent faith provision without a Chaplain and to do so would be contrary to its core purpose: that the timing and process was unfair; and, that his dismissal was discriminatory. He also challenged the decision to pay him in lieu of notice thereby depriving him of other payments he would have received had he worked (pages 561 – 567).
208. The Claimant was invited to attend an appeal hearing on 20 November 2020 chaired by Mr Gregory, Director of Operations, and was advised of his right to be accompanied (page 575).
209. The Claimant was accompanied at the hearing and was given full opportunity to explain his grounds of appeal. Thereafter, Mr Gregory, scheduled meetings with Mr Penty, Ms Astell-Crocker (the new Bursar) and Ms Dayton (HR) to better understand the background to the Claimant's redundancy.
210. After deliberation, Mr Gregory concluded that the decision to dismiss the Claimant by reason of redundancy should be upheld. He was satisfied that the financial impact of the covid pandemic had led to a necessary requirement to make costs savings on a school-wide basis, and whilst he did not address the Claimant's allegation of discrimination directly, was satisfied that his redundancy was part of those wider measures. He was also satisfied that the ongoing discussions regarding the School's faith provision meant that a directly employed Chaplain was not required. Accordingly, he concluded that the redundancy process was legitimate and fair.
211. However, Mr Gregory agreed to compensate the Claimant for any payments that he would have received had he worked his notice period and confirmed his findings by letter dated 11 December 2020 (pages 602 – 603).

Post the Claimant's dismissal

212. The School has not employed a Chaplain to date. In November 2021, it was inspected by the Independent Schools Inspectorate. A particular focus of the inspection was the provision of religious education. Mr Penty was informed in

his initial meeting with the inspector that other areas of focus were the School's provision for relationship and sex education and its compliance with the requirements relating to protected characteristics and the active promotion of Fundamental British Values.

213. The report found that the school met all the standards required in the ISSR. In particular it found that *"the quality of the pupils' personal development"* was excellent. It said that pupils:

"have a well-developed sense of the college's Christian values which encourage them to develop an understanding of those things that enrich life beyond material possessions ...

A highly developed respect of other faiths and beliefs is embedded throughout the college...

Evidence from PSHE lessons confirmed that pupils have a strong knowledge of the rule of law in the UK and the Fundamental British Values that underpin it.

Pupils have outstanding levels of tolerance and understanding for those from other faiths or cultural backgrounds and are committed participants in a range of activities to promote equality, diversity and inclusion including a willingness to sign a pledge to uphold the belief that "We all Belong". Lesbian, gay, bisexual and transsexual (LGBT) groups such as the Pride Team, and pupils that are affirming their gender identity, feel free to go about their daily business in an atmosphere of equality and normality supported by the well embedded relationships and sex education (RSE) programme that challenges all gender stereotypes. An overwhelming majority of parents and pupils who commented in the questionnaire agreed that the school actively promotes respect and tolerance for those with different faiths and beliefs and for any with protected characteristics" (pages 1421 -1434).

THE LAW

Unfair dismissal

214. Section s.98 Employment Rights Act ("ERA") provides:

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the

dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under enactment.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

215. Section 139 ERA provides:

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease--

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

Discrimination

Burden of Proof

216. Section 136(2) Equality Act 2010 (“EQA”) provides:

(1) This section applies to any proceedings relating to a contravention of this Act.

(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.

Religion or belief

217. Section 10 EQA provides:

(1) Religion means any religion and a reference to religion includes reference to a lack of religion.

(2) Belief means any religious or philosophical belief and reference to belief includes a reference to a lack of belief.

(3) In relation to the protected characteristic of religion or belief –

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;

(b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

Harassment

218. Section 26(1) EQA provides:

(1) A person (A) harasses another (B) if:

(a) A engages in unwanted conduct related to a protected characteristic (race in this case); 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.*

.....

(4) In deciding whether the 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.*

Victimisation

219. Section 27 EQA provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

- (a) B does a protected act, or*
- (b) A believes that B has done, or may do, a protected act.*

(2) Each of the following is a protected act—

- (a) bringing proceedings under this Act;*
- (b) giving evidence or information in connection with proceedings under this Act;*
- (c) doing any other thing for the purposes of or in connection with this Act;*
- (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.

.....

Direct discrimination

220. Section 13 of the EQA provides:

“(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.

....

European Convention on Human Rights (ECHR)

221. Article 9 provides:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

222. Article 10 provides:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

223. We have had regard to the following cases: ***Richard Page v NHS Trust Development Authority [2021] EWCA Civ 255: Scicluna v Zippy Stich Ltd [2018] EWCA Civ 1320: Bank Mellat v Her Majesty’s Treasury (no.2) [2013] UKSC 39: R (Miller) v College of Policing [2020] HRLR 231 10 (A231): Ewaida v United Kingdom [2013] IRLR 231: Ngole v University of Sheffield [2019] EWCA Civ 1127 (A681): Chief Constable of Yorkshire v Coffey [2019] IRLR 805 (A 877): Nagarajan v London Transport [1999] ICR 877 (A 718): Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11 (A 739): Forstater v CGD Europe [2019] UKET 2200909/19 (A796):***

Talbot v Costain Oil, Gas and Process Ltd [2017] UKEAT/0283/16: Bougnaoui v Micropole SA [2018] ICR139 (A583): IX v Wabe [2021] IRLR 832 (A625): Martin v Devonshire Solicitors UKEAT/0086/DA [2010]: Wasterney v East London NHS Foundation Trust [2016] ICR 643 (A771): Re Sandown Free Presbyterian Church [2011] NIQB (A116): Handyside v UK (1997-1980) 1 EHRR 377 (A378): (R (on the application of the European Roma Rights Centre) v Immigration Officer at Prague Airport [2004] UKHL 55, [2005] IRLR 115: Centrum Voor Gelkijheid Van Kansen [2008] IRLR 732 (A507): King v Eaton Ltd No. 2 I[1998] IRLR 686, CS: Case of Biblical Centre of the Chuvash Republic v Russia, application no/ 33203/08.

SUBMISSIONS

224. Both parties provided detailed, lengthy written submissions and their respective replies to each other's submissions. Collectively, they run to one hundred and twenty-five pages, and we do not attempt to summarise them in any detail here but refer to key points in our conclusions below. We have, however, considered all the points made and all the authorities relied on where appropriate, even when no specific reference is made to them.

225. The primary focus of the parties' submissions is the direct discrimination claim.

The Claimant's position

226. In brief, the Claimant submits that he was mistreated by way of interference with his Article 9 right to manifest his beliefs read with Article 10 and, therefore, there has been a breach of the EQA.

227. It is a fundamental and long-established principle of Article 10 jurisprudence that upset or distress caused to hearers is not in itself a reason to restrict freedom of expression. Furthermore, the Convention rights of pupils to hear and receive ideas and hold particular beliefs are also in issue.

228. The School has not pleaded a defence under the derogations in Articles 9(2) or 10(2) and "*thus the Claimant does not know the case he has to meet*". He relies on ***Scicluna v Zippy Stich Ltd [2018] EWCA Civ 1320*** in that '*the Court of Appeal has made it clear that the parties and the Tribunal are bound by a list of issues agreed between professional representatives..... there may be exceptional circumstances where this is not true but this is not one of them*'.

229. Without prejudice to the pleading point, the School's treatment of the Claimant cannot be justified.

The School's position

230. The School denies the claim and says that the reason for the Claimant's treatment was because of the time, the place, to whom and the manner in which he expressed those beliefs which amounted to an objectionable manifestation of them. The treatment was justified because of its duty to safeguard its pupils

from the risk of harm and its obligation to comply with the ISSR.

231. It submits that a justification defence is not pleaded in the list of issues because the Claimant's claim depends on s.13 EQA under which there is no statutory defence. The issue of justification arises if we are satisfied that the Claimant's treatment was because of an objectionable manifestation of his beliefs. This is because section 3 of the Human Rights Act 1998 ("HRA") requires us to interpret and give effect to domestic legislation in a way which, so far as possible, is compatible with the ECHR. Under Article 9 the right to manifest religious belief may be limited in accordance with Article 9(2) which is why the issue of justification arises. The reasons for the Claimant's treatment are pleaded in its grounds of resistance and form the School's justification for its actions. Accordingly, the Claimant has always known the case he is required to meet.

