Case No: F00CR532

IN THE COUNTY COURT SITTING AT CENTRAL LONDON

Thomas More Building,
Royal Courts of Justice,
Strand,
London,
WC2A 2LL

Date: 24/04/2023

Before :

HIS HONOUR JUDGE LETHEM
(sitting with an assessor – David Schofield)

- -

Between :

(1) IZAIYAH MONTAGUE **Claimant**
(a child, by his mother and litigation friend,
Izoduwa Montague)

(2) IZODUWA MONTAGUE

(3) SHANE MONTAGUE

- and -

THE GOVERNING BODY OF HEAVERS FARM PRIMARY SCHOOL **Defendant**

- -
- -

Michael Phillips (of **Andrew Storch Solicitors**) for the **Claimants**
Ian Clarke (instructed by **Browne Jacobson LLP**) for the **Defendant**

Hearing dates: 1st February 2023 to 9th February 2023

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE LETHEM

His Honour Judge Lethem:

I INTRODUCTION

1. This is a claim for compensation, damages, declarations and recommendations pursuant to alleged violations of the Equality Act 2010, the Human Rights Act 1998 and for breach of Statutory duty. Although pleaded, a claim for breach of contract was not pursued. The allegations focus on teaching delivered by the Defendant school in the summer of 2018.

II BACKGROUND

2. Heavers Farm Primary School in South Norwood, Croydon serves an ethnically diverse borough and its composition reflects that background. The Head Teacher, Susan Papas records that about 80% of the pupil population are Black African, Caribbean or Eastern European heritage. The defence suggests that one third of the pupils speak English as an additional language. It is not a faith school and its pupils are drawn from a number of religions and families with no religious affiliation. It is unsurprising that many children hold different faiths, reflecting their heritage. The students at the school are drawn from a broad spectrum of family structures, including children with unmarried parents, step families, single parent families, families with same sex parents and looked after children. Thus the school reflects the diverse population that constitutes modern Britain. The Claimants are black Christians whose 4 year old son Izaiyah Montague attended the school between 11th September 2017 and 19th October 2018. He was thus in the reception year until the summer holiday in 2018.

3. Later in this judgment I turn to the detail of events. In broad terms, the focus of this case is on the events from mid 2018 when the school decided to arrange a number of activities which would coincide with 'Pride Month' in June. It is the school's position that these events were part of broader teaching throughout the year. This was directed towards supporting tolerance, challenging stereotypes and to prevent bullying. It is said that the school had become aware of low grade homophobic language and intolerance in the playground which the school were anxious to address from the outset. Thus they designed a school curriculum including a number topics grouped around the notion that there was 'no hierarchy of equalities'. The activities were designed to address the spiritual, moral, cultural, mental and physical development of the pupils ('SMSC'). These involved:
    a. Celebrating diversity, identity and equality;
    b. Anti-bullying;
    c. Debunking gender stereotypes;
    d. What makes them proud;
    e. What makes them unique;
    f. Different family dynamics;
    g. Famous people from the LGBT[1] community;
    h. The work of different LGBT people; and
    i. LGBT History.[2]

    The school suggest that the course of work addressed diversity in all its manifestations including black history, disability awareness, mindfulness and mental health, women's

[1] I am conscious that some may subscribe to other formulations of the term 'LGBT'. I use it in this judgement because it was the term adopted by the parties throughout the trial.
[2] [135,13 and 14]

history, and the environment. Their case is that, while LGBT issues were included in the programme, they were not the focus or the prime concern of the work. This narrative is not accepted by the Claimants who complain of the Defendant's aggressive interference with their Christian beliefs and cultural proselytism.

4. In terms of delivery, it has to be recollected that Izaiyah was in the reception year. Accordingly the school maintain that the curriculum included drawing posters of the pupils' families and rainbow posters to reflect a wide range of colours getting on and being friends. It is said that the children were encouraged to bring food from their culture into the school as part of an international food day. The children were read "*The Family Book"* by Todd Parr. This book addresses the diversity of family structures including ethnicity and sexual orientation. It is said by the school that the focus was on identifying and normalising different family groups. As such it would be contrary to the ethos of the book and the curriculum to prioritise and extoll the virtues of any one structure over any other. The Claimants suggest that any focus on the breadth of the teaching masks that it was essentially directed at LGBT relations and normalising them, contrary to scripture.

5. An element of the teaching was to be a 'Pride March' ('the Parade') which the school identified as celebrating the diversity of the school and was due to take place on the 29th June 2018 in the presence of the parents. Advance notice of the event appeared in the school blog from May 2018 onwards. The event became somewhat controversial. A number of parents raised concerns that this was elevating LGBT issues, especially as it would co-ordinate with wider LGBT events in the community marking Gay Pride Month and which would resonate with the children. While the content of the event remained unaltered, the school reflected and rebadged the event as a 'Proud to be Me' parade shortly before the event. This did not assuage the concerns of a number of parents who sought to withdraw their children from the event. The Second and Third Claimants allege they were among them. It is agreed that the school refused all such requests save in the case of one child who came from a Jehovah's Witness family. The school's position is that this exemption was granted because the Jehovah's Witness community do not participate in any celebrations.[3]

6. The concern of the parents of children at the school did not abate and it seems that there was to be a planned demonstration set for the 29th June. In the face of this development the school moved its position further and the event was held in the absence of the parents. It is accepted that the First Claimant did not attend the event. The circumstances are controversial and I return to these later.

7. Relations between the school and the Second and Third Claimants deteriorated. On 13 July 2018, the Second Claimant sent an email to the school accusing the Executive Head of the school of being;

> "obnoxious, arrogant, undermining, unsympathetic/unempathetic, biased, disrespectful, dishonest and undemocratic".[4]

[3] [770] and 2nd witness statement Susan Papas (9th May 2022) -[1058]
[4] See email Second Claimant to the Federation Governance Manager – 13.07.2018 [157]

A meeting was arranged with the parents on the 19th September 2018, attended by Susan Papas (The Executive Head Teacher of the School), Robert Askey (The Assistant Head), both parents and a supporter, Edmund Matyjaszek, who is an educationalist and the principal of a school on the Isle of Wight. Also present was a note taker Atalanta Copeman-Papas (Susan Papas' daughter). It is suggested that she was a late replacement for Jo Read, the Federation Deputy Executive Headteacher. Ms. Copeman-Papas was wearing a T-shirt upon which the slogan "*Why be Racist, Sexist, Homophobic, Transphobic, when you could just be quiet*" was written. The parents took exception to this T-shirt. The parents' view is that this slogan was directed at them. This reinforced the impression that the meeting was not a genuine attempt to resolve matters, but that Ms. Papas was simply following a script that later formed a letter of response dated the 26th September 2018. The parent's complaint was then escalated to the governors of the school.

8. In the meantime there was an incident on the 8th October 2018 in which it is alleged that Izaiyah Montague misbehaved and was screaming at lunch. He was taken to the Leadership Room. His behaviour did not moderate and accordingly he was given a lunchtime punishment and isolated from the other pupils until mid afternoon.[5] It seems that a further detention followed on the 9th October. The Second and Third Claimants do not accept this version of events and have alleged that this was a further incident of the school exacting retribution on them for holding their Christian beliefs and manifesting these beliefs in the form of their complaints. Matters deteriorated yet further and the Second Claimant was banned from the Defendant's premises on the 12th October 2018. On the 19th October 2018 the parents removed Izaiyah and he has subsequently been educated at a different school

9. The parents escalated the complaint by way of a letter dated the 18th October 2018.[6]. Thus the main complaint came before a meeting between the Governors and Mr and Mrs. Montague on the 20th November 2018 at which Roger Kiska attended and supported the parents. The outcome of the Governor's consideration was conveyed to the Second and Third Claimant by a letter dated the 20 December 2018 from Moses Bukenya, the Chair of the complaints panel who observed:

    a. Communications about the Proud to be Me event had not been sufficient and clearer information should have been provided in advance to parents; and

    b. It was unfortunate that Ms Copeman-Papas was wearing the T-shirt. An apology was provided and the panel asked the governing body to review the staff dress code.

    c. There was no evidence that any person had been labelled homophobic as a result of their beliefs.

    d. The governors rejected the suggestion that Izaiyah had been adversely treated as a result of the parents' beliefs or complaints.

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[5] [226]
[6] Letter of 18th October 2018 [318]

e. The school acted appropriately in banning the Second Claimant from the school premises.[7]

10. The parents were not satisfied with this response and requested the Department for Education to investigate. They Department reported on 19th September 2019 that the school had not adhered to its complaints procedure. The report found no other breaches and that the school had adhered to the relevant policies in relation to the subject of the complaint.[8]

11. Concurrently the parents commenced this action. They do not accept the school's narrative as I have outlined it. The claim against the school is set out in Particulars of Claim dated the 22nd April 2019.[9] It asserts the Christian belief of the Claimants and that they believe that a Christian should abstain from sexual activity or live in a lifelong union with one person of the opposite sex. Homosexuality is regarded as a sin and Pride is a vice that should be avoided. Accordingly the alternative family structures outlined in *The Family Book* are outwith their beliefs. In general the Claimants assert that posters emanating from Stonewall (a gay rights charity) were displayed, rainbows (a well known LGBT symbol) were used both in terms of bunting and the creative work for the children, that the children were encouraged to create posters celebrating LGBT Pride, and that they were taught that same sex relationships were normal. The Particulars of Claim contain further complaints that there were no advance discussions with the parents and that the school refused to permit the parents to withdraw Izaiyah from the Pride March.

12. In relation to the parents' complaints, the Claimants' assert that the school were obstructive, failed to follow their own complaints policy, that the wearing of the T-Shirt by Ms. Copeman-Papas was an act of discrimination because it was a response to the making and pursuing of the complaints which were protected acts. The parents argue that their complaints were not properly addressed by the various tiers of the school hierarchy and that this was due to their espousal of their Christian belief and their complaints. The Claimants argue that the detention of Izaiyah on the 8th and 9th October 2018 were the product of the parents' protected act of complaint and an aspect of the animus of the school against them.

13. Amplifying on the above. The parents do not accept that the Pride March was simply part of a broader based curriculum. In her letter to the governors Mrs. Montague has accused the school of,

> "proselytism towards a specific worldview, whereby certain lifestyles are promoted and celebrated in a manner which runs foul of the school's obligations to respect the right of parents to raise their children according to their own religious and philosophical beliefs."[10]

This allegation of moral and cultural proselytism was repeated in Mr. Phillips' skeleton dated the 23rd January 2023. At trial it was suggested that other aspects of the

[7] See letter 20.12.18 - [236]
[8] See Summary of Findings – DoE report 19.09.19 [246]
[9] Particulars of Claim – [29]
[10] Letter of 18th October 2018 [319]

curriculum addressing Windrush or Millicent Fawcett were a screen for the school's true purpose which was to promote, campaign or affirm a LGBT agenda. They consider this to be an aggressive form of education. The parents' case is that the teaching at the school caused a conflict between their religious household and the approach adopted by the school, exposing their young and vulnerable child to the possibility of conflict and confusion. They further assert that the treatment of the complaints, the detention of Izaiyah and the barring of the Second Claimant were the direct result of their adherence to Christian beliefs and prosecution of a well founded complaint to the school.

14. Derived from the foregoing the Claimants have formulated a broad based claim alleging breaches of Article 2 of the First Protocol, Articles 8, 9 and 10 the Human Rights Act 1998 ('HRA'). In this respect they rely on the following acts of the Defendant as unlawful under s. 6(1) HRA, as pleaded in para 28 of the Particulars of Claim:
    - The Defendant's aggressive interference with the 2nd and 3rd Claimants' ways of educating their son about sexual ethics and/or about the nature of family.
    - The Pride events at the School.
    - Failure to adequately inform and/or consult the parents about the proposed Pride events in advance.
    - Failure to excuse the First Claimant from participating in the Pride events when requested by the Second Claimant.
    - Failure to consider the Second and Third Claimants' complaints on those matters fairly, respectfully, and/or in good faith, as pleaded in paras 11-22 below.