Area of agreement

232. The School does not dispute that the Claimant has the protected characteristic of religion or belief. Nor does it dispute that he has the right to manifest those beliefs and that in delivering the sermons he did so.
233. On balance, we found the School's submissions to be highly persuasive.

DISCUSSIONS AND CONCLUSIONS

General

The wider debate

234. Mr O'Dair submits that contextual evidence about the wider debate on competing rights is relevant and that "*The issues raised are of huge public importance – the question is whether an orthodox chaplaincy service and/or the expression of gender critical views is a threat to children. These issues are also highly political as the Tribunal will know from the furore over the so-called Conversion Therapy Bill*". He quotes a speech made by the former Attorney General, Suella Braverman QC, which we were invited to read in its entirety. We chose not to as it does not assist us in the matters we are required to determine.
235. We appreciate that from the Claimant's perspective, his case also forms part of a wider debate about what is referred to as '*cancel culture*'. However, it is not our role to become embroiled in these wider debates nor should the Tribunal be used as a platform to advance them. We have focused solely on the legal issues before us in this case.

Direct discrimination

236. We concur with the School's submission on how the claim should be assessed. It derives from s.13 EQA which we are obliged to determine compatibly, so far

as possible, with the ECHR. The burden is on the School to prove its reasons for the Claimant's treatment and we must determine whether the reasons justify that treatment. Given that there is no statutory defence under the EQA, the School cannot plead one in the list of issues and, therefore, it is not barred from arguing justification.

237. In **Page**, Underhill LJ set out the legal approach to cases involving the manifestation of religion or belief as follows:

68. I start with a point which is central to the analysis on this issue. In a direct discrimination claim the essential question is whether the act complained of was done because of the protected characteristic, or, to put the same thing another way, whether the protected characteristic was the reason for it: see para. 29 above. It is thus necessary in every case properly to characterise the putative discriminator's reason for acting. In the context of the protected characteristic of religion or belief the EAT case-law has recognised a distinction between (1) the case where the reason is the fact that the claimant holds and/or manifests the protected belief, and (2) the case where the reason is that the claimant had manifested that belief in some particular way to which objection could justifiably be taken. In the latter case it is the objectionable manifestation of the belief, and not the belief itself, which is treated as the reason for the act complained of. Of course, if the consequences are not such as to justify the act complained of, they cannot sensibly be treated as separate from an objection to the belief itself.

69. The distinction is apparent from three decisions in cases where an employee was disciplined for inappropriate Christian proselytisation at work – Chondol v Liverpool City Council [2009] UKEAT 0298/08, Grace v Places for Children [2013] UKEAT 0217/13 and Wasteney v East London NHS Foundation Trust [2016] UKEAT 0157/15, [2016] ICR 643. In essence, the reasoning in all three cases is that the reason why the employer disciplined the claimant was not that they held or expressed their Christian beliefs but that they had manifested them inappropriately. In Wasteney HH Judge Eady QC referred to the distinction as being between the manifestation of the religion or belief and the "inappropriate manner" of its manifestation: see para. 55 of her judgment. That is an acceptable shorthand, as long as it is understood that the word "manner" is not limited to things like intemperate or offensive language."

238. Underhill LJ went on to endorse the distinction at paragraph 74 as follows:

"So far as I am aware the distinction applied by the Tribunal has not been endorsed in this Court, but it is in my view plainly correct. It conforms to the orthodox analysis deriving from Nagarajan: in such a case the "mental processes" which cause the respondent to act do not involve the belief but only its objectionable manifestation. An analogous distinction can be found in other areas of employment law – see paras. 19-21 of my judgment in Morris v Case Number: 1601578/2021 12 Metrolink RATP

DEV Ltd [2018] EWCA Civ 1358, [2019] ICR 90. Also, and importantly, although it gets there by a different route (because the provisions in question are drafted in very different ways), the recognition of that distinction in the application of section 13 achieves substantially the same result as the distinction in article 9 of the Convention between the absolute right to hold a religious or other belief and the qualified right to manifest it. It is obviously highly desirable that the domestic and Convention jurisprudence should correspond.”

239. Accordingly, we need to ask whether the reason for the treatment complained of by the Claimant was because of his beliefs or his manifestation of those beliefs.
240. If the reason for the treatment arose from the manifestation of the Claimant's beliefs, we need to ask whether the manifestation was the reason for the treatment or whether it was the particular way in which he manifested them which was the reason.
241. If it was the way in which the Claimant manifested his beliefs which was the reason, we must ask whether the School's objection to that manifestation was justified.
242. A discriminatory reason need not be the sole or principal reason for the treatment, it is enough if it is a significant cause.
243. When considering justification, we are required to determine whether the reasons for the Claimant's treatment justify it by making an assessment of the proportionality of the School's actions in accordance with the approach set out in **Bank Mellat v Her Majesty's Treasury (no.2) [2013] UKSC 39** (para 20). As per Underhill LJ in **Page** – “*It is a sufficient summary for the present purposes to say that that involves balancing the interference with the fundamental right in question against the legitimate interests recognised by paragraph 2 of both articles*” (para 52).
244. Paragraph 20 of **Bank Mellat** provides:

The requirements of rationality and proportionality, as applied to decisions engaging the human rights of applicants, inevitably overlap. The classic formulation of the test is to be found in the advice of the Privy Council, delivered by Lord Clyde, in De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing [1999] 1 AC 69 at 80. But this decision, although it was a milestone in the development of the law, is now more important for the way in which it has been adapted and applied in the subsequent case-law, notably R (Daly) v Secretary of State for the Home Department [2001] 2 AC 532 (in particular the speech of Lord Steyn), R v Shayler [2003] 1 AC 247 at paras 57-59 (Lord Hope of Craighead), Huang v Secretary of State for the Home Department [2007] 2 AC 167 at para 19 (Lord Bingham of Cornhill) and R (Quila) v Secretary of State for the Home

Department [2012] 1 AC 621 at para 45. Their effect can be sufficiently summarised for present purposes by saying that the question depends on an exacting analysis of the factual case advanced in defence of the measure, in order to determine (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community. These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them. Before us, the only issue about them concerned (iii), since it was suggested that a measure would be disproportionate if any more limited measure was capable of achieving the objective. For my part, I agree with the view expressed in this case by Maurice Kay LJ that this debate is sterile in the normal case where the effectiveness of the measure and the degree of interference are not absolute values but questions of degree, inversely related to each other. The question is whether a less intrusive measure could have been used without unacceptably compromising the objective. Lord Reed, whose judgment I have had the advantage of seeing in draft, takes a different view on the application of the test, but there is nothing in his formulation of the concept of proportionality (see his paras 68-76) which I would disagree with.

Comparator

245. The parties disagree about an appropriate hypothetical comparator, and we are not persuaded that discussion about the correct hypothetical comparator assists us. We agree with the Claimant's submission that it is appropriate for us to consider the 'reason why' test set out in ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337***. We are satisfied that this test allows us to determine his direct discrimination claim without the need to construct a comparator.

The Claimant's dismissal in August 2019

246. We remind ourselves that the Respondent is a school and the matters complained of arise out of the 2019 sermons which were delivered firstly to 11-13 year olds and subsequently to 14–17 year olds. The School's safeguarding duties are of paramount importance. Every member of staff is responsible for promoting pupils' welfare, including emotional welfare, and are required to act in their best interests at all times.
247. We also remind ourselves of the regulatory background against which those sermons were delivered. The ISSR are mandatory and a failure to adhere to them can result in regulatory and enforcement action against the School by the Secretary of State. Mr Penty gave unchallenged evidence that if the School fails one standard, it fails an inspection.

248. Standard 5 sets out the requirement to actively promote the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs. In particular, the School must encourage pupils to respect other people, paying particular regard to the protected characteristics set out in the EQA.
249. The accompanying guidance makes it clear that the standard will not be met if the School teaches that the requirements of religious law permit the requirements of English civil or criminal law to be disregarded. The School can teach that its particular faith has teachings and explain to pupils what they are. It is also acceptable to teach that the faith position of the School is marriage is only between a man and a woman.
250. However, this does not mean that its curriculum, including that for religious education, can advocate or otherwise encourage pupils not to respect each other more generally on the basis of a protected characteristic. In that case, the standard will not be met and may also amount to a breach of other standards, for example the standard to encourage respect for other people, paying particular regard to the protected characteristics.
251. Furthermore, the guidance is clear that if the School is going to explore the relationship between English civil law and religious requirements, particular care should be taken to ensure that such discussion is age appropriate.
252. In respect of the standard to encourage respect for other people, paying particular regard to those with protected characteristics, the guidance explains that it is not sufficient for a school to say that it meets this standard because its teaching and other activities encourage respect for all people in a *general way* (our emphasis).
253. The guidance in Valuing All God's Children focuses on preventing homophobic, biphobic and transphobic bullying. It highlights that all bullying, including homophobic, biphobic and transphobic bullying causes profound damage, leading to higher levels of mental health disorders, self-harm, depression and suicide. In particular, it states that in collective worship the importance of inclusivity and dignity and respect for all should be explored as well as challenging all forms of prejudicial bullying, including HBT bullying and language.
254. It rightly acknowledges that there is a breadth of views about same sex marriage etc but recommends '*hosting a space where different views can be aired and honoured*' as a means to equipping discussion about such views well.
255. The School has an equal opportunities policy, as well as an ethos which focuses on the '*strongest pastoral care to nurture pupils to be the best they can be enabling them to flourish in a changing world*'.

2016

256. We have had regard to the events of 2016 which are significant in light of the events of 2019.
257. The 2016 sermon upset many and generated complaints from both staff and pupils. One teacher explained that not only was she personally upset by the contents of the sermon, but that she *'cried for the students who have sat through [the Claimant's] chapel on this*' She articulated the view shared by the School that *'challenging' issues should be 'dealt with in the classroom, at an age appropriate point, in a context which allows for questions and for clarification. Without those functions, there is a very strong likelihood of misunderstanding, or misconceptions being firmed up in the student body'*.
258. In consequence of the 2016 sermon, the Claimant was spoken to by Ms Rimington, Ms Curran and Ms Braine. Within those conversations, he was made aware that his sermon had potentially caused harm by increasing the vulnerability of the School's LGBT+ pupils to mental ill health, self-harm and suicide. Ms Rimington shared the statistics from the wider research evidencing this vulnerability.
259. At this hearing, the Claimant was dismissive of the evidence that LGBT+ pupils are at more risk of harm and submitted their vulnerability amounts to a stereotypical assumption. He gave evidence that the risk was *'hypothetical'* and there was a *'leap to harm from the ordinary course of discomfort that we all experience'*. His contempt was evidenced in the cross examination of Ms Rimington when it was put to her that no harm had been caused by the sermons because no-one had been to see the nurse afterwards. However, we are not persuaded that there is any reason to doubt the link between bullying, including HBT bullying, and increased harm to pupils which is well publicised, and accepted by the Church of England in Valuing All God's Children.
260. Regardless of the Claimant's views on this point, given that he was individually responsible for the safeguarding of pupils, he was duty bound to heed the advice of Ms Rimington in her role as Designated Safeguarding Lead.
261. Mr Cowie discussed the consequences of the sermon with the Claimant in his performance review and explained whilst the intention of the sermon was not to cause upset, *that was the effect* (our emphasis).
262. We are satisfied that after the 2016 sermon, the Claimant was well aware that the topics of orthodox Christian beliefs on marriage concerning sex, sexual orientation and gender identity were i) not appropriate topics for Chapel sermons, rather that they could be dealt with safely through PSHE or in the classroom; ii) that he should not address those issues in sermons; iii) that the content of his sermons needed to be age appropriate; and, iv) that dealing with these issues in Chapel risked not only upset to pupils and staff but also real distress and the risk of psychological harm to vulnerable LGBT+ students who were coming to terms with their sexual identity.

263. The School took no action against the Claimant in 2016, despite the level of upset caused. Rather, it took a pastoral approach in helping him understand the impact of the sermon on vulnerable pupils to prevent it from reoccurring. We accept the School's evidence that it (and those about who the Claimant now complains) had no issue with the Claimant's beliefs or his right to manifest them. Rather, it was the way in which he expressed them and the subsequent impact. Indeed, the Claimant makes no complaint about any adverse treatment in connection with his beliefs between 2016 and late 2018.

E&C

264. The Claimant worked without complaint until the introduction of E&C. The School was keen to adopt a school-wide approach to addressing any homophobia and used an Ofsted approved and DfE recommended best practice programme to do so. We are satisfied that this was in accordance with its duties under the ISSR and its desire for inclusivity more generally.

265. The Claimant formed a view on E&C before the training session and gave evidence that it was based on a *'Marxist and atheist reading of the universe'* and that *'even not being a Christian, it is profoundly wrong'*. He referred to Ms Barnes as a *'Marxist leaning activist'*.

266. In evidence, the Claimant referred to Marxist and queer theory and said: *'they come in with this worked out agenda and if you don't understand where it is coming from, you might think it was pretty harmless'* but that it was *'very revolutionary in a partisan way'*.

267. He further said that his concern was that E&C *"was going well beyond an anti-bullying thing"* and it was *'contrary to Christian tradition and British values'*. In our view, this reaction was somewhat extraordinary when the reality of the programme was that it was a subtle approach to encouraging inclusivity for all and approved for use in schools by the DfE and Ofsted. The Claimant himself acknowledged in evidence that he had noticed very little around the School after the training day, namely posters in the lower block and some books in the library.

268. The Claimant took great exception to, not only elements of E&C more generally, but to Ms Barnes herself and this exception triggered the sermons to follow. Indeed, at the 24 June 2019 meeting, when Mr Hallows asked the Claimant how they had arrived at a toxic situation he replied: *'well somebody invited Educate and Celebrate in'*. He repeated that view at the hearing before us and said: *"We wouldn't be here today if E&C had not been invited into the School"*.

269. The Claimant asks us to find that E&C:

"Included an uncritically LGBT+ affirming curriculum designed to change the way children thought so radically that it would not occur to them henceforth to be anything other than affirming in ethical terms of same sex marriage. The idea that same sex marriage was equivalent in ethical

terms to heterosexual marriage would become part of the air that the children breathed. So too would the idea that everyone had the right to choose a gender identity contrary to their sex. Alternative views would be rendered unthinkable”.

270. However, we make no such finding. The Claimant takes an extreme view of E&C which bears no resemblance to the reality of its purpose and implementation, which was aimed simply at creating an inclusive environment for all. We saw and heard no evidence that came anywhere close to supporting the Claimant’s view that E&C would indoctrinate pupils in such a way.
271. Returning to the September 2019 training day, much has been made by the Claimant of the phrase ‘*smash heteronormativity*’. However, we accept the School’s evidence that this was simply an enthusiastic attempt by Ms Barnes to warm-up the teachers at the outset of the day which some found ‘*cringeworthy*’. It was certainly not a phrase adopted by the School or used to underpin any implementation of E&C. We agree with Mr Wilson’s submission in any event that ‘*taking the ordinary meaning of heteronormativity as meaning that heteronormativity is the normal mode of sexual orientation, the underlying message that there are other ‘normal’ sexualities seems innocuous*’.
272. At the training session itself, the Claimant took further exception to Ms Barnes referring to the protected characteristic of gender reassignment as ‘*gender identity*’ and formed the view that she was a liar – a view he expressed to the pupils in his sermon - despite the term being quite commonplace.
273. After the training session, the Claimant was not invited to join the steering group and we are satisfied that this was because i) there was no need for him to be involved and ii) because of Mr Hallows’ view that he was too angry with elements of E&C to be involved.