    Additionally the Claimants seek remedies for direct, indirect discrimination and victimisation contrary to the Equality Act 2010. In large part the provisions, criteria or practices (PCPs) that the school applied mirror the issues identified in relation to the HRA claim and I return to these in detail below.[11] I have indicated that the claim for breach of contract was not pursued. However the Claimants have maintained a claim for breach of the Education Act 1996 pleading breach of statutory duty.

III THE ISSUES

15. Arising from the foregoing the following issues require resolution:

    - The Defendant has put the Claimants to proof as to their beliefs and whether they have a protected characteristic. ('The Belief Issues')

    - The content of the curriculum, including considerations of (i) whether there was manipulation of the curriculum, (ii) the lack of consultation and (iii) the refusal to excuse the attendance of children whose religion or beliefs conflicted with events. ('The Curriculum Issues')

    - The delivery of the curriculum ('Delivery Issues')

    - The handling of the Claimants' complaints. ('The Complaints Issues')

[11] See paragraph 33 of the Particulars of Claim (the Equality Act claim) and paragraph 28 (the HRA claim)

- The detention of Izaiyah on the 8th and 9th October 2018 ('The Detention issues')

- The banning of the Second Claimant. Mrs. Montague on the 12th October 2018. ('The Barring Issues')

- The breach of Statutory Duty Issues

IV THE LEGAL CONTEXT

16. As set out above, the Claimants have made a broad claim rooted in diverse provisions of the Human Rights Act 1998, the Equality Act 2010 and for breach of statutory duty arising out of the Education Act 2006. The Equality Act and HRA claims overlap and it is convenient to address the relevant law holistically. I address the legal framework for breach of statutory duty as a discrete issue in Part 12 below.

The Education Acts

17. Plainly the action is rooted in the provision of education and the legal responsibilities of the Defendant are provided by the Education Act 2002. By s.78 of the Education Act the school is under a duty to provide a balanced and broadly-based curriculum which:
    a. promotes the spiritual, moral, cultural, mental and physical ("SMSC") development of pupils at the school and of society, and

    b. prepares pupils at the school for the opportunities, responsibilities and experiences of later life.

    Paragraph 6 of the defence summarises the guidance that supplements the s.78 duty and pleads:

    "6. In November 2014 the Department for Education Issued guidance entitled "Promoting fundamental British values as part of SMSC in schools". The guidance provides:

    6.1 "Through ensuring pupils' SMSC development, schools can also demonstrate they are actively promoting fundamental British values".

    6.2 Fundamental British values are identified as "democracy, the rule of law, individual liberty, and mutual respect of those with different faiths and beliefs."

    6.3 The guidance includes:

    "Actively promoting the values means challenging opinions or behaviour in school that are contrary to fundamental British values .. "

    6.4 The guidance continues:

    "Through their provision of SMSC, schools should:

    - Enable students to develop their self-knowledge, self-esteem and self-confidence;
    - Enable students to distinguish right from wrong and to respect the civil and criminal law of England;

- Encourage students to accept responsibility for their behaviour, show initiative, and to understand how they can contribute positively to the lives of those living and working in the locality of the school and to society more widely;
- …..
- Further tolerance and harmony between different cultural traditions by enabling students to acquire an appreciation of and respect for their own and other cultures;
- Encourage respect for other people;
- …..

"The list below describes the understanding and knowledge expected of pupils as a result of schools promoting fundamental British values.

- An appreciation that living under the rule of law protects individual citizens and is essential for their wellbeing and safety;
- …..
- An understanding that the freedom to choose and hold other faiths and beliefs is protected in law;
- An acceptance that other people having different faiths of beliefs to oneself (or having none) should be accepted and tolerated, and should not be the cause of prejudicial or discriminatory behaviour; and
- An understanding of the importance of identifying and combatting discrimination."[12]

None of the above is controversial. I accept that the guidance is no more than assistance and support and does not have the status of legislation.

18. I refer to ss 403, 405 and 4.06 of the Education Act 1996 hereafter in considering the claim for breach of statutory duty. However Mr. Phillips submitted that the notions of 'sex education' and 'partisan political views' have a dual function, firstly as the aspect of the claim for the breach of statutory duty but also as a foundation for an argument that the teaching in question was not prescribed for the purpose of the qualifications to the HRA claims because they were unlawful. Accordingly it is appropriate to address these issues at this juncture.

19. I confess that neither party has been able to identify significant material as to what constitutes 'sex education'. I note with some surprise that such a core concept for the purpose of the Education Acts does not appear to have a statutory definition, certainly I was referred to none. Mr Phillips submitted that I should adopt a broad definition of 'sex education' and relied on *HJ v. Secretary of State for the Home Department* [2010] UKSC 31 @ paragraph 78 as support for the proposition that sex education should be defined broadly as including any material of a sexualised nature, or which promotes the

[12] See bundle - [1028]

celebration of specific sexual orientations and by extension practices. Beyond this I had little assistance.

20. It seems to me that the line between 'Relationship And Sex Education' ('RSE')[13] and spiritual, moral, cultural, mental and physical development of the pupils ('SMSC') is not always clear. Some support for this proposition is provided by an internal email from a member of the teaching staff Rachel Evans to the other staff dated the 20th June 2018. In it she requested that the school's teaching of the LGBT events be saved as SMSC as opposed to PSHE observing that 'Learning under this heading is statutory'[14]. This suggests to me that there was some ambiguity in this area and the school were conscious that some members of staff may consider the teaching to by PSHE and were anxious to delineate this as SMSC.

21. I was not assisted by the reference to *HJ v Secretary of State for the Home Department*. That was a case concerning the test to be applied when considering whether a gay person who was claiming asylum under the Convention relating to the Status of Refugees 1951 had a well-founded fear of persecution in the country of his or her nationality. As such it addressed issues concerning a 'well founded fear' and was not addressing the provision of 'sex education'. It decided that the protected behaviour was wider than sexual acts and included how those individuals would choose to live other aspects of their lives that are related to, or informed by their sexuality. As such it concerned the individual and how their behaviour was informed by their sexuality. It really did not address what constituted sex education. However, I do draw one conclusion, namely that the decision focussed on the individual interpersonal relationships of the Applicant in its broadest manifestation.

22. I have considered the guidance provided by the government into RSE education[15]. It states:

> *What is sex and relationship education?*
>
> 9. It is lifelong learning about physical, moral and emotional development. It is about the understanding of the importance of marriage for family life, stable and loving relationships, respect, love and care. It is also about the teaching of sex, sexuality, and sexual health. It is not about the promotion of sexual orientation or sexual activity – this would be inappropriate teaching.
>
> It has three main elements:
>
> - attitudes and values

[13] Referred to as Sex and Relationship Education at the time of this case. It is now the subject of a new policy of Relationship and Sex Education. It was referred to as RSE in submissions and I retain that nomenclature. This passage was the subject of further submissions at the 'hand down' hearing. It seems that the policy in the original draft related to a more recent iteration of the policy. The policy current at the time of the events in question is incorporated in this judgment. Both counsel saw it and had an opportunity to take instructions on the day. They agreed that I should amend to include this version. It does not alter the conclusion I drew from the previous iteration and in fact strengthens my approach in defining RSE (or SRE) as about personal relationships.
[14] Email, Rachel Evans to Atlanta Copeman-Papas and others – 20.06.18 [556]

- learning the importance of values and individual conscience and moral considerations;
- learning the value of family life, marriage, and stable and loving relationships for the nurture of children;
- learning the value of respect, love and care;
- exploring, considering and understanding moral dilemmas; and
- developing critical thinking as part of decision-making.

- personal and social skills
  - learning to manage emotions and relationships confidently and sensitively;
  - developing self-respect and empathy for others;
  - learning to make choices based on an understanding of difference and with an absence of prejudice;
  - developing an appreciation of the consequences of choices made;
  - managing conflict; and
  - learning how to recognise and avoid exploitation and abuse.

- knowledge and understanding
  - learning and understanding physical development at appropriate stages;
  - understanding human sexuality, reproduction, sexual health, emotions and relationships;
  - learning about contraception and the range of local and national sexual health advice, contraception and support services;
  - learning the reasons for delaying sexual activity, and the benefits to be gained from such delay; and
  - the avoidance of unplanned pregnancy.[16]

This guidance makes it clear that RSE extends beyond sexual relationships and even embraces relationships that are not intimate. The reference to "understanding of the importance of marriage for family life, stable and loving relationships, respect, love and care " makes this clear. I have also considered the phrase, "It is not about the promotion of sexual orientation or sexual activity". It might be suggested that this supported the Claimants' position. However, I attach some weight the use of the word 'promote', which is to support of actively encourage a position. Teaching the existence of, and tolerance of a particular orientation is not promotion. Mr. Philipps is justified in arguing for a wide definition. However, in my judgment he goes too far. I compare this extract with the guidance in relation to SMSC set out above. The latter is devoted to fostering understanding and acceptance of different cultures, traditions and beliefs. I conclude that there is a line that demarks RSE from SMSC and that relates to the subject matter of the teaching. The RSE teaching is directed to interpersonal relationships. The terminology is rooted in our personal one to one relationship with others, be it sexual or one of platonic friendship. On the other hand SMSC addresses

[16] Sex and relationship Education Guidance: Department for Education and Employment (DfEE 0116/2000) – July 2000. P5

acceptance of others in a general and non specific sense. This definition conforms with the approach in *HJ* which was concerned with how the individual related to his world. I apply this approach to whether the teaching was 'sex education'.

23. Neither party addressed the term 'partisan political view'. Thus I content myself with the observation that I will give the words their natural English meaning.

Equality Act 2010

24. Part 6 Chapter 1 of the Equality Act 2010 addresses the provision of education and s.89(2) provides:

> "Nothing in this Chapter applies to anything done in connection with the content of the curriculum."

In terms, the provisions of the Equality Act do not apply to the content of the curriculum, however it is agreed that this exemption is narrowly drawn and does not extend to the delivery of the curriculum. Equally it is agreed that this provision is not repeated in the Human Rights Act 1998.

25. As with the Education Act, the statutory provisions of the Equality Act are supplemented by guidance issued by the Department for Education in May 2014. Of course, this is only guidance and does not have the weight of statute. In relation to content of the curriculum it provides:

> "2.9 Excluding the content of the curriculum [from the Equality Act] ensures that schools are free to include a full range of issues, ideas and materials in their syllabus, and to expose pupils to thoughts and ideas of all kinds, however challenging or controversial, without fear of legal challenge based on a protected characteristic. But schools will need to ensure that the way in which issues are taught does not subject individual pupils to discrimination .
>
> 2.10 Some examples can best explain the distinction between content and delivery of the curriculum as the Act applies:
>
> - A boy complains that it is sex discrimination for him to be required to do a module on feminist thought.
> - A girl complains that putting The Taming of the Shrew on the syllabus is discriminatory; or a Jewish pupil objects to having to study The Merchant of Venice.
> - A fundamentalist Christian objects to the teaching of evolution in science lessons unbalanced by the teaching of "intelligent design".
> - A school does a project to mark Gay Pride Week. A heterosexual pupil claims that he finds this embarrassing and that it discriminates against him on grounds of his sexual orientation ; a Christian or a Muslim pupil objects to it on religious grounds .
> - A Muslim pupil objects to the works of Salman Rushdie being included on a reading list.

> 2.11 All of the above are examples of complaints against the content of the curriculum, and none of them would give rise to a valid complaint under the Act."[17]

Consistent with the distinction between 'content' and 'delivery' the guidance continues, in relation to delivery:

> 2.12 However, valid complaints that the curriculum is being delivered in a discriminatory way might well arise in situations such as the following :
>
> - A teacher uses the fact that 'The Taming of the Shrew' is a set book to make derogatory generalisations about the inferiority of women, in a way which makes the girls in the class feel belittled . Or, in teaching 'The Merchant of Venice', he encourages the class to laugh at a Jewish pupil.
> - In class discussions , black pupils are never called on and the teacher makes it clear that she is not interested in their views .
> - Girls are not allowed to do design technology or boys are discouraged from doing food technology. This is not intrinsic to the curriculum itself but to the way in which education is made available to pupils .
> - The girls' cricket team are not allowed equal access to the cricket nets, or the boys' hockey team is given far better resources than the girls' team. This would be less favourable delivery of education rather than to do with the sports curriculum per se"[18]

Thus it is important to maintain a sharp focus on the distinction between content and delivery of the curriculum when addressing the interrelationship of the Education Act and the Equality Act.