The 2019 sermon

274. In 2019, a pupil asked the Claimant ‘*how come we are told we have to accept all this LGBT stuff in a Christian school?*’. We find that the Claimant used this as a pretext to deliver his sermons and express his opposition to what he believed lay behind the E&C programme. The sermons were entirely self-serving and not driven by the needs of the pupils who had not expressed any issue with E&C.
275. The Claimant embarked on his sermons in the full knowledge that they were very likely to have an adverse impact on his audience having already been warned of the same in 2016.
276. Furthermore, the Claimant knew that his sermons would generate a similar reaction to that in 2016. This is glaringly obvious given he went to the trouble to cleverly script it in case any concerns were raised, and have it validated by Reverend Dr Paul ‘*because it might be helpful in handling parental complaints if there were any*’. He was careful to ensure that on plain reading the sermon

might seem innocuous, including reference to respecting others and '*love thy neighbour*' at the beginning and end – leading to the sermon being described as a '*sandwich sermon*'. Clearly, these parts of the message were not heard by many pupils which we address later.

277. Despite the Claimant's anticipation of complaints, he deliberately chose not to alert Mr Hallows, or any other member of staff, to the content knowing full well that he would be instructed not to deliver it.
278. We find that the Claimant had no regard for the setting and his audience in delivering the sermons. He held a position of authority and trust and delivered his sermons from a script in Chapel to a '*captive audience bound by silence*' (para 68 Mr Penty's statement). This is contrary to the ISSR guidance which obliges the School to ensure that, if there is some occurrence involving one or more of the protected characteristics, pupils understand the issues and respect all those characteristics. This could not be achieved in a ten-minute chapel service at the start of the school day with no facility to question or debate.
279. It was also contrary to the School's view on how such matters should be addressed. The Respondent's witnesses were consistent in their evidence that the subject matter was certainly worthy of debate. However, such debate should be done in the right environment, e.g. PSHE, with plenty of time and careful use of age appropriate language, where pupils had the opportunity to openly discuss, challenge and question the topic and have time to think and reflect. Furthermore, it should be discussed sensitively knowing that there are pupils who identify as LGBT+ or were struggling with their sexuality. This same approach is endorsed in Valuing All God's Children which recommends a Bedouin '*tent of meeting*' when handling controversial issues.
280. The ISSR mandate that the quality of education provided must take into account the ages, aptitudes and needs of all pupils. The sermon was complex, and we agree with Mr Wilson that it needs to be read several times before it can be properly understood. We also agree with Mr Penty's analysis in his dismissal letter that it was pitched at a conceptually complex and intellectually challenging level that was too high, using ideas and terminology that was inaccessible to, at the least, younger pupils.
281. The Claimant's view on this was broadly '*well if they don't understand there's no problem*'. He also said that he did not believe in '*dumbing down*' but acknowledged that '*possibly it would be difficult for some to get their head around but not impossible...*'
282. The Claimant also took the stance that his contract of employment and job description required him to preach the doctrines of the Church of England come what may. He believed that something was '*wrong when sensitivities come before truth speaking*' and that his right to free speech prevailed over the pupils' right not to be offended. In his view, he deserved an apology.
283. We do not accept that the Claimant's contract of employment and job

description gave him free reign in the Chapel or that they overrode his, and the School's, duty to protect pupils from harm or potential harm. Nor did they override the requirements of the ISSR. We agree with the School that the Claimant used them as a convenient platform to justify his actions.

284. We also agree with the School's submission that many of terms used in the sermon itself were pejorative. The Claimant suggested that being LGBT+ is an ideology rather than a reality, he refers to it as '*LGBT stuff*', refers to '*LGBT activists*' and suggested that they are liars and use the tactics of '*totalitarianism*' and '*dictatorship*'. This is inflammatory language falling outside the permissibility of faith teachings within the ISSR and falling within the realm of encouraging pupils not to respect those in the LGBT+ community.
285. Furthermore, we agree with the School's submission that the Claimant used a particular type of rhetoric to guide the pupils e.g. '*you may perfectly, properly believe*' '*you might reasonably notice*' '*you might be concerned*' ... '*you may think*'. He also told them that they '*do **not** have to accept the ideas and ideologies of LGBT activists*'. This goes way beyond the teaching of a particular perspective and in our view, amounted to an intent to persuade pupils to agree with his views. Again, this fell outside the permissibility of faith teachings within the ISSR and ignored the obligations to ensure pupils understand issues and encourage respect for all people, having particular regard for those with protected characteristics. We are satisfied that the sermon would likely breach the ISSR. Even if this was not the Claimant's intention, it was certainly the effect.
286. The complaints after the sermons evidence that the key message taken away by some pupils who identified as LGBT+ was that they were wrong, felt ashamed and that it was okay to discriminate. The Claimant was warned in 2016 that pupils will only pick up on themes and strands rather than the whole narrative. We find the Claimant was fully aware this would be the impact, hence his careful scripting and reliance on the transcript to '*prove*' that he had said that everyone should be respected. Again, this ignored the fact that his audience was school children, some of whom identified as LGBT+ or may have been struggling with their sexual identity, and their needs were paramount. He had a duty of care to them to keep them safe, free from harm or potential harm and to act in their best interests at all times.
287. The Claimant's caveats were clearly not heard as evidenced by the Year 9 pupil who said:

"I believe that this school is a place where all students should feel included and welcomed, but most importantly safe. Having a well-respected member of staff, stand in a place of religious importance (which is a place of safety for many of the students) and speak about LGBTQ+ people in a dehumanising and demoralising manner is something that I, and many others, believe is the definition of unacceptable.

During the Chapel service on Friday, I felt uncomfortable in my own

skin..... The impact of his words made me feel physically sick. I wanted to leave..."

288. After the first sermon, Mr Hallows received immediate complaints that the underlying message could be interpreted as *'it's okay to be homophobic'* and that it was not appropriate for the age groups. Mr Hallows had not had the benefit of seeing or hearing the sermon and attempted to guide the Claimant away from causing further upset. He did not instruct him not to deliver the sermon, rather he relayed the concerns in the hope that he would moderate the next sermon to take them into account. We agree with Mr Wilson's interpretation of the e-mail in that it demonstrated a level of respect for the Claimant in letting him reach his own decision about how to approach the second sermon as opposed to simply ordering him not to repeat it.
289. The Claimant chose not to heed Mr Hallows' feedback and delivered essentially the same sermon to years 9, 10 and 12 in the full knowledge that it would cause further upset.
290. The Claimant held a position of trust and abused that position by delivering the sermons armed with the knowledge of the potential for harm, and in ambushing the School by not allowing it to facilitate debate on the topic in an appropriate environment. He said in cross examination that: *'Jesus went around offending people – if it's good enough for Jesus, it's good enough for me'*. His stance demonstrates no regard for the ages and possible vulnerabilities of his audience in a modern society or his duty to safeguard that audience. It further demonstrates no regard for the School's obligations under the ISSR.
291. On 24 June 2019, Mr Hallows and Ms Rimington met with the Claimant to understand the rationale behind him delivering the sermons, to help him understand the strength of complaint with a view to formulating a response together. However, the Claimant's stance was that he was simply doing his job and he had not said anything that was untrue. He showed no regret or remorse for the upset that he had caused to pupils or any desire to take corrective action. Rather, his right to free speech prevailed over his duty of care to the pupils. It was the Claimant's intransigence and lack of concern for the welfare of the pupils that alarmed Mr Hallows and Ms Rimington, who escalated their concerns to Mr Penty. Thereafter, disciplinary proceedings were instigated against the Claimant which ultimately led to his dismissal in August 2019.
292. We agree with Mr Penty's conclusion that asserting to pupils that the School's stance on LGBT+ matters undermined its Anglican foundation and threatened its charitable status was inaccurate, inflammatory and inappropriate for his audience. The Claimant took his own view on the meaning of the objects in the Memorandum of Association, which were formulated in 1890 for legal purposes, without discussion with the School about their meaning in more modern times. He simply used it as a convenient platform to express his opposition to E&C in a manner which was detrimental to pupils.
293. We also agree with Mr Penty that the Claimant's sermons lacked empathy for

the feelings of pupils and staff generating an unprecedented number of complaints thereby amounting to offensive behaviour.

294. Further, his conduct was likely to damage the School's reputation given the Claimant's stance and the way the sermons were delivered which was contrary to its safeguarding obligations, the ISSR and its own ethos.
295. For the reasons set out above, we are entirely satisfied that it was not the Claimant's beliefs or their manifestation which was the reason for or a substantial cause of his treatment but, rather, it was reasons separable from them. It was because of the time, the place, to whom he expressed his beliefs and the manner in which he expressed them which was objectionable and caused his dismissal.
296. We are also satisfied that the imposition of management instructions on the Claimant's reinstatement was because of the objectionable manifestation of his beliefs. The appeal panel agreed with the reasons for his dismissal. However, because of the absence of formal warnings for the earlier incidents, they allowed him a further opportunity to improve, promote the School's ethos and create an inclusive environment and the management instructions were designed purely to prevent repeat behaviour
297. Following these conclusions, we must consider whether the School's treatment of the Claimant was justified.

Justification

298. The parties agree that the assessment of proportionality should be made in accordance with the approach set out in ***Bank Mellat***.
299. In justifying its treatment of the Claimant, the School says that its objectives were twofold – firstly the duty to safeguard children from the risk of harm and secondly the duty not to act in breach of the ISSR. We are satisfied that both are legitimate interests.
300. We are satisfied that the safeguarding risk to children is evident in the complaints received by the School – it was not a hypothetical risk. Those complaints detail the upset and distress caused to pupils with one saying that they felt physically sick. We do not accept that causing pupils the level of upset and distress evidenced in the complaints amounts to the '*ordinary course of discomfort we all experience*' as advanced by the Claimant. This shows no regard for the fact that his primary audience was school children, some as young as 11 years old and, as one teacher said: "*These are vulnerable students who are looking to the school to protect themand those pupils' needs were not met this morning*".
301. We find that the Claimant was cognisant of the risk of upset and distress to his audience which is evident by his need to script it should complaints be received. The position may well have been different if his audience was consenting adults,

but they were not. Chapel was compulsory, the sermon was not age-appropriate and was delivered in a manner which suggested that it was wrong to be LGBT+ and okay to discriminate.

302. We cannot accept that the Claimant's right to manifest his beliefs in the manner he did could ever outweigh the School's duty to safeguard its pupils from harm or potential harm. The Claimant argued that the School could have excluded pupils who were vulnerable from Chapel, but such argument is a non sequitur when the Claimant did not alert it to the content of the sermons in advance.
303. In terms of the School's obligations under the ISSR, the School took the view that the sermon was contrary to them, and we agree that this was a justifiable position to take. His sermon fell well below the requirement to encourage respect for other people paying particular regard the protected characteristics and the requirement to deliver education in an age-appropriate manner. We cannot accept that his right to manifest his beliefs in the manner he did outweighs the School's obligations to comply with the mandatory ISSR.
304. The balancing exercise involves a consideration of whether a less intrusive measure could have been taken by the School. It had already tried a less intrusive approach in 2016 by seeking to educate the Claimant in the potential harm of delivering such sermons. However, he chose to embark on the same path in 2019 because of his objection to E&C and in doing so, placed pupils at the risk of harm again. He abused his position of trust and in doing so acted contrary to his safeguarding duties and obligation to comply with the ISSR.
305. In 2019, the School's initial approach in 2019 was again to meet with the Claimant to better understand the rationale behind the sermons with a view to possibly planning together how to respond to the reaction. However, Claimant showed no regret or remorse for the upset he had caused. His stance was that he was just doing his job, had done nothing wrong, had been discriminated against and deserved an apology.
306. Given that stance, the School could have no confidence that he would not do the same again. Accordingly, we are satisfied that the School was justified in concluding that his conduct amounted to gross misconduct and summary dismissal was appropriate
307. We conclude the same about the imposition of the management instructions on his reinstatement. They were designed purely to prevent repeat behaviour and, therefore, justified.
308. Finally, we address the Claimant's submission that the School cannot justify discrimination '*by reference of the discriminatory views of third parties e.g. staff and "outside constituencies"*'. The School does not rely on this as the sole reason for justification, far from it. Its primary concern was the welfare of its pupils and staff who are not third parties and, therefore, this argument holds no weight.

Articles 9 & 10

309. The Claimant's preferred approach to the claim is to consider if there was an interference with his Convention rights as a means to informing any breach of the EQA. For completeness, this takes the claim no further because our conclusions are the same – as per paragraph 74 of **Page** above in which Underhill LJ said (and which Mr O'Dair acknowledges in his submissions): "*Also, and importantly, although it gets there by a different route (because the provisions in question are drafted in very different ways), the recognition of that distinction in the application of section 13 achieves substantially the same result as the distinction in article 9 of the Convention between the absolute right to hold a religious or other belief and the qualified right to manifest it. It is obviously highly desirable that the domestic and Convention jurisprudence should correspond.*"
310. The School accepts that Article 9 is engaged given the Claimant was employed as its Chaplain and he expressed his beliefs in Chapel. However, it says that the Claimant's actions fell within the qualifications in Article 9(2).
311. For the same reasons as above, we are satisfied that the School's actions were justified to meet its legitimate objectives of safeguarding pupils from the risk of harm and complying with the ISSR. As such, there was no breach of Article 9.
312. We also agree with the School's submission that the outcome would be the same if Article 10 is engaged. The right to freedom of expression can be restricted as necessary in a democratic society for prescribed reasons, including the protection of health or morals or the protection of the reputation or rights others.
313. We have considered the Claimant's argument that upset to hearers is not in itself a reason to restrict freedom of expression, but this shows no regard for the fact that his audience was school children, some as young as 11 years old. We are satisfied that the duty to safeguard pupils from the risk of harm and the requirement to comply with the ISSR outweigh the Claimant's right to express his beliefs in the manner he did in a school environment.
314. Furthermore, there was no '*disregard*' for the pupils' Article 10 right to hear and receive ideas or their Article 9 right to hold particular beliefs. The School's position was that the subject matter of the Claimant's sermons was certainly worthy of debate, as long as it was done in the right environment taking into account the aptitudes and vulnerabilities of its pupils.
315. For the same reasons as above, we are satisfied that the School's treatment of the Claimant was justified in meeting its legitimate objectives and there was no breach of Article 10.

The other matters complained of

316. We now deal with each further allegation in turn.

The failure to include the Claimant in discussions about the implementation of the Educate and Celebrate programme

317. There is no dispute that the Claimant was not included in the steering group set up to implement the E&C programme. We accept the School's evidence that no aspect of the framework required any review of the School's faith provision, nor did any member of the group identify any requirement for his involvement.
318. The steering group was small and comprised those members of staff who had responsibility for LGBT+ matters and safeguarding. Accordingly, we are satisfied that the reason why the Claimant was not involved was because there was no need for him to be. His non-inclusion had nothing to do with his beliefs.
319. The Claimant asked to be a member of the group, but Mr Hallows' view was that he was too angry. We find that Mr Hallows was justified in his opinion given the Claimant's extreme reaction to elements of E&C and Ms Barnes.
320. Accordingly, we are satisfied that it was for these reasons that the Claimant was not included, and not because of his beliefs or the manifestation of the same. In any event, Mr Hallows left the door open for the Claimant to discuss any concerns he had thus was able to contribute otherwise if he so chose. However, we heard no evidence from the Claimant or the School's witnesses that he attempted to do so.