26. I adopt a broad definition of the ambit of curriculum as:

> "embracing all learning and experiences that the school plans for its pupils, and the national curriculum forms only part of this. (see *Birmingham v Afsar (no.3)* [2019] EWHC 3217 (QB) at paragraph 47).

However I emphasise the use of the word 'plans' in the above extract. This maintains the distinction between the curriculum itself and the delivery of that curriculum.

27. The Defendant has put the Claimants to proof that they have the protected characteristics found at paragraph 2 of the Particulars of Claim. In addressing this issue, the Equality Act identifies both religion and belief as protected characteristics.[19] S. 10 provides that:

> (1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
> (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.
> (3) In relation to the protected characteristic of religion or belief—

[17] See bundle [875]
[18] See bundle [875-6]
[19] See s.4 Equality Act 2010.

> (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.

I accept the following propositions drawn from Mr. Phillips' submissions:

- The range of religions and beliefs falling within s.10 is identical to those protected by Article 9 of the Convention of Human Rights (ECHR): (*Harron v Chief Constable of Dorset Police* [2016] IRLR 481), thus I adopt the same approach to the Equality Act and Human Rights Act claims in this respect.

- The approach to what constitutes a belief should be wide. The belief is protected if it:
  i. is genuinely held.
  ii. is not simply an opinion or viewpoint based on the present state of information available.
  iii. concerns a weighty and substantial aspect of human life and behaviour.
  iv. attains a certain level of cogency, seriousness, cohesion and importance, and
  v. is worthy of respect in a democratic society, is not incompatible with human dignity and is not in conflict with the fundamental rights of others. (*Grainger Plc v Nicholson* [2010] 2 All E.R.)

- The last of the *Grainger* criteria is derived from Article 17 ECHR. thus there is an extremely high bar for exclusion. A philosophical belief will only be excluded if it was the kind of belief the expression of which would be akin to Nazism or totalitarianism. (*Forstater v CGD* (UKEAT/0105/20/JOJ)

28. Turning to the structure of the Equality Act. Sections 4 and 10 provides that religion or belief is a protected characteristic. I accept that there is no meaningful distinction between the approach as to what constitutes a belief for the purpose of s.10 and the right to freedom of thought, conscience and religion for the purposes of Article 9 of the ECHR and I adopt these observations in relation to Article 9.

29. S. 13 defines direct discrimination in the following terms:

> **13 Direct discrimination**
> (1)A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

S.19 addresses indirect discrimination and provides:

> **19 Indirect discrimination**
> (1)A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
> (2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
> (a)A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c) it puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

S.27 defines victimisation in the following terms:

27 Victimisation

(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.
(4) This section applies only where the person subjected to a detriment is an individual.

Section 149 of the Equality Act establishes the Public Sector Equality Duty ('PSED') in the following terms:

149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—
  (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
  (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
(a) tackle prejudice, and
(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

Part 6, Chapter 1 of the Equality Act addresses the provision of education in schools and legislates:

85 Pupils: admission and treatment, etc.

(1) ……..
(2) The responsible body of such a school must not discriminate against a pupil—
(a) in the way it provides education for the pupil;
(b) in the way it affords the pupil access to a benefit, facility or service;
(c) by not providing education for the pupil;
(d) by not affording the pupil access to a benefit, facility or service;
(e) by excluding the pupil from the school;
(f) by subjecting the pupil to any other detriment.
(3) …..
(4) …..
(5) The responsible body of such a school must not victimise a pupil—
(a) in the way it provides education for the pupil;
(b) in the way it affords the pupil access to a benefit, facility or service;
(c) by not providing education for the pupil;
(d) by not affording the pupil access to a benefit, facility or service;
(e) by excluding the pupil from the school;
(f) by subjecting the pupil to any other detriment.
(6) A duty to make reasonable adjustments applies to the responsible body of such a school.

30. Building on this structure, it is clear that not every complaint to the school will necessarily be a protected act. To achieve that status, first that the Claimants must show that they hold the belief and second that there is a sufficiently close and direct nexus between the act of manifestation and the underlying belief. (*Eweida and Others*

v. the United Kingdom (2013) ECHR 37 and *Page v NHS Trusts Development Authority* [2021] EWCA Civ 2).

31. Thus it is plain that there must be a causal link between the act complained of and the protected characteristic and protected action. Accordingly if I find that the school disapplied their procedures and acted unreasonably or unfairly towards the Claimants, I must still be satisfied, on balance, that the unlawful actions were the result of the protected characteristic or actions. If that relationship does not exist then that claim will fail notwithstanding the illegality of the action. The point was made clearly in *Glasgow City Council v Zafar* [1998] ICR 120:

> "The requirement necessary to establish less favourable treatment which is laid down by section 1(1) of the Act of 1976 is not one of less favourable treatment than that which would have been accorded by a reasonable employer in the same circumstances, but of less favourable treatment than that which had been or would have been accorded by the same employer in the same circumstances. It cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee, that he would have acted reasonably if he had been dealing with another in the same circumstances."

32. Mr Clarke submitted that in relation to direct discrimination I should be satisfied that the act complained of was not done because of the protected characteristic.[20] In my judgment the issue is more nuanced and I prefer Mr. Phillips' submission that the Claimants will not be required to show on balance that their beliefs and manifestation of beliefs was the sole or principle cause of the discrimination. They must show that the belief and manifestation had a 'significant influence' on the Defendant's treatment of them (*Nagarajan v London Regional Transport* [1999] ICR 877, HL). This can relate 1) to the fact of holding or manifesting a belief and 2) the fact that the belief had been manifested in a particular way. This is made clear in *Page* at para 68 where the court said;

> 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. "

[20] See Defendant's Skeleton Argument paragraph 63

It need not be shown that the act of discrimination was a conscious act, all that is required is that it can be properly inferred from the evidence that a significant cause of the discrimination was the protected characteristic irrespective of the motive of the discriminator. Indeed, as *Nagarajan* makes clear, the discriminator need not realise that act of discrimination was based on the protected characteristic. What is necessary is that the court draws the appropriate inferences from the evidence placed before it.

33. Turning to indirect discrimination, s.19 identifies discrimination in relation to PCPs. The Particulars of Claim identifies five PCPs.

(1) Holding the Pride events at the School.
(2) Holding the Pride events at the School without informing and/or consulting the parents in advance.
(3) Mandatary participation of students in the Pride events at the School.
(4) Denying the parents a right to withdraw their children from the Pride events at the School.
(5) Unfair, biased and/or ineffective consideration of complaints in relation to the Pride events at the School.[21]

The approach to making adjustments is found in ss. 20 and 21 and the following principles can be identified:

(i) A PCP should be widely construed. In *Ishola v Transport for London* [2020] EWCA Civ 112 the court applied the statutory guidance, holding:

> "The Equality Act 2010 Statutory Code of Practice issued by the Equality and Human Rights Commission (which must be taken into account by courts or tribunals in any case in which it appears to the court or tribunal to be relevant: see s.15(4)(b) Equality Act 2006) provides as follows:
>
> > "6.10 The phrase [PCP] is not defined by the Act but should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, or qualifications including one-off decisions and actions .."

(ii) A PCP is not established by a single event. The terms connote a continuous state of affairs in that it identifies how things are or will be done. A practice requires an element of repetition. The practice may be demonstrated by a single event if is it indicative of a general state of affairs and how future events of a similar nature would be addressed. Thus in *British Airways Plc v Starmer* [2005] IRLR 862 the decision in relation to part time working was a single incident but one which indicated how the policy would be applied over a basket of similarly situated employees. (see also *Ishola*)

[21] See Particulars of Claim – paragraph 33 *et seq* [37]

(iii) S.23 of the Equality Act provides, "On a comparison of cases for the purposes of section 13, … or 19 there must be no material difference between the circumstances relating to each case.".

34. A core argument advanced by Mr. Clarke was that the approach of the Equality Act is not to proscribe all forms of discrimination based on a protected characteristic. The discrimination in question must relate to one of the areas of life referred to in parts 3 to 7 of the Act. In this respect education is addressed at Part 6 as I have outlined. In his submission the provisions of Part 6 do not apply to the parents and only outlaw discrimination in relation to pupils. Mr. Clarke referred to the decision in *Afsar* at paragraph 52, where Warby J stated,

> "as I have noted, the conduct proscribed by EA s 85 is discrimination against pupils, not parents, still less discrimination against third parties who hold views about the content of the curriculum or, indeed, the way in which education is delivered. Aggrieved parents and interested third parties have no standing to complain of a contravention of Part 6 of the EA."

In Mr. Clarke's submission this was a complete answer to the Second and Third Defendants' claims for direct discrimination.

35. Mr Phillip's response was to seek to distinguish the decision in *Asfar* arguing that it was a very different form of complaint and did not involve a parade. He characterised that case as more an article 10 claim as opposed to a claim under the Equality Act. His secondary position was that the act of discrimination against the parents could be framed under Part 3 of the Act (The Provision Of Services) arguing that the parents were plainly requiring and using the service provided by the school. He was bound to concede that such a claim did not appear in the Particulars of Claim but argued that he had not pleaded Part 6 either, accordingly the Particulars of Claim was broad enough to encompass the Part 3 claim.

36. Mr. Clarke submitted that there was no meaningful distinction between the decision in *Afsar* and this case and further that *Afsar* was authority for the proposition that a Part 3 claim could not lie in the educational context.

37. I do not accept that there is any meaningful distinction between the underlying claims in this case and that in *Afsar*. In that case parents were alleging both direct and indirect discrimination, arguing that, under the guise of British Values, the school were promoting LGBT subjects in the primary school. The protected provision, criteria or practice were the complaints against this situation. The parents argued that the texts used, the inclusion of rainbow colours and the lack of consultation amounted to discrimination. All these are identical to the instant case. While I appreciate that, in *Afsar* the school were seeking to restrain the manner of the complaint, the underlying factual matrix was very similar to this case. In truth Mr. Phillips was unable to point to any meaningful distinction in terms of the principles involved.

38. *Afsar* makes it clear that the Equality Act does not outlaw all forms of discrimination. As the court observed:

> "The EA does not outlaw all discrimination based on any protected characteristic. It covers specific territory, carefully mapped out in the Act. Conduct is only unlawful discrimination if it relates to an activity falling within one or more of Parts 3 to 7 of the Act."

The wording of s.85(2) of the act makes it clear that, in relation to the provision of education, the discrimination contemplated in Part 6 is against 'a pupil' and would not extend to a parent.[22] On this basis Mr. Clarke is correct to observe that the parents have no claim under Part 6 of the Act.

39. In terms of a potential claim under Part 3, this would arise by application of s.29 which outlaws discrimination in relation to part 3. In my judgment this claim has equal difficulties in relation to the application of the Equality Act. The first hurdle is the fact that it is simply not pleaded, (in breach of CPR 16). In his closing submissions Mr. Phillips referred to Lewis Carol's Beyond the Looking Glass and that Humpty Dumpty is quoted as saying that "words mean just what you choose it to mean, nothing more, and nothing less". It seems to me that this perfectly summarises his approach to pleading any reliance on Part 3. It was not pleaded and he sought to suggest that it could be inferred from the pleading. In my judgment it could not. Accordingly, as a matter of law and construction the claim must be pleaded with sufficient particularity so that the Defendant and the court can identify what is alleged (see CPR 16 and *Towler v Wills* [2010] EWHC 1209 (Comm) @ paragraph 18). It has not been pleaded and thus any claim under Part 3 must fail as a matter of law, irrespective of my factual findings.

40. In any event, *Afsar* specifically considers this very position. The court had to consider two classes of potential defendant who relied on s.29 (i) Protesters who had no children at the school and (ii) parents or guardians of children at the school. Ms. Afsar was a parent. At paragraphs 58 and 59 the court observed:

> "58. No doubt education authorities are public authorities for the purposes of s. 29. Schools may provide services to members of the public, for instance by making their facilities available out of hours to parents, or others, for non-educational purposes. I am unable to see how s 29 could be relied on in relation to any alleged discrimination against protestors who are not parents of pupils at the school ….. Nor can it realistically be said that Ms Afsar was a person "requesting a service" from the Head Teacher, such that (for instance) permitting third parties to tie ribbons to the school gates (at a weekend) represented a "detriment" to which the Head Teacher subjected Mrs Afsar "in the course of providing a service".
>
> 59. I am fortified in these conclusions by the Technical Guidance for Schools in England, published by the Equality and Human Rights Commission (last updated July 2014), pursuant to s 13 of the Equality Act 2006. At paragraph 1.34, the guidance addresses the question, "Does a school have obligations under the Act to parents?". The answer does not even contemplate the provision of state education as a "service" within EA Part 3. It gives examples concerned with public access to a school swimming pool, and attendances at parents' evenings. I do not regard any of the matters

[22] See the definition of pupil in s.89 Equality Act 2010 and s.3 Education Act 1996

> complained of in the passage cited at [51] above as analogous to service provision of that kind."

In these circumstances *Afsar* makes it clear that a Part 3 claim would not lie. Thus the application of the law operates to defeat the Claimant parents' applications for direct discrimination and I will dismiss these claims on these grounds alone.

41. The school is a public authority for the purpose of the act and thus obliged to meet its duties in relation to the PSED. I accept Mr. Clarke's proposition that the school had to have regard to the need to eliminate discrimination, advancing equality of opportunity; and fostering good relationships between persons who share protected characteristics. I am not sure that Mr. Phillips would demur from this proposition. Both advocates are agreed that it is permitted to include these matters in the curriculum. Again both advocates returned to the distinction between 'content' and 'delivery'. Mr Clarke submitted that, the school was always justified in the teaching of the fact of LGBT people and families in an age-appropriate fashion. The point of bifurcation between the advocates was that the Claimants argued that the school overly advocated LGBT issues and lifestyle, which is a matter of fact. Later I return to the issue raised by the Claimants that the teaching in question was not prescribed for the purpose of the qualifications to the HRA claims because they were unlawful. If the school were properly discharging their PSED then the steps were lawful.

Human Rights Act

42. The mainstay of the Claimants' case is rooted in the Human Rights Act. As set out above these are advanced as breaches of s.7(1) HRA in relation to Article 2 of the First Protocol to the ECHR ('the right to education), Article 9 (the right of freedom of thought, conscience and religion, the right to respect for family life (Article 8), the right of freedom of expression (Article 10), the right to freedom of peaceful assembly and to freedom of association (Article 11) and to enjoy all the aforesaid rights and any of them without discrimination on any grounds such as religion, religious and/or philosophical beliefs, political or other opinion, in accordance with Article 14 ECHR. This proved to be the most contentious area of the legal context.

43. The scheme of the HRA provides that s. 6(1) of the Human Rights Act 1998 (HRA) makes it "unlawful for a public authority to act in a way which is incompatible with a Convention right". The Defendant has conceded that it is a 'public authority' for the purposes of this provision. S. 7(1) HRA provides:

> A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—
>
> (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
> (b) rely on the Convention right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.

S. 8(1) HRA provides:

> "In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate."

44. Naturally the specific allegations mirror those advanced under the Equality Act. The Claimants rely on the following acts of the Defendant as unlawful under s. 6(1) HRA, as pleaded in para 28 of the Particulars of Claim:

    a. The Defendant's aggressive interference with the 2nd and 3rd Claimants' ways of educating their son about sexual ethics and/or about the nature of family.

    b. The Pride events at the School.

    c. Failure to inform and/or consult the parents about the proposed Pride events in advance.

    d. Failure to excuse the First Claimant from participating in the Pride events when requested by the Second Claimant.

    e. Failure to consider the Second and Third Claimants' complaints on those matters fairly, respectfully, and/or in good faith, above.

45. Counsel agreed that it is helpful to group the convention rights under three headings:
    - Article 2 of the 1st Protocol and Article 9, alone or taken together with Article 8. ('Freedom of conscience rights')
    - Article 10 and/or Article 11 ('Negative freedoms')
    - Prohibition of discrimination under Article 14.

46. The freedom of conscience rights formed the principal plank of the Claimants' case. Mr Phillips recognised that there is a tension between the right of the individual parent and the power of the state to mandate certain parameters to teaching. A theme running through his submissions was that the court should have a proper recognition of the integral position of parents and family in the lives of children, especially those who were as young as Izaiyah. The European jurisprudence recognises this and significantly limits the power of the state to inculcate ideas that were antipathetic to those of parents.

47. Article 2 of the 1st Protocol to ECHR provides:

> **Right to education**
> No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. (the Protocol Right)

The UK reservation to Article 2 of the ECHR 1st Protocol, incorporated by Schedule 3 HRA, reads:

> "At the time of signing the present (First) Protocol, I declare that, in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure."

Mr Phillips placed specific emphasis on the duty to respect the rights of the parents and the prominence of the religious and philosophical convictions. He went on to consider specific elements of the right.

48. His interpretation of the provision was broad and that this extends beyond curriculum to 'the organisation of the school environment' which should be calm and free from proselytism (see *Lautsi v Italy* [GC] (Application no. 30814/06) 18.03.2011 and *Hasan and Eylem Zengin*, application no. 1448/04, judgment of 09/10/2007). Mr. Phillips emphasised the term 'any function' contained the Protocol Right. Thus it was impermissible to limit the operation of the Protocol Right to the curriculum or its delivery, it was much wider (*Folgero and Others v. Norway* [GC], App. No. 15472/02, judgment of 29 June 2007). He focussed on the word 'respect' submitting that this places a heavy obligation on the state, not just to 'take into account' or acknowledge the Claimants' views but to give a meaningful expression to them. He pointed out that the term 'have regard to' was specifically rejected by the framers of the legislation. Indeed he suggested that the term was strong enough to confer a parental right to demand respect for their religious views in the ambit and delivery of the teaching. (*Campbell and Cosans v The United Kingdom*, application no. 7511/76 and 7743/76, judgment of 25/02/1982)

49. In his submission, this approach recognises the special position of parents in relation to the education of children. He drew support for this proposition from the decision in *Kjeldsen, Busk Madsen and Pedersen v Denmark*, Judgment, Merits, App No 5095/71 (A/23), [1976] ECHR 6, IHRL 15 (ECHR 1976), 7th December 1976, European Court of Human Rights [ECtHR], at para 52, where the court recognised the role of parents, saying;

> "it is in the discharge of a natural duty towards their children- parents being primarily responsible for the 'education and teaching' of their children- that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education."

More generally, Mr Phillips drew further support for this proposition from the recognition in *Dahlab v Switzerland*, application no. 42393/98, dec. of 15/02/2001 that young children were particularly susceptible to influence from teachers because of their age, the daily contact, and the hierarchical relationship of teacher to infant child. As a matter of law, this underlined the importance of the protocol rights and the need to limit the UK government's reservation.[23] In this respect he prayed in aid that a balance must be struck to ensure that the state does not abuse its dominant position in relation to minorities. (*Chassagnou and Others v. France*, 29 EHRR 615, 28331/95). He submitted that this was especially true where the teaching of the school could have a proselytising effect (*Folgero*). Indeed he argued that the vulnerability of Izaiyah, the dominant position of the school and the need to respect the beliefs of the parents implied a positive obligation on the school to ensure that the views of the parents were duly taken into account. This I took to be an important element in his case that the

[23] Though not pleaded, Mr, Phillips also referred to the United Nations Convention on the Rights of the Child requirement to have deference to the parents of younger children.

parents should have been informed and/or consulted the parents in advance of the Pride events.

50. Mr Phillips accepted that the protocol right was not unfettered and that the United Kingdom had incorporated a reservation in Schedule 3 of the HRA, accepting Article 2 'only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.' While he accepted that this trammelled the otherwise broad ambit of the right, he stressed that there had to be a nexus between the limitation and the provisions of the Education Acts and also the need to provision of efficient instruction and the avoidance of unreasonable expenditure. He argued that this reservation had no bearing on the issues in the case. Even where it was permissible to introduce sensitive moral issues to young children, he submitted that there was a duty on the state to teach them neutrally and in a way that did not conflict with the religious beliefs of his family. He referred to the decision in *Kjeldsen*:

> "the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded."

51. He further submitted that the provision was located in the legislative matrix provided by Articles 8, 9, and 10 and referred to *Catan v Moldova and Russia* and to *Hasan and Eylem Zengin*, at paragraphs 54-55:

> "54. The Court reiterates that it has always stressed that, in a pluralist democratic society, the State's duty of impartiality and neutrality towards various religions, faiths and beliefs is incompatible with any assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed (see *Manoussakis and Others v. Greece*, judgment of 26 September 1996, Reports 1996 IV, p. 1365, § 47….
>
> 55. Such an interpretation of the second sentence of Article 2 of Protocol No. 1 is consistent at one and the same time with the first sentence of the same provision, with Articles 8 to 10 of the Convention and with the general spirit of the Convention itself, an instrument designed to maintain and promote the ideals and values of a democratic society (see *Kjeldsen, Busk Madsen and Pedersen*). This is particularly true in that teaching is an integral part of the process whereby a school seeks to achieve the object for which it was established, including the development and moulding of the character and mental powers of its pupils as well as their personal independence."

52. Mr Phillips bracketed Article 9 with the protocol rights seeing them as complimentary in the context of this case. In relation to HRA Article 9 he identified that it creates two "closely related yet distinct protections against discrimination/harassment (a) on the grounds of religion and (b) on the grounds of beliefs - whether religious or philosophical". The parties are agreed, and I accept that it is established law that the right to hold a belief is an absolute right, whereas the right to manifest that belief is

qualified. (*Page v NHS Trusts Development Authority* [2021] EWCA Civ 2 and in *R (Begum) v The Governors of Denbigh High School* [2007] 1 AC 100).

53. Turning to Article 8 Mr. Phillips submitted that Izaiyah's tender age, his exercise of his article 9 rights were indistinguishable from the beliefs of his parents and he was brought up in a Christian family, where the teaching of the bible were integral to his moral and religious beliefs. Accordingly he submitted that this further underlined the parental rights identified in *Kjeldsen*. Thus, Izaiyah's Article 9 right, "seen through the lens of Article 8, must be protected as vigorously as the individual Article 9 rights of an adult". It was a recurrent theme in the Claimants case that Izaiyah's age made him particularly vulnerable to the school's teaching and that this necessitated a proper attention to the parental rights as against the state.

54. Moving on to the negative freedoms in Articles 10 and 11. As with Article 9 both these provisions are qualified by 10(2) and 11(2) which, insofar as it is relevant to this case provides that the right are subject to conditions prescribed by law and are necessary in a democratic society, in the interests of or public safety, for the prevention of disorder or crime, for the protection of health or morals and for the protection of the reputation or rights of others (the rights and freedoms of others in Article 11). For the avoidance of doubt, it is the Claimants' case that the Parade was an assembly for the purpose of Article 11. Mr Phillips stressed that the conditions for the qualifications need close scrutiny and were not met in this case.

55. In particular Mr Phillips focussed on the use of the word 'necessary', found in Articles 8(2), 9(2), 10(2) and 11(2). He has cautioned against any dilution of this term and referred me to the judgment of Lord Bingham in *R v Shayler* [2003] 1 AC 247 explaining that the word 'necessary' in Article 10(2) in the following terms:

> "[it] has been strongly interpreted: it is not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable': *Handyside v United Kingdom* (1976) 1 EHRR 737, 754, para 48. One must consider whether the interference complained of corresponded to a pressing social need, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authority to justify it are relevant and sufficient under article 10(2): *The Sunday Times v United Kingdom* (1979) 2 EHRR 245 , 277–278, para 62."

He sought to suggest that the means used by the Defendant school in this case fell significantly short of the requirements of necessity. Indeed he argued that the school fell into the trap of conflating conservative views on sexual ethics with discrimination. He argued that this conflation led the school into the trap of seeking to censor the Claimants' religious views. This was not lawful (see *R (Ngole) v University of Sheffield* [2019] EWCA Civ 1127; *Re Sandown Free Presbyterian Church* [2011] NIQB 26; *Miller v College of Policing* [2020] EWHC 225 (Admin)).