The referral to Prevent

321. The School has a Child Protection and Safeguarding policy incorporating its statutory duties which provides that '*any concern that pupils may be exposed to any form of possible extremism, extremist ideology and or radicalisation (including religious or right-wing ideologies) must be treated as a safeguarding concern*'
322. Ms Rimington has extensive experience in her field. She gave evidence that she is trained to look for indicators of radicalisation and recognise when someone was becoming radicalised long before they reach the point where terrorism is reached. She explained that there was '*a continuum which is quite a long journey*'. She also gave evidence that she is trained to seek professional advice when a safeguarding concern is not clear cut.
323. Ms Rimington felt that the sermon on its own did not meet the threshold for a referral to Prevent. However, after meeting with the Claimant on 24 June 2019 her concerns escalated given his anger about elements of E&C, his entrenched views which he voiced in Chapel, his lack of empathy for pupils affected by the sermons, his lack of reflection or regret over the distress caused and, in particular, his belief that Canon law took priority over the welfare of pupils and staff.
324. It was these concerns which led her to seek advice from the Local Authority, in

line with her training, because she remained unsure whether the referral threshold was met. The advice was to make the referral which she acted upon in accordance with her position as Designated Safeguarding Lead. Accordingly, we are satisfied that it was her concern that the Claimant's stance fell within the remit of Prevent and the advice from the Local Authority which led her to make the referral and not because of the Claimant's beliefs or his manifestation of them.

325. Even if it was, the referral arose because of the objectionable way in which the Claimant manifested his beliefs and was justified because of the need to take a cautious approach from a safeguarding perspective. This approach is encouraged by Prevent which said it '*would rather receive the referral than not as it is always good to get our professional opinion in these circumstances*'.

On 24 June 2019, failing to adjourn or postpone the investigation meeting when the Claimant was visibly upset

326. The meeting on 24 June 2019 was not an investigation meeting in the formal sense. It was simply a meeting to understand the Claimant's rationale for delivering the sermons and to help him understand the strength of complaint with a view to formulating a response.
327. Having reviewed the meeting notes, we accept Mr Hallows' and Ms Rimington's evidence that the meeting was conducted in a professional, sensitive and courteous manner and the Claimant did not appear upset or confused. Accordingly, there was no need to adjourn it.
328. We are also satisfied that, if the Claimant needed an adjournment or the meeting to be postponed, it would have been apparent to Mr Hallows and Ms Rimington and/or the Claimant would have made such a request. We find no connection between this allegation and the Claimant's beliefs or his manifestation of the same.

Alleged unreasonable criticism of the Claimant's religious beliefs (see paragraph 34 of the Claimant's particulars of claim)

329. The alleged unreasonable criticism relied on is cited at paragraph 115 above. Mr Hallows and Ms Rimington gave evidence that they were not referring to the Claimant's beliefs or manifestation in documenting these concerns, rather it was the Claimant's intransigence and lack of concern for the pupils' welfare in the meeting on 24 June 2019. Mr Hallows said in evidence: "*I was expecting a reflective practitioner to reflect on the effect on the children and say we are where we are and how do we move on from here?*"
330. However, Mr Hallows and Ms Rimington were met with defiance and it was the Claimant's behaviour in the meeting that led to their concerns and not his beliefs or the manifestation of those beliefs.
331. In any event, the meeting arose because of the objectionable way in which the

Claimant manifested his beliefs, and we find that the concerns were not unreasonable in the first instance and justified in the second given the School's safeguarding duties and obligation to comply with the ISSR.

Mr Hallows voicing his concerns that the Claimant's view of Church of England rules were out of sync with the School's ethos

332. The Claimant submits that the School's objects remain at the core of the School's ethos and that Mr Hallows' willingness to make this criticism without even considering or citing any source relating to the supposed Church of England position was wholly unreasonable and '*should be taken together with the evidence in the case as leading to an inference of discrimination*'. He says they include the historic and unchanged Anglican stance on marriage and sex.
333. The objects were formulated in 1890 and the School has a distinct ethos which appears in its literature and on the website. The focus is on academic provision and the '*strongest pastoral care*' which nurtures pupils to be the best they can be enables them '*to flourish in a changing world*'.
334. At no point did the Claimant seek any guidance from the School about the meaning of the objects in a modern society nor did he have regard for the School's actual ethos, the ISSR and the welfare of the pupils more generally. We agree with Mr Penty's view that the Claimant used the objects as a convenient springboard for the actions he took over time and to justify why he did those actions.
335. Given the Claimant's actions and subsequent stance, we find Mr Hallows' concerns entirely reasonable in light of the School's ethos and in Mr Wilson's words, '*fair comment*'.
336. We are also satisfied that Mr Hallows' concerns were in response to the Claimant's intransigence rather than his beliefs or his manifestation of the same.
337. In any event, those concerns stemmed from the objectionable way in which the Claimant manifested his beliefs and his responses in the meeting on 24 June 2019. Mr Hallows voicing them was justified given it cannot be said that the Claimant '*provided the strongest pastoral care*' in delivering the sermons and given the legitimate objectives of the School.

Mr Hallows voicing his concerns that the Claimant was unfit to give pastoral advice or spiritual support to senior pupils

338. Again, we find this concern was raised following the Claimant's behaviour at the meeting and his apparent lack of concern for the welfare of pupils in delivering his sermons and thereafter, and not because of his religious beliefs or manifestation of the same. Mr Hallows' reasonably held these concerns because the Claimant had shown no empathy with pupils who might have been affected by LGBT+ issues.

339. In any event, these concerns stemmed from the objectionable way in which the sermons were delivered. Mr Hallows gave evidence that they arose because the Claimant's sermons had displayed a lack of empathy with children generally and specifically those who might be affected by LGBT+ issues personally or within their family context. Further, the sermons had caused distress to children and staff and had left them with the view that the Claimant had a negative view of LGBT+ matters. As such, we are satisfied that Mr Hallows' voicing his concerns was justified given the School's safeguarding duties and the obligation to comply with the ISSR.
340. The Claimant submits Mr Hallows assumed that because he held the views he did on marriage and gender identity he would not be able to separate his role as a preacher from his role as a pastor and this was a stereotype which would not have been applied *mutatis mutandis* to an affirming Chaplain.
341. However, we are satisfied that this concern would have been raised about anyone in a position of authority, whether Chaplain or teacher, who had demonstrated no regret or remorse for a negative impact of their sermons or teachings on the pupils. In any event, voicing such concern would be justified given the School's safeguarding duties and the obligation to comply with the ISSR.

Mr Hallows voicing his concerns that the Claimant looked to Canon Law for guidance

Mr Hallows' concerns that the Claimant's sermon was 'narrow in terms of other faiths' and 'dressed up' to hide a damaging underlying message

342. As above, we accept Mr Hallows' evidence that these concerns were held following his meeting with the Claimant on 24 June 2019 and the Claimant's response to the impact of his sermons. The Claimant's position was that his beliefs and his right to manifest those beliefs took precedence over the duty to safeguard and comply with the ISSR. He said that he took his authority from Canon law and appeared to ignore Church of England guidance.
343. Again, we do not accept that the Claimant's beliefs and right to manifest those beliefs take precedence over the School's obligations in respect of safeguarding and the ISSR. We have already found that the message taken away by pupils was that it was wrong to be LGBT+ and okay to discriminate. As such, Mr Hallows' concerns were entirely justified in light of the School's legitimate objectives.
344. Furthermore, Mr Hallows gave evidence that the notes at page 349 are simply bullet points of issues discussed and do not provide the full context. We accept his evidence in this regard entirely.

Ms Rimington voicing her concerns that the Claimant could not be trusted in the role of chaplain

345. Ms Rimington voiced this concern in the investigatory meeting on 28 June 2019 and we are satisfied with her evidence that it was because of her safeguarding concerns and not because of the Claimant's beliefs of his manifestation of them.
346. In any event, her concerns arose because of the objectionable way in which the Claimant manifested his beliefs, and we are satisfied that Ms Rimington was justified in voicing those concerns in light of the School's safeguarding duties and obligation to comply with the ISSR and the Claimant's disregard of the same.