56. Uncontroversially Mr. Phillips proposed that these rights also confer a right not to express ideas or assemble against one's will. He referred to the decision in *Young, James and Webster v UK* (7601/76, 7806/77, 13/08/1981, to the effect that one cannot be compelled to join an association against one's will, and submitted "that the same

reasoning applies to compelling someone to joining an assembly or taking part in an activity which requires a person to express, even symbolically, allegiance to a worldview or campaigning symbol." In support of this proposition he referred to the Supreme Court decision in *Lee v Ashers Baking Co* [2020] AC 413 as support for the proposition that compelling a person to demonstrate and manifest a belief that he did not hold would amount to an interference with Articles 9 and 10.

57. Finally Mr. Phillips addressed the provisions of Article 14. He accepted that these submissions largely overlapped with the position in relation to the Equality Act claim. However he drew my attention to the absence of any provision in the HRA which replicated s.89(2) of the Equality Act. In short, the cloak of protection afforded by s.89(2) was not available to a claim under Article 14 and hence it was open to the Claimants to argue that the contents of the curriculum discriminated against the Claimants even if there was no claim under the Equality Act.

58. Overall the Claimants approach was summarised by the opening paragraph of Mr. Phillips closing submissions

> 1. "Aristotle is famously quoted as having said: give me a child until he is 7 and I will show you the man. In truth, parents are in rather precarious position in relation to the power of state education if it is aimed specifically at changing the hearts and minds of young pupils on sensitive moral and political questions. Whether parents like it or not, individual schools have a tremendous amount of authority and influence over our children's belief systems. This is why merely trusting our schools to the task is not enough, Parliament has seen fit to adopt a great number of laws to protect parental rights from abusing this relationship."

The court has to be astute to ensure that a proper balance is struck between the state and individual rights.

59. Mr Clarke, for the school focused on the limitations placed on the rights asserted by the Claimants concurring that Articles 8, 9, 10 and 11 are subject to restrictions dependent on the facts of the case. Indeed he was not at odds with Mr. Phillips on much of the law and focused on the application of the law to the facts of this case.

60. He submitted that the Second and Third Claimants were in error in advancing a claim based on Article 2 to the 1st Protocol. He submitted that the provision conferred a right to education on the First Claimant alone. Thus the argued that the claims of the parents failed to surmount this hurdle. In common with his general approach, he relied heavily on the UK reservation and that any rights asserted by the Claimants had be to be read down with that reservation in mind.

61. Moving on from there he argued that the right to education is relatively weak. He referred to the decision of the House of Lords in *Ali v Lord Grey School* [2006] 2 AC 363 which made two important observations, firstly that the right was a weak one and secondly that there was no guarantee of education of a particular type. The question in each case was whether the authorities of the state acted so as to deny to a pupil effective access to such education facilities as the state provided for such pupils.

62. In relation to Article 9 Mr Clarke accepted that the right to hold the belief engaged the right not to hold or manifest that belief (*Young James and Webster*). He agreed that this was amply demonstrated by Lady Hale in *Lee v Ashers Baking Co Ltd* [2018] 3 WLR 1294 who noted the importance of Article 9, citing *Kokkinakis v Greece* (1993) 17 EHRR 397. At paragraph 50 Hale LJ noted:

> "Furthermore, obliging a person to manifest a belief which he does not hold has been held to be a limitation on his article 9(1) rights. In *Buscarini v San Marino* (1999) 30 EHRR 208, the Grand Chamber held that it was a violation of article 9 to oblige non-believers to swear a Christian oath as a condition of remaining members of Parliament. The court reiterated that freedom of thought, conscience and religion "entails, inter alia, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion".

To this extent counsel were agreed on the framework of this aspect of Article 9. The divergence lay in the application of the principles to the instant case. Mr Clarke went further and submitted that Article 9 can normally be successfully invoked where a Claimant is compelled to support or manifest a belief that ran contrary to their own beliefs and provided three examples:

a. *Lee v Ashers Baking Co Ltd*: Private business owners being forced to ice a cake in support of a political message supporting gay marriage;
b. *Buscarini v San Marino (1999)*: Forcing non-believers to swear a Christian oath so as to remain a member of Parliament;
c. *Commodore of the Royal Bahamas Defence Force v Laramore*: a Muslim petty officer being obliged, on pain of disciplinary action, to remain present and doff his cap during Christian prayers.[24]

He submitted that Izaiyah was not compelled to associate with any event that ran contrary to his views and thus Article 9 was not engaged. Similarly he argued that it is required that there is sufficient nexus between the belief and the manifestation (see *Eweida* above), which was absent in this case.

63. Mr Clarke did suggest that the Claimants had failed to appreciate the high standard to establish an infringement of Article 9. In his skeleton argument he supported this proposition with the judgment of Lord Bingham in *Begum* noted at paragraph 24:

> "there remains a coherent and remarkably consistent body of authority which our domestic courts must take into account which shows that interference is not easily established."

Lord Bingham had set out the relevant case law at paragraph 22 of his judgment:

> "22 As my noble and learned friend pointed out in Williamson, above, para 38, "What constitutes interference depends on all the circumstances of the case, including the extent to which in the circumstances an individual can

[24] Defendant's skeleton – paragraph 43.

reasonably expect to be at liberty to manifest his beliefs in practice". As the Strasbourg court put it in *Kalaç v Turkey* (1997) 27 EHRR 552, para 27,

> "Article 9 does not protect every act motivated or inspired by a religion or belief. Moreover, in exercising his freedom to manifest his religion, an individual may need to take his specific situation into account."

The Grand Chamber endorsed this paragraph in *Sahin v Turkey*, (Application No 44774/98, 10 November 2005, unreported), para 105. The Commission ruled to similar effect in *Ahmad v United Kingdom* (1981) 4 EHRR 126, para 11:

> ". . . the freedom of religion, as guaranteed by Article 9, is not absolute, but subject to the limitations set out in Article 9(2). Moreover, it may, as regards the modality of a particular religious manifestation, be influenced by the situation of the person claiming that freedom."

23. The Strasbourg institutions have not been at all ready to find an interference with the right to manifest religious belief in practice or observance where a person has voluntarily accepted an employment or role which does not accommodate that practice or observance and there are other means open to the person to practise or observe his or her religion without undue hardship or inconvenience. Thus in *X v Denmark* (1976) 5 DR 157 a clergyman was held to have accepted the discipline of his church when he took employment, and his right to leave the church guaranteed his freedom of religion. His claim under article 9 failed. In *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711, paras 54 and 57, parents' philosophical and religious objections to sex education in state schools was rejected on the ground that they could send their children to state schools or educate them at home. The applicant's article 9 claim in Ahmad, above, paras 13, 14 and 15, failed because he had accepted a contract which did not provide for him to absent himself from his teaching duties to attend prayers, he had not brought his religious requirements to the employer's notice when seeking employment and he was at all times free to seek other employment which would accommodate his religious observance. *Karaduman v Turkey* (1993) 74 DR 93 is a strong case. The applicant was denied a certificate of graduation because a photograph of her without a headscarf was required and she was unwilling for religious reasons to be photographed without a headscarf. The Commission found (p 109) no interference with her article 9 right because (p 108) "by choosing to pursue her higher education in a secular university a student submits to those university rules, which may make the freedom of students to manifest their religion subject to restrictions as to place and manner intended to ensure harmonious coexistence between students of different beliefs". In rejecting the applicant's claim in *Konttinen v Finland* (1996) 87-A DR 68 the Commission pointed out, in para 1, page 75, that he had not been pressured to change his religious views or prevented from manifesting his religion or belief; having found that his working hours conflicted with his religious

> convictions, he was free to relinquish his post. An application by a child punished for refusing to attend a National Day parade in contravention of her beliefs as a Jehovah's Witness, to which her parents were also party, was similarly unsuccessful in *Valsamis v Greece* (1996) 24 EHRR 294. It was held (para 38) that article 9 did not confer a right to exemption from disciplinary rules which applied generally and in a neutral manner and that there had been no interference with the child's right to freedom to manifest her religion or belief. In *Stedman v United Kingdom* (1997) 23 EHRR CD 168 it was fatal to the applicant's article 9 claim that she was free to resign rather than work on Sundays. The applicant in *Kalaç*, above, paras 28-29, failed because he had, in choosing a military career, accepted of his own accord a system of military discipline that by its nature implied the possibility of special limitations on certain rights and freedoms, and he had been able to fulfil the ordinary obligations of Muslim belief. In *Jewish Liturgical Association Cha'are Shalom Ve Tsedek v France* (2000) 9 BHRC 27, para 81, the applicants' challenge to the regulation of ritual slaughter in France, which did not satisfy their exacting religious standards, was rejected because they could easily obtain supplies of meat, slaughtered in accordance with those standards, from Belgium."

Based on the foregoing Mr. Clarke submitted that the qualification contained in Article 9(2) was an important curb on the otherwise breadth of the right. Further that the individual circumstances of the Claimants were important. In this case they chose to send Izaiyah to a non faith school. Their right to choose an alternative school preserved their Article 9 rights. He submitted that the decision in *Begum* reinforced this jurisprudence. In *Begum* a student refused, for religious reasons, to wear a mandatory uniform. Again a majority observed that there were other schools who would have accommodated the Claimants' wishes. Lord Hoffman observed that, "Article 9 does not require that one should be allowed to manifest one's religion at any time and place of one's own choosing". For Mr. Clarke this element of choice was an important factor in defeating the Claimants' case.

64. In relation to the curriculum, Mr. Clarke parted company with Mr. Phillips' submissions. It will be recollected that the Claimants' placed weight on the absence of any provision exempting the content of the curriculum from the HRA unlike the Equality Act which contained s.89(2). He submitted that the jurisprudence demonstrated that the state has a wide latitude in setting a curriculum. In *Osmanoglu and Kocabas v Switzerland* (application number 29086/12) (a case concerning mixed swimming lessons), the court observed:

> "States enjoyed a considerable discretion ("margin of appreciation") concerning matters relating to the relationship between State and religions and the significance to be given to religion in society, particularly where these matters arose in the sphere of teaching and State education. Whilst refraining from pursuing any aim of indoctrination, the States were nonetheless free to devise their school curricula according to their needs and traditions.
>
> With regard to weighing up the competing interests, the Court observed that school played a special role in the process of social integration, and one that was all the more decisive where pupils of foreign origin were concerned; that

> given the importance of compulsory education for children's development, an exemption from certain lessons was justified only in very exceptional circumstances, in well-defined conditions and having regard to equality of treatment of all religious groups; and that the fact that the relevant authorities did allow exemptions from swimming lessons on medical grounds showed that their approach was not an excessively rigid one.
>
> Accordingly, the children's interest in a full education, thus facilitating their successful social integration according to local customs and mores, prevailed over the parents' wish to have their children exempted from mixed swimming lessons."

Thus Mr. Clarke submitted that the school were entitled to fashion a curriculum as they did.

65. In the event that there was a *prima facie* infringement of the Claimants Article 9 human rights then they would still have to demonstrate that this was not proportionate. He stressed that there will be occasions when there are competing factors in play and that proportionality did not dictate that one belief should prevail over other incompatible beliefs. He suggested that this was exemplified by the decision in *Begum* where the court observed at paragraph 23:

> "It is therefore necessary to consider the proportionality of the school's interference with the respondent's right to manifest her religious belief by wearing the jilbab to the school. In doing so we have the valuable guidance of the Grand Chamber of the Strasbourg court in *Sahin*, above, paras 104-111. The court there recognises the high importance of the rights protected by article 9; the need in some situations to restrict freedom to manifest religious belief; the value of religious harmony and tolerance between opposing or competing groups and of pluralism and broadmindedness; the need for compromise and balance; the role of the state in deciding what is necessary to protect the rights and freedoms of others; the variation of practice and tradition among member states; and the permissibility in some contexts of restricting the wearing of religious dress."

Mr Clarke stressed that the Claimants' religious beliefs were not the only beliefs engaged in the school's teaching. As indicated, there was a broad base of family structures including children who lived in same sex households, hence the religious beliefs of the Christian parents had to be weighed against the equally important rights of same sex families to demand respect for their beliefs.

66. In my judgment the followings propositions govern my findings in relation to the identified issues.

67. While it is for the Claimants to prove a breach of their rights on a balance of probabilities, the burden of proving any reservation under the Protocol Rights or that a breach was necessary and proportionate, lies on the school.

68. Article 2 of the 1st Protocol provides a right of education and imposes a duty on the school to respect the religious and philosophical convictions of the parents. I agree

with Mr. Phillips that the approach to the ambit of the provision is a broad one. I place particular emphasis on the words "any functions". These words demonstrate the broad scope of the provision. Thus it will embrace the posters, the rainbow symbols as well as the means of delivery such as the parades. Plainly it straddles both the content of the curriculum and the delivery of that curriculum and more. As identified in *Lautsi* it extends to the organisation of the whole school environment. Like Mr. Phillips I place significance on the fact that religion and philosophical convictions have been singled out for mention, thus emphasising the importance attached to these attributes and the need of the courts to recognise that these represent core aspects of a person's identity. I would also emphasise that the right is generic. In terms the school have to discharge this duty in relation to those that hold religious beliefs and those who adhere to LGBT relationships.

69. I agree that the term 'respect' in the Protocol Right is a strong one. It is more than 'taking into account' or 'acknowledging'. This is made clear by the rejection of the term 'have regard to' when the provision was framed. The clear intention of the authors was to ensure that there was a strong safeguard in place to preserve the intellectual and family integrity of individuals. I accept that this has been interpreted as being tantamount to a right to demand respect. Of course that is not a right to demand a particular form of teaching, a matter I return to.

70. I acknowledge the importance the Claimants attach to this provision as bulwark to protect them against unwelcome teaching. I understand that a dissonance between the teaching at home and the teaching at school can be confusing, especially for a young person such as Izaiyah and should be avoided where possible. The parents' duty to their children and their primacy in terms of education and guidance was recognised in *Kjeldsen* at paragraph 52. Equally important is the capacity of the state to influence the learning of children as was outlined and demonstrated in *Dahlab*. For this reason the jurisprudence draws a sharp distinction between content and delivery of the curriculum.

71. Of course the Protocol Right is qualified and is enforceable, "only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure". Mr Philips submitted that this had no relevance to the matters before the court. As I have indicated Mr. Clarke relied on the qualification. In my judgment the qualification is limited in its scope and will only be engaged to the extent that it is suggested that the Claimants' case hampered the efficiency of the instruction or would cause unreasonable public expenditure. This has to be set in the context of the requirements of law for the curriculum. I have already addressed the statutory duty placed on the Defendant to provide a balanced and broad based curriculum that meets the requirements of s.78 Education Act 2002. Accordingly I am satisfied that if, for example, the Claimants established a primary duty to consult before teaching elements of the curriculum, but I also formed the view that the consultation would hamper the efficient delivery of the statutory requirement, then the reservation is engaged.

72. In terms of the content of the curriculum there is a clear conflict between the parties approach. I am satisfied that the Claimants do not have right to claim under the HRA in relation to the content of the curriculum. The answer to this question lies in the decision in *Kjeldsen* at paragraph 53 which specifically addresses the issue and says:

> "53. It follows in the first place from the preceding paragraph that the setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era. In particular, the second sentence of Article 2 of the Protocol (P1-2) does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. The same is true of religious affinities if one remembers the existence of religions forming a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature.
>
> The second sentence of Article 2 (P1-2) implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded."

It is apparent that this decision is authority for the proposition that the parents cannot object to the inclusion in the curriculum of religious or philosophical subjects. I am struck by the congruence between the reasoning in *Kjeldsen* and the rationale expressed in the guidance to the Equality Act at paragraph 2.9 as set out above. If I am wrong in this finding then I am persuaded in line with *Osmanoglu and Kocabas* that the state has a considerable latitude in setting the curriculum especially where they are having to weigh competing interests in the interest of social integration.

73. I am also persuaded that Mr. Clarke is right to limit the right to education to the First Claimant alone. On a true construction the Protocol Right creates two rights. The first is the right of a person to education. In other words this is the pupil's right to receive education. The second right is the right of the parents to have respect for their religious or philosophical views. Thus, insofar as the Second and Third Claimants seek to advance an argument that they have been refused education (as opposed to their right of respect for their views being ignored) the claim is misconceived and must fail.

74. It is plain that the State, in the form of the school, have duty to observe limits in their delivery of sensitive issues such as LGBT. The jurisprudence is clear. The state must not abuse its position (*Chassagnou*), they must not pursue the aim of indoctrination or proselytisation that might be considered as a failure to respect the parent's beliefs (*Kjeldsen, Folgero*, *Valsamis , Osmanoglu* and *Kocabas*). To put it another way, the state must adopt a position of impartiality and neutrality (*Hasan and Eylem Zengin*). In particular *Kjeldsen* emphasises the requirement that the school takes care that the curriculum is taught in an objective critical and pluralistic manner. I stress the words critical and pluralistic. The teaching has to ensure that it does not promote any belief

over that of another. It is permitted to critically analyse propositions, providing this is achieved in an age sensitive way. I note that the use of the term 'critical' chimes with a similar use of the word in the Education Act which permits schools to deliver education that 'challenges' opinions or behaviour. Providing a school remain within the parameters that I have outlined they are entitled and required to stretch their students intellectually and to introduce difficult notions in an age-appropriate manner.

75. The above discussion needs to be set in context. I am persuaded that the right to education found in the Protocol Right is a weak one as described in *Begum*. The case refers to a number of Strasbourg decisions where the individual right was overruled by other considerations. However I am very conscious that *Begum* makes it clear that the exercise of the right is very fact specific and that there is a danger in simply transporting a decision on one set of facts into another case. This works in terms of considering the factual matrix and that the Claimant may need to consider his specific situation (see *Sahin* and *Ahmad v UK*).

76. There is one aspect of *Begum* which requires further analysis. Mr. Clarke made submissions based on the fact that the Claimants Article 9 rights were preserved by an element of choice, in terms the Second and Third Claimants chose a nondenominational school and could change (as in fact they did). He relied on the decisions in *X v Denmark*, *Kjeldsen, Karaduman, Konttinen* and *Stedman v UK* referred to in *Begum*. I am conscious that both Lord Nicholls and Baroness Hale dissented from the majority view in *Begum* in relation to the availability of other schooling. Lord Nicholls dissented on the basis:

> "I think this may over-estimate the ease with which Shabina could move to another, more suitable school and under-estimate the disruption this would be likely to cause to her education."

I approach the matter on the basis that a change of school is not the equivalent of changing a job. I am sure that Mr. and Mrs Montague had no notion that there would be the LGBT teaching when they chose the school. I recognise that changing a child's school is a multi-faceted decision. It involves a disruption to a child's education, to their peer group and the very basis of their social construct. It is not to be lightly undertaken. Sometimes the LEA policy makes it impossible to change school. Of course there are occasions when a change is required but it should not be lightly inferred that this is a ready made solution to an infringement of Article 9. However the majority in *Begum* held that the right to alter school protected the human rights engaged. Of course, it is factually accurate that, in this case Mr. and Mrs. Montague were able to effect a change of education within a short time of becoming disenchanted with Heavers Farm.

77. The weakness of the right under the Protocol has to be set against the Article right to manifest one's beliefs and importantly, not to manifest a belief. I accept Mr. Clarke's reference to the decision of Lord Hoffman in *Begum* to the effect that there was no requirement to permit an individual to manifest their belief at the time and place of their choosing. Both counsel were agreed that the cases where Article 9 had had particular success was when an individual was being asked to associate with a belief they did not have. I bear in mind that the Claimants' case rests on the allegation that Izaiyah was being asked to associate with events which represented an aggressive interference with

their religious beliefs. Indeed I would go further and suggest that there is an overlap between the Claimants Article 8 rights and the Article 9 right. In terms their son was being asked to manifest a belief that was contrary to the family ethos and, as such there was an inherent and worrying dichotomy between the domestic and family belief system on the one had and the association with an inconsistent view at school.

78. I bear in mind that the rights in question are qualified. Although the right to freedom of thought is an absolute right, the thrust of the Claimants' case rests on the manifestation of that right. I agree with Mr. Phillips that the qualifications should not be used to overly dilute the essential right. Hence there has to be a nexus between any derogation from the Protocol Right and the need for efficient instruction and avoidance of unreasonable expenditure.

79. In terms of proportionality, I have identified that some of the rights relied upon by the Claimants are qualified by the provisions of Article 8(2), 9(2), 10(2) and 11(2). To be engaged the provisions must meet the various conditions. Accordingly they are only subject to limitations prescribed by law and they must be necessary. I agree with Mr. Phillips that one is required to adopt a strict definition of the term and that it should not be diluted (*R v Shayler*).

80. Against that legal framework I turn to the evidence in the case.

V THE EVIDENCE

81. As I have indicated, the complaints fall into the six discrete areas of the Belief Issues, the Curriculum Issues, the Delivery Issues, the Complaint Issues, the Detention Issues and the Banning Issues.

82. The following gave evidence to the court:
For the Claimants
    1. The Second Claimant[25]
    2. Edmund Matyjaszek[26]
    3. The Third Claimant[27]

For the Defendant.
    4. Susan Papas.[28]
    5. Graham Cluer[29]
    6. Atalanta Copeman-Papas[30]
    7. Robert Askey[31]
    8. Ellen Boylan.[32]

[25] See also witness statement 16th July 2020 [102]
[26] See also witness statement 16th July 2020 [123]
[27] See also witness statement 16th July 2020 [118]
[28] See also witness statements 17th July 2020 and 9th May 2022 [132] & [1058]
[29] See also witness statement 16th July 2020 [279]
[30] See also witness statement 17th July 2020 [327]
[31] See also witness statement 16th July 2020 [269]
[32] See also witness statement 23rd July 2020 [339]

83. I refer to the evidence in relation to the specific issues as I consider these in turn. However at the outset I wish to make some general observations about the quality of that evidence.

84. Mrs. Montague was the lead witness for the Claimants, as she had a preponderance of the involvement in the events giving rise to the claims. She is plainly an intelligent, articulate and committed woman with a fervent belief in her values. Superficially she gave her evidence well. She was considered and thoughtful, though, as I suggest later there was a certain fluid quality to her evidence in some respects. Frequently she was unable to distinguish her present views with those she expressed in 2018. Not because of dishonesty but as a result of having to think through certain propositions. However a number of aspects of her evidence made me uneasy about its reliability. First there was a marked difference between the person I saw in the witness box and the author of the emails in question. I examine her email correspondence in more detail later in this judgment, but they can hardly be described as balanced or acceptable and Mrs. Montague accepted this (unlike Mr. Matyjaszek). Thus there was a marked dissonance between the witness I saw and the tenor of the written correspondence.

85. Secondly, I noted that the witness accepted that she had resorted to subterfuge in the form of using aliases[33] when contacting the media. While this is understandable, it meant that she was prepared to stoop to a degree of artifice which did not promote faith in her evidence.

86. On occasions the Second Claimant contradicted herself for example telling me that she learnt of the LGBT issues when she saw a letter dated the 19th June 2018[34] and then she discovered that there was no mention of LGBT in the letter, in short her evidence was not reliable in that respect.

87. Two further aspects of the evidence illustrate my broader concerns. First at paragraph 8 of her witness statement she wrote that she had written to the school on the 26th June 2018 and asked for her son to be excused from the Pride Parade. In evidence in chief she corrected this and said that she had spoken to the school and there was no letter. She was unable to explain satisfactorily why she had given this account, attested with a Statement of Truth, and now altered it. My concern was exacerbated when I considered paragraph 6 of the Third Defendant's witness statement in which he made the same error writing that "The Pride Parade was only a few days away, so my wife wrote to the school on the 26th June 2018 and requested our son be excused." In short Mr. Montague made the same error in the same detail. He denied any suggestion of collusion. Even when I suggested that it was natural that he and his wife would discuss the matter, he rejected this contenting himself with the observation that his wife is a good communicator and he thought that she wrote to the school. This was a thin explanation for the identical error, even down to the date of the letter. Plainly it reflected on Mr. Montague's credibility but also adversely affected my consideration of Mrs. Montague's evidence. These are examples of a trend that permeated the Second Claimant's evidence.