Referring the Claimant to LADO

347. The Claimant submits that, in essence, if Ms Rimington genuinely believed that the Claimant was a risk to children, she would have referred him to LADO immediately after the 24 June 2019 meeting rather than wait until September 2019. Her failure to do so either shifts the burden of proof to the School or alternatively, it is to be explained as a desperate attempt to keep the Claimant out of the School because of his '*entrenched beliefs*'.
348. We accept Ms Rimington's evidence that she took advice on whether to make the referral after collating material relating to the 2016 sermon as part of the disciplinary process. Having re-visited the events of 2016, she felt that the Claimant posed an ongoing risk to vulnerable children given his disregard for her previous advice.
349. Again, we note that Ms Rimington sought advice from the LADO at Derbyshire County Council before making the referral. The LADO was of the view that the category of emotional harm to pupils applied and she should submit a referral if she wanted feedback.
350. In her role as designated safeguarding lead, we see nothing untoward in her making the referral in light of her concern that the Claimant posed an ongoing risk in the future. Furthermore, she simply made the referral – she does not dictate what follows thereafter so we reject the submission that it was a desperate attempt to keep the Claimant out of the School. In the same way as the referral to Prevent, the referral to LADO arose because of the objectionable way in which the Claimant manifested his beliefs and was justified because of the real risk that the Claimant would cause harm to LGBT+ pupils through his sermons and the need to take a cautious approach to safeguarding.

Failing to reinstate the Claimant's academic timetable after his reinstatement for academic years 2019-2020 and 2020-2021

351. The Claimant submits that his academic timetable was not reinstated for academic years 2019/20 and 2020/21 on the instruction of Mr Penty. He bases this assertion on a minute of Mr Penty's interview with Mr Abrahams on 22 November 2022 as part of the Claimant's whistleblowing complaint which says "*WJP not letting BCR back in classroom as the Heads of Tiers don't want him. He has a reputation for expressing these views*" (page 467).

352. Mr Penty explained in cross-examination that the note did not capture what he was trying to say, namely that there were concerns about him returning to the classroom, which were not limited to concerns that he would use his position to express similar views to those expressed in the sermons. We accept his evidence that he could not instruct, and did not instruct, Mr Brumby not to allocate a teaching timetable.
353. That aside, we accept Mr Brumby's evidence on this point. In respect of 2019/20, the term was already six weeks in when the Claimant was re-instated, and he wanted to avoid disruption to pupils' education with a change of teacher. This is the reason why the Claimant was not allocated a teaching timetable and not because of his beliefs or manifestation of the same.
354. We also accept Mr Brumby's evidence about the 2020/21 academic year in the context of covid and the School's decision to dispense with spare staffing. The Claimant's previous teaching requirements could be covered by qualified and experienced teaching staff. We are satisfied this was the reason why the Claimant was not allocated a teaching timetable and not because of his beliefs or manifestation of the same.
355. On a final point, even though the Claimant relies on the comment at page 467, he was allowed back into the classroom providing cover and EPQ supervision. He would not have been permitted to do this had there been an instruction from Mr Penty to keep him out.

Overall conclusion – direct discrimination

356. To conclude, we are satisfied that all the matters complained of by the Claimant were not because he held his beliefs or that he manifested them. Accordingly, his claims of direct discrimination against the School, and the individual Respondents, fail in their entirety.

Harassment

357. The Claimant relies on the above allegations as unwanted conduct related to his beliefs. However, his primary submission is that they amount to direct discrimination with remarkably little focus on the harassment argument.
358. The list of issues sets out the generic elements of s.26 EQA. The submissions take us no further, the only explicit reference to harassment being i) the referral to Prevent and ii) imposing the management restrictions and then only as an argument in the alternative with no supporting substance.
359. The School says generally that for the same arguments advanced in the direct discrimination defence, the alleged harassment was not related to the Claimant's beliefs but to the objectionable manifestation of them. Even if it was, it would not be reasonable to regard the treatment as having the necessary effect because the acts complained of were justified by his conduct. We concur

with this submission entirely but deal with the two allegations referred to in particular by the Claimant in his submissions.

360. In respect of the referral to Prevent, the Claimant argues that it was clearly related to his views, unwanted and it had the effect of creating an intimidating environment (para 110 of his statement). We have no doubt that the referral was unwanted conduct which created an intimidating environment for him.
361. However, for the same reasons as our findings in respect of direct discrimination, we are satisfied that the referral was not related to his beliefs or manifestation of those beliefs. Rather, it was related to the objectionable manifestation of them.
362. Even if the conduct complained of was related to his beliefs or the manifestation of those beliefs, it would not be reasonable, having regard to all the circumstances in the case, to regard the treatment as having the necessary purpose or effect. The Claimant embarked on his sermon in the full knowledge that it had the potential to harm vulnerable pupils. Even if he did not accept Ms Rimington's explanation of the elevated risk of harm to LGBT+ pupils, he knew this was the School's view and had been warned against delivering similar sermons in 2016. However, he disregarded that advice. His sermon was an act of retaliation against his misconceived view of E&C with no regard for his audience. It prompted an unprecedented number of complaints for which the Claimant showed no regret or remorse. Rather, his position was that he deserved an apology.
363. The Claimant used his position of authority to risk harm for his own gratification and, as such, it is not reasonable to subsequently claim that the consequences amount to harassment. Ms Rimington held legitimate concerns about the Claimant's stance and sought professional advice as she was trained to do. It was only on receiving advice to make the referral that she did so which we have already found was justified given the requirement to take a cautious approach to safeguarding. As such, we are satisfied that the referral to Prevent did not amount to harassment.
364. The Claimant also claims that the imposition of the management restrictions on his reinstatement amounted to harassment, but only argues this in the alternative to direct discrimination. He says nothing further in respect of the elements in s.26 EQA which is inadequate for our deliberations. Regardless, we are satisfied that the imposition of the management restrictions was related to the objectionable manifestation of his beliefs and, therefore, does not amount to harassment. Even if it was related to his beliefs or their manifestation, it would not be reasonable, having regard to all the circumstances in the case, to regard the treatment as having the necessary purpose or effect because their imposition was justified to prevent repeat behaviour.
365. The remainder of the allegations are also inadequately pleaded. Notwithstanding that, we are satisfied that allegations 20 d-k arose out the objectionable manifestation of his beliefs and, therefore, do not constitute

harassment. Even if they did, it would not be reasonable, having regard to all the circumstances in the case, to regard the treatment as having the necessary purpose or effect because it was justified.

366. Allegation 20a was not related to the Claimant's beliefs or their manifestation but to the fact that there was no need for him to be involved in the discussions about the implementation of E&C and Mr Hallows' justified view that he was too angry to be involved in the steering group. However, he was still able to discuss any concerns with Mr Hallows so was not excluded and could contribute if he chose. Even if it was, it would not be reasonable, having regard to all the circumstances in the case, to regard the treatment as having the necessary purpose or effect because of the Claimant's extreme reaction to elements of E&C.
367. Allegation 20c was not related to the Claimant's beliefs or his manifestation of them. There was simply no reason to adjourn the meeting.
368. The final allegation in relation to the Claimant's academic timetable also fails. His 2019/20 timetable was not reinstated because Mr Brumby did not want to disrupt pupils' education with a change of teacher six weeks into the term. He was not allocated a timetable in 2020/21 because of the School's decision to dispense with spare staffing and his previous teaching requirements could be covered by other teachers. Neither reason was related to the Claimant's beliefs or manifestation of those beliefs.
369. The allegations of harassment against the School, and the individual Respondents, are not well-founded and fail in their entirety.

Victimisation

370. The Claimant relies on the presentation of his first claim on 28 January 2020 as the protected act which is not disputed by the Respondent. The Respondent received notification of the same circa 3 February 2020.
371. The detriments alleged by the Claimant are the failure to reinstate his teaching timetable for the academic years 2019/20 and 2020/21 and his dismissal by reason of redundancy. We take each in turn.

Failure to re-instate the Claimant's timetable

372. The Claimant accepts that he was told by Mr Brumby that his teaching timetable for 2019/20 would not be reinstated in October 2019 to avoid disruption to pupils' learning. Naturally, this predates the presentation of the claim by over three months which obviates the reallocation of the 2019/20 timetable as an act of victimisation. In any event, we are satisfied with Mr Brumby's explanation that the Claimant's timetable was not reinstated on the Claimant's return to work in October 2019 to avoid disruption to pupils' teaching.
373. After his re-instatement, the Claimant continued to provide cover teaching for 2

to 3 classes per week in addition to EPQ supervision work until the first lockdown in March 2020. At this juncture, physical lessons ceased, assemblies and Chapel services were cancelled until the end of term and the Claimant was placed on furlough, along with other members of staff.