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[33] In cross examination, she admitted to using at least two aliases: 'Ruth Anderson' and 'Zizi Alfuso'
[34] Bundle [154]

88. Further during her evidence it was put to Mrs Montague that she had sought to 'out' a member of staff from the school as gay, to the press. She flatly denied this and that she had made such an accusation to the media. She then conceded that a journalist might have asked why the school were orchestrating this and that she might have said that a member of staff might be gay, but she was not sure. When Ms Papas gave evidence she revealed that the journalist had been sufficiently concerned to forward an email from Mrs. Montague to him. With the concurrence of both parties an email dated the 19th July 2018 was produced the following day. It is lengthy and I return to its contents later, it contains the line, "She [Ms. Papas] has personal agendas as her daughter is suspected of being part of the LGBT community, so Ms. Papas did this for herself." Ms Montague told me that she had completely forgotten the email and its contents. She suggested that she did not understand this as 'outing'. The latter observation grated and was inconsistent with the evidence she had given a few days earlier when she had perfectly understood the term 'outing'. I am afraid it was not honest evidence. Similarly when one considers the circumstances of the email to the journalist and the entire contents of the email, it is simply not credible that she forgot this, and her explanation was unconvincing. This aspect of the evidence is only one element, however taken with my other concerns, it cast a long shadow over the reliability of her evidence to the court.

89. Mr. Montague was an engaging witness. His involvement was more peripheral but he sought to consider his replies and gave them as fully as he could. I have already observed that there were passages of his evidence which I could not accept, for example the issue of the letter of the 26th June 2018. I would make one further observation germane to both Mr. and Mrs. Montague. Sometimes they have sought to reconstruct incidents from their recollection and failed in that endeavour. It was plain that Mr. Montague had got himself in a muddle in paragraph 6 of his witness statement where he elided incidents in late June 2018, with another incident in October 2018. Perhaps because of his peripheral involvement his recollection was less acute compared with his wife.

90. I regret that the evidence of Mr Edmund Matyjaszek did not assist me, save where I indicate to the contrary. He is the Principal of Priory School of Our Lady of Walsingham, an independent Christian School on the Isle of Wight. He is one of the four founders of Parent Power, established to support parents in the position of Mrs. and Mr. Montague. He accompanied both parents to the meeting on the 19th September 2018. While he was able to give evidence about his visit to the school and the meeting, that evidence has to be seen through the prism of a very partisan approach. By way of example. Mrs. Montague wrote an email on the 13th July 2018. In commenced with the lines:

> "I have been distressed with Susan Papas & the way she is running the school. It has been appauling (*sic*), the way she has handled this devastating controversy. She has not met the high expectations of a head of a primary school. She has been obnoxious, arrogant, undermining, unsympathetic / uempathetic (*sic*), biased, disrespectful, dishonest and undemocratic"

It went on describe the Head Teacher as head bully of a corrupt organisation, and being Christophobic, Mr Matyjaszek denied that this was aggressive, insulting or even intemperate. Rather he sought to cast the document as a product of a 'hurt and damaged women'. He did not know that there had been no communication between

Mrs. Montague and Ms. Papas prior to the email, but that did not alter his view. I return to this email later, but his position was both revealing and unsustainable. Despite his denial I am satisfied that Mr. Matyjaszek came to the court with a specific agenda. He had publicly written in 2019;

> "Child grooming is befriending and establishing an emotional connection with a child, and sometimes the family, to lower the child's inhibitions with the objective of sexual abuse.
>
> The current proposed RSE for primary and secondary schools will have the effect, whether intended or not, of preparing children for early sexual experimentation, and make them vulnerable to predatory adults."[35]

During the course of his evidence Mr. Matyjaszek purported to give opinion evidence on the infiltration of schools by Stonewall, about the difference between seven colour rainbows and six colour (gay) rainbows and that Ms. Papas description of the events as not a gay event but focused on being 'proud to be individual' as an attempt during the meeting to 'put the genie back in the bottle'. The contemporaneous evidence suggests that this was not the case as I set out below. There was no permission to rely on expert evidence and, as I indicted during the trial, I have confined my consideration of his evidence to the factual evidence and not his opinion and, on occasions, speculation. I do not doubt Mr. Matyjaszek's sincerity and belief in what he says. However I am not satisfied that he brought any semblance of objectivity to his evidence.

91. Susan Papas is the Executive Head Teacher of two schools, the Defendant and a linked school, Selsdon Primary School. As such she had a supervisory as opposed to hands on role in the school. Mr. Phillips criticised the quality of her evidence arguing that she was passionate about LGBT issues, and he evidenced this in her choice to prevent opt outs for parents and her desire to change the views of pupils of parents whom she considers harbour homophobic views. I turn to these specifics later in this judgment. She gave her evidence well. The picture that emerged was a person who ratified and supported the LGBT element of the teaching as opposed to devising it. Perhaps understandably, she was somewhat defensive on occasions. Later I suggest that she underplayed the LGBT elements of the curriculum and thus her evidence had to be seen through the prism of a witness trying to put the best gloss on the situation. She made timely concessions as to the lack of communication and that the school had not followed its own policies, as she was bound to do given the documentary material. She did not present as a person who was particularly well versed in the LGBT culture and certainly did not present as an evangelist for LGBT. I do not share Mr. Phillips' observations about Ms Papas' passion, which I return to in considering the mindset of the school in relation to the content of the curriculum. One aspect of her evidence assisted me considerably. On a couple of occasions she reminded me that I had to see beyond her professional standing and realise that there was a human being in play. Thus she made helpful concessions about feeling nervous and apprehensive before the meeting on the 19th September 2018 which I found credible.

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[35] Matyjaszek E, 'RSE and Schools as grooming factories' published in Anglican Mainstream. 20.03.2019 [925]

92. Mr Graham Cluer was the Chair of Governors in 2018 and remains so. I am bound to observe that he was a breath of fresh air in evidence. His testimony was no nonsense and clear. He heard that Ms. Copeman-Papas had worn the T-Shirt referred to on many occasions in school. He deprecated any slogans on T-Shirts in school and volunteered that the school had got this wrong 'big time', accurately describing himself as 'an old fashioned stickler'. He went further and volunteered that he considered slogans against knife crime where political and should not be in the school. I formed the view that no part of his agenda involved defending the school unless that accorded with his experience. He brought a degree of independence and common sense to the case and I found him to be a credible and helpful witness.

93. Atalanta Copeman-Papas is Ms Papas daughter and is the Federation Schools Manager. Although she has some hand in teaching PE, she is not an educationalist. It emerged early in evidence that she has achieved some academic distinction and has three Masters Degrees, one in culture diaspora and ethnicity. It was plain from her evidence that she relished the dialectic experience of giving evidence as a platform to demonstrate her obvious intelligence. The evidence that she gave was accurate. On occasions I felt that the quality of the evidence was lost in thickets of technical nit picking and semantics. Thus she analysed the disciplinary policy in a technical way which did not assist the broad assessment of whether the spirit of the policy was followed. I also had concerns about the certainty of some of her recollection. In contrast with other witnesses there was a conviction that did not sit happily with the fact that these events were more than four years ago and that the memory can fade and alter recollection. Unlike her mother I formed the view that Ms Copeman-Papas is passionate about LGBT issues, albeit in the context of a wider promotion of equality. As Mr. Phillips observed this was evidenced by her T-Shirt with the slogan on it and the posts to the school blog.

94. Robert Askey is the Head Teacher of the Defendant school and was the Assistant Head in 2018. As with Ms. Papas, his role was more supervisory and less hands on. He taught older children and had little contact with the Claimants. Again there was no suggestion in his answers that he is an evangelist for LGBT rights over others. His answers were particularly thoughtful on occasions and he seemed to analyse the issues in greater depth than some of the other witnesses. He was a generous witness, he was asked if he laughed during the meeting of the 19th September, instead of simply denying this was the case, he volunteered that he may well have shown exasperation in terms of sighing and rolling his eyes. Not evidence that assisted him but which had the mark of honesty.

95. The last witness was Ellen Boylan a trainee teaching working in Izaiyah Montague's class.[36] She no longer works at the school and thus brought a certain detachment to the proceedings. She was particularly useful in giving an insight into the actual delivery of the teaching about which nobody else had any real insight. She gave her evidence well and I found her credible.

96. Against that background I turn to the issues identified above.

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[36] I refer to the witness as Ellen Boylan as that was the name used in the trial, but heard she is now married and Ms Ellen Wilson.

VI THE BELIEF ISSUES

97. The Claimants have pleaded out the relevant protected characteristics in their Particulars of Claim as follows:

> 2. The Claimants are Christians and a Christian family. The Claimants rely on their Christian religion and/or beliefs, which include (without limitation) the following religious and/or philosophical beliefs and/or convictions:
>
> a. Only two kinds of sexual lifestyle are permissible for Christians: either complete abstinence or life-long fidelity within a marriage between one man and one woman. Any other sexual lifestyle (including but not limited to the so-called 'LGBT' lifestyles) is sinful.
> b. Homosexual acts and relationships are sinful, as set out in Leviticus 18:22; Romans 1:26-27 and Corinthians 6:9-11.
> c. 'Pride' is the most serious of the sins. 'Pride' is not a virtue which should be encouraged or celebrated, but a vice to be avoided and repented.

The Defence simply puts the Claimants to proof. I refer to the *Grainger* criteria as set out above. In truth there has been no challenge to the accuracy of paragraph 2 of the Particulars of Claim. I have no hesitation in accepting that the Claimants are all Christians and live in an avowedly Christian family. They do believe that there are two forms of sexual lifestyle, total abstinence or lifelong fidelity in marriage between a man and a woman. This was the thrust of the evidence of both the Second and Third Claimant. Similarly they both gave evidence that same sex relations are sinful. This belief is rooted in the biblical text referred to in the Particulars of Claim and are genuinely held by the Claimants. Mr Montague gave helpful evidence that he was reared in a Christian family and adhered to Christian beliefs at the time of this incident, he told me that he was not baptised and 'born again' until 2019. This does not detract from his evidence that he was a Christian before then. The path to being 'born again' can be gradual and one arrived at over time. In truth there would be no rational explanation for the stance taken by the parents unless Mr. and Mrs. Montague felt that their beliefs were being contradicted by the school and that there was a conflict between their lifestyle and the delivery of the school curriculum. The Claimants hold these protected characteristics and I accept that Izaiyah, as a young child reared in the Christian household I have described also holds those protected characteristics.

98. However these findings do not resolve all the belief issues. During the course of his evidence Graham Cluer commented that he had difficulty in understanding how the school had infringed the parents' views and rights. I appreciate this. It is important to understand the application of the broad principles as an aid to consider the extent to which the Defendant has infringed those rights and as part of the factual context. The simple observation contained in the Particulars of Claim does not assist in terms of the practical consequences of the beliefs held. It has to be accepted that the approach of Christians to the application of the biblical text encompasses a broad spectrum.[37]

[37] The breadth of Christian responses is recognised by the Biblical and Pastoral Responses to Homosexuality – a resource for church leaders at paragraph 5 to which I was referred. [909] It states; *"5. We oppose moves within certain churches to accept and/or endorse sexually active same-sex partnerships as a legitimate form of*

99. Mr Clarke sought to understand where these Claimants drew the line between an acceptable reference to LGBT lifestyle and what constituted aggressive interference with their ways of educating the First Claimant. In answer to this line of enquiry, the Claimants' evidence had a fluid quality. I gained the impression that the rigour of cross examination caused them to consider and re-evaluate matters that they had not previously focussed on. Thus they made statements about their beliefs but later sought to refine or reverse them when they pondered the issues raised.