374. In May/June 2020, Mr Brumby began planning for the academic year 2020/21 and it was apparent that all teaching in religious Studies and Classical Civilisation could be covered by qualified teachers and as such, the Claimant was not allocated a teaching timetable. Against the background of the covid pandemic and the School's decision not to operate with spare staffing to reduce cost, this was an understandable and justifiable decision and not one that gives rise to an inference of victimisation. Rather, it is a credible explanation as to the reason why the Claimant was not allocated a timetable for the 2020/21 academic year.
375. The documentary evidence in the bundle demonstrates the financial pressures placed on the School and its actions were consistent with that pressure. We find no evidence to suggest that non-allocation of the Claimant's timetable was in any way linked to his presentation of the first claim and this allegation of victimisation is not well-founded and fails.

The Claimant's dismissal by reason of redundancy

376. The Claimant also alleges that his dismissal by reason of redundancy was '*artificially orchestrated*'. He says the factual background pre-issue of the claim and history of disputes means the burden of proof passes to the School.
377. In terms of the factual background, the Claimant continued to work in his role as Chaplain on reinstatement and covering classes until the first lockdown in March 2020. We accept entirely the School's evidence that covid and lockdowns had an adverse impact on the School's operation and finances. This is clearly evidenced in the minutes from the Governors' meetings and the number of staff that were furloughed, including teaching staff. The Claimant does not seek to argue that the School's financial position has been misrepresented.
378. In September 2020, Mr Penty and his executive team were tasked with making further savings to mitigate the ever-increasing financial pressures. By this stage, it is significant that seven teaching posts had already been made redundant. However, rather than seek to dismiss him at this stage, they identified that the necessary requirements of the role could be achieved in seven hours per week when furlough came to an end. A revised job description was produced, and the Claimant was notified of the proposal to restructure the Chaplaincy. The Claimant was in a pool of one given that he was the only Chaplain. He sought to argue that other support staff should be included but we are satisfied that his role was unique and not interchangeable with other teachers.
379. Thereafter, a period of consultation took place. We are satisfied that such consultation was genuine and meaningful, hence Mr Hallows' willingness to

consider changes to the proposed job description and consider an increase in hours.

380. We do not accept the Claimant's submission that the School went to the trouble of deliberately creating a role it knew he could not accept as a means of forcing him to leave. We find that argument fanciful. Given that it had already dismissed teaching staff by reason of redundancy, if the intent was to dismiss the Claimant at this stage, it could have moved straight to a redundancy consultation against the backdrop of other redundancies.
381. The Claimant also says that the School did not move to redundancy initially because it was nervous about dismissing him having already '*demonstrated willingness to fight back in the Employment Tribunal* (para 340 C's submissions)'. Again, we reject that submission given that the School was already making redundancies which would have been the more obvious time to dismiss the Claimant if that was its intent at the time. However, we do not find that it was.
382. On 8 October 2020, the Governor's Finance and Estates Committee directed that the School should consider further cost and headcount savings. We find Mr Penty's evidence that he was contemplating how to achieve further savings over the two-week half term break entirely credible. The announcement of a second lockdown led to the inevitable realisation that the impact of covid was not going away and the only place left to make savings was the Chaplaincy. In exploring this, Mr Penty spoke to colleagues in the sector who had successfully delivered faith provision in school without a Chaplain. This, coupled with the School's earlier review of its own faith provision, led Mr Penty to form the view that the School could do the same and consequently his decision to convert the restructure to a redundancy.
383. We see nothing sinister in Mr Penty's decision that would point us to the conclusion that his decision was in any way linked to the Claimant presenting his first claim some eight months earlier. His decision was entirely consistent with the position the School found itself in as a consequence of covid.
384. The Claimant also alleges that the redundancy appeal was a sham lending further weight to an inference of discrimination. We disagree. Mr Gregory's conclusions were entirely consistent with the financial position of the School at the time and its conclusion that it could deliver its faith provision without an employed Chaplain.
385. The School's view that it could deliver its faith provision without a Chaplain was endorsed in its subsequent inspection in November 2021 which found that the quality of the pupils' personal development was excellent.
386. As such, we are satisfied that the Claimant's dismissal by reason of redundancy was genuine and not artificially orchestrated to get rid of him in consequence of him issuing proceedings. As such, this element of the victimisation claim is not well-founded and also fails.

Unfair dismissal

387. We have already found that the Claimant's dismissal was by reason of genuine redundancy. Therefore, we are satisfied that the requirement of the School for the Claimant to carry out Chaplaincy work had ceased or diminished (s.139(b)(i) ERA).
388. The primary emphasis in the Claimant's case is that his dismissal was an act of victimisation. There is no reference to the principles we are required to consider under the ERA in his lengthy submissions.
389. However, and as above, we accept Mr Penty's evidence explaining why he made the decision to move to redundancy. The letter advising the Claimant of the same explained the rationale in full.
390. The Claimant argues that he should not have been placed in a pool of one. However, he was the only Chaplain in the School and we were not presented with any evidence to indicate that other individuals' roles were similar or interchangeable. Whilst we accept that he had taught Religious Studies and Classical Civilisation in the past, his role was not comparable to a qualified or experienced teacher whose primary role was to teach. Furthermore, he had not had an allocated academic timetable since his return to the School in October 2019 which we accept was for genuine reasons. As such, we are satisfied that it was appropriate to place him in a pool of one.
391. The School was obliged to consult meaningfully with the Claimant, and we are satisfied that it met this obligation. The Claimant asserts that the consultation was a mere formality and the decision to dismiss him had already been made. We accept that much of the consultation was already covered within the restructuring exercise and the redundancy consultation was confined to one meeting. This does not, however, vitiate the meaningfulness of that meeting against the background of the earlier meetings. The School was open to a further consultation, but the Claimant did not request it.
392. The School rejected the Claimant's request to remain on furlough which we consider reasonable. The furlough scheme was a means of protecting viable jobs, so it was not reasonable to use it to prolong the Claimant's employment and delay his inevitable dismissal. The financial situation aside, the School made the decision that it could deliver its faith provision without an employed Chaplain and this remains the case to date.
393. In the absence of the identification of alternative employment, the Claimant was dismissed by reason of redundancy and, as above, we are satisfied that there were genuine grounds for doing so and this was the reason for his dismissal. It is not suggested by the Claimant that such employment was available but was not offered to him.
394. The Claimant was afforded the right to appeal which he exercised, albeit his

appeal was rejected after proper consideration by Mr Gregory. We acknowledge that Mr Gregory did not address the Claimant's allegations of discrimination directly in his appeal outcome. Nevertheless, he addressed the circumstances leading to his dismissal and was satisfied that i) it formed part of the School's need to make cost savings within the context of the School's deteriorating financial position at the time and ii) was shaped by the School's ongoing discussions about delivering its faith provision without a directly employed Chaplain in the future.

395. Considering the above, we are satisfied that the decision to dismiss the Claimant fell within the range of reasonable responses of a reasonable employer in those circumstances. As such, his claim of unfair dismissal is not well-founded and fails.

Jurisdiction – continuing act

396. Given the Claimant's claims have failed, the question of whether the acts complained of prior to 30 August 2019 amounted to conduct extending over a period is academic. We note that neither party addresses the point with much vigour in their respective pleadings or submissions and we address the point succinctly.
397. The matters in issue all arise before the presentation of the Claimant's first claim on 28 January 2020. They appear at paragraph 2.a – 2.l (except 2.k which is not in issue) in the original list of issues. We would have found that the matters are so intrinsically linked to the matters complained of stemming out of the sermons that they amounted to conduct extending over a period in accordance with s.123(3)(a) EQA.



Employment Judge Victoria Butler

Date: 21 February 2023

JUDGMENT SENT TO THE PARTIES ON

21 February 2023



Mike Hammonds
FOR THE TRIBUNAL OFFICE

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