100. At one point Mrs. Montague told me that she loved all people as God's creations and that she believed that we all had to come together to learn together. This reflected her written evidence. She accepted that we are all sinners and that labelling same sex relations as a sin does not mark those in LGBT relationships out from the rest of humanity. I suggested that, seen in these terms, the slogan "I'm gay get over it!" was consistent with Christianity, in that exhorted everyone to look at the person not the label. She seemed to accept this analysis but then abandoned it arguing it was open to interpretation, but elucidating no further. On occasions she seemed to accept that there was a role for the school in teaching the existence of LGBT issues. In other aspects of her evidence she took a more extreme line, refusing to accept that LGBT adherents were disadvantaged, asserting that they only represented 5% of the pupils in the school, stating that LGBT issues were not in the curriculum and in her oral evidence that she did not see why LGBT issues should be 'lumped in with woman and black history'.[38] The Second Claimant indicated at one point that the school should only refer to LGBT issues if it was a problem in the school. She then resiled from this arguing that the school should simply deal with this as bullying and make no mention of LGBT relations at all. She told me this was unnecessary. She objected to the children being told that some families had two mummies or two daddies. Later she said that even if parents were ultra bigots then LGBT matters should still be left exclusively to the parents. On occasions Mrs Montague took a restricted view of the school's role, telling me that it is for them to ensure that the children learn and excel in traditional subjects and not to concern themselves with background issues. She took the view that it was for the parents to challenge gender stereotypes and not the school, contradicting this in re-examination. I gained the impression that, for Mrs. Montague, this was partly to do with control. She did not know what the school were teaching and so they should leave it to the parents. She denied that the teaching was about diversity. She emphasised that her approach was showing proper respect to parents as the law required.

101. Mr. Montague exhibited a similar ambiguity. He was shown the teaching plan[39] and could not pinpoint any particular concern other than a belief that children should not play with toys traditionally assigned to the other gender. He was opposed to the school celebrating difference. Equally he accepted that children should be taught of different cultures. At some stages in his evidence he considered that the teaching should be at home and not at school, but presented with the choice of Izaiyah finding out about LGBT issues in the playground or from teachers he opted for the latter.

Christian relationship and to permit the ordination to ministry of those in such sexual relationships. We stand prayerfully with those in such churches who are seeking to resist these moves on biblical grounds"

[38] See for example her emails to the school and to Inside Croydon – 19.07.18 [not in the bundle but admitted during the course of the trial].

[39] Page [629]

102. Trying to draw the above together, I was materially assisted by the 'Biblical and Pastoral Responses to Homosexuality – a resource for church leaders' ('BPRH') to which I was referred and which the Second and Third Claimants endorsed. I accept that they hold the following beliefs:

- All human beings are sinners.
- They repudiate all attitudes and actions which victimise or diminish people whose affections are directed towards people of the same sex.
- Marriage is an institution created by God in which one man and one woman enter into an exclusive relationship for life. Marriage is the only form of partnership approved by God for sexual relations and homoerotic sexual practice is incompatible with His will as revealed in Scripture. They do not accept that holding these theological and ethical views on biblical grounds is in itself homophobic.
- They oppose moves within certain churches to accept and/or endorse sexually active same-sex partnerships as a legitimate form of Christian relationship and to permit the ordination to ministry of those in such sexual relationships.
- They oppose church services of blessing for civil partnerships and other forms of gay and lesbian relationships as unbiblical and reject any redefinition of marriage to encompass same-sex relationships.
- They believe both habitual homoerotic sexual activity without repentance and public promotion of such activity are inconsistent with faithful church membership.

As I understand the position, those of the Claimants' belief draw a distinction between the homosexual inclination on the one hand and the practice on the other hand, a point made on a number of occasions during the trial.

103. In terms of the practical application of these beliefs, the Second and Third Claimant seemed to finally rest on the suggestion that there should be no mention of LGBT to Izaiyah in school. This was certainly the thrust of Mrs. Montague's comments when she was recalled. Her view was that gender teaching was a matter for parents and that a proper respect for parental rights required that issues of diversity should be addressed within the domestic setting. In this way there would be no disharmony and confusion for the child and a degree of consistency would be achieved. The parents took the word 'celebration' to be advancing the cause of LGBT when they considered that it was potentially sinful and not a cause for celebration.

104. I am bound to say that Mr. Phillips closing submissions did not sit happily with the evidence of his clients. He submitted to me that the case was not about;

> "the Claimants suggesting that their son should not be exposed to different ideas and philosophies. The greatest disservice that could be afforded to the Claimants is to view their case one dimensionally, understanding their claim to be based solely on the fact that their son received LGBT education. This case is not a referendum about LGBT education. What their claim is about is about how their son received LGBT education."

I rely on Mr. Phillips closing comments and I proceed on the basis that the Claimants' complaint is about delivery. However, I am bound to take into account the parents'

view as demonstrated in their written and oral evidence into account in deciding what weight to attach to their evidence about delivery.[40]

105. It was noticeable that, despite the contents of paragraph 2 of the Particulars of Claim, neither parent raised any issue about teaching that might be seen to promote single parent families, divorcees, children born out of wedlock or other family structures that were outwith their religious beliefs. It might be said that a single parent family did not necessarily connote sexual relations outside marriage and divorce, but given the ages of the children it was likely to, and yet they raised no concern about this.

106. I am conscious that part of the protected characteristic advanced by the Claimants is that 'Pride' is the most serious of the sins. 'Pride' is not a virtue which should be encouraged or celebrated, but a vice to be avoided and repented". In oral evidence Mrs. Montague addressed this and told me that the basis for this belief was that pride was over arrogant and denying the honour due to God. This was the basis of the objection. She took me to the Christian Dictionary which introduces Pride in the following terms:

> "The emphasis placed on pride, and its converse humility, is a distinctive feature of biblical religion, unparalleled in other religious or ethical systems. Rebellious pride, which refuses to depend on God and be subject to him, but attributes to self the honour due to him, figures as the very root and essence of sin."[41]

Mrs. Montague's evidence thus identified the pride that the Christians object to is the pride that promotes the self over God and fails to recognise God's goodness in any achievement. This is important because it contextualised the term. There is a danger of becoming lost in alleyways of semantics. I was greatly assisted by this aspect of the evidence. In my judgment this explained the concept that was objected to and avoided some of the evidence that began to explore euphemisms for Pride which missed the reality of the situation. I approach 'Pride' on the basis that this is conceptually a displacement of the honour due to God its replacement with a focus on the self.

VII THE CURRICULUM ISSUES

107. In closing submissions Mr. Phillips abandoned any arguments for a remedy based on the contents of the curriculum. In my judgement this was a sensible concession given the provisions of s.89(2) Equality Act and the extract from paragraph 53 of *Kjeldsen* to which I have referred. However it is important to establish exactly the curriculum that the school intended to deliver. Of course this has been the subject of much criticism by the Claimants. I adopt the broad definition of curriculum identified in *Afsar* as "embracing all learning and experiences that the school plans for its pupils, and the national curriculum forms only part of this." In this section, I focus on the plans as opposed to the delivery. This is not just a consideration of the teaching but includes all the support materials, for example posters and parades and the whole school environment.

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[40] For example consider paragraph 4 of the Second Claimant's witness statement, "However I believe that primary school age, especially 5 years of age, is far too young to learn about such [LGBT] relationships."
[41] New Bible Dictionary [924]

108. There was little dispute about the factual situation in relation to the curriculum. The dispute focussing on the effect and the inferences that could be drawn. In assessing the content of the curriculum I focus on the final version of the curriculum as opposed to earlier iterations, which is important as it was a dynamic situation. The history may give an insight into the final product, but it is the ultimate version that defines what it was intended to deliver and that which was delivered. Ms Papas explained that the school decided to focus the SMSC work in half termly themes.[42] In this respect the school identified six such themes; a) Black History; b) Disability Awareness; c) Mindfulness and Mental Health; d) Women's History; e) Environment; f) LGBT (lesbian, gay, bisexual and trans) History. With regards the latter item, she gave unchallenged evidence that the school had noticed low level homophobic language in the playground (for example using 'gay' in a pejorative sense). She accepted that some of the activities were timed to coincide with Pride Month.

109. It is plain that the teaching for National Pride Month went through a number of changes. It was first discussed at a staff meeting on the 21st May 2018. The proposal was contained in a presentation prepared by a member of staff who had had Stonewall training.[43] It focussed on the alleged prevalence of homophobic bullying in schools and then advocated the celebration of difference in the school and identifying three areas:

- Stock the school book areas with a diverse range of books.
- Celebrate difference across the school – ensure that images, posters and displays across the school are diverse and celebrate how we all different.
- Hold an event to celebrate equality and diversity.

The plan suggested that the teaching should find expression in the Pride March on 29th June. It also involved talking about different family structures. Alongside this theme the teaching was designed to emphasise individual positive self image ('it is good to be me'). The proposal contains no reference to promoting LGBT as superior to any other belief. It certainly contains a focus on LGBT matters, for example suggesting,

> "setting aside time in art class to for pupils to create their own placards and rainbow decoration showing support for the diverse LGBT community and the importance of equality"

However equally it stressed diversity, celebrating how we are different, challenging stereotypes and 'it is good to be me'. Even at this early stage of planning the aggressive promotion of LGBT over other beliefs was absent.

110. Pausing at this point. It is plain that there was a clear linkage between the proposed teaching and the Pride Month in the wider community. In passages of evidence the school sought to downplay this aspect. In my judgment it is apparent from the material that it was proposed that there would be a clear link between LGBT issues and the teaching. In this respect I recognise that the timing was important to the school because it would occur when other institutions were likely to be celebrating Pride Month. As Ms. Papas pointed out, "great many businesses support Pride, for example Tesco,

[42] See, for example paragraphs 9 & 10 of witness statement of S. papas. [134]
[43] See slide presentation for the meeting [530] *et seq*

Amazon, Costa Coffee, Transport for London, H&M, Facebook, Nando's, Disney, Apple and the list goes on." Thus the teaching was likely to resonate with the wider environment in which the children operated. The linkage in the document was clear, for example it included making rainbow decorations "showing support for the diverse LGBT community". Equally the evidence was clear that the school as a whole had no input into this proposal which emanated from one or two members of staff, and which was the basis for discussion at the meeting. The Claimants have sought to suggest that this proposal was the teaching, the evidence did not support this conclusion. However it does give an insight into the genesis of the teaching.

111. What emerged from the meeting for the reception class can be judged from the lesson plans.[44] This entailed, talking about ways that families are different, reading *The Family Book* by Todd Parr, encouraging the children to talk about something that was special in their family, making posters of families and rainbow posters. It was explained that "we are using a rainbow because it has lots of different colours in it, and represents lots of different people getting along and being friends." The plan also suggested, "Tell children that on Friday we are going to be taking part in a march around school that is all about being proud of ourselves and our families". The children were also to learn three songs, '1,2,3 – It Is Good To Be Me', We Are Family' and 'True Colours'. The teaching also included placing a selection of gender stereotypical toys and discussing who should use the toys and why, as a vehicle for challenging gender stereotyping. In evidence I saw *The Family Book*.[45] In bright and engaging colours and drawings it describes, big, small and coloured families, adopted families, close families, distant families and runs the gamut of family structures including one page that states, "some families have two moms or two dads". There was no evidence that the parents were consulted or had any say in the formation of this curriculum.

112. From this outline it is plain that there was a subtle change of ethos from the presentation to the plan. The focus in the teaching plan was on people being different, being proud of one's own identity and breaking down stereotypes. Understandably, Mr Phillips spent much time on the original proposal however one has to understand that there was a degree of change and refinement during the curriculum development.

113. The school introduced the LGBT teaching in a post to the school blog on the 18th June 2018. The document began,

> "As you may have gathered, June is PRIDE MONTH across the globe. As a result, in our schools we have been, and will be, learning about issues related to equality and pride throughout the month.

It went on to narrate a history of the 'Stonewall Uprising' in 1969 and concluded with the following passage:

> "At the end of the month, we will be asking all of our pupils to celebrate their own differences; to be proud of who they are and proud of their own family by taking part in our Pride Parade.

[44] Page [627] in the bundle.
[45] Page [560] in the bundle

> When thinking about our Pride celebrations it is important that we remember that there is no hierarchy of equalities and that we remember our Great British Values of individual liberty, mutual respect and tolerance."

It became clear that there was parental concern about the teaching. I heard considerable evidence from Mrs. Montague, Ms Papas and Mr. Askey that there were discussions at the school gate. Some of these were ill informed with parents calling the staff 'child abusers', saying that the school were teaching 'bum sex' and that homosexuals should be killed or locked up. Although Mr. Phillips has noted the absence of this material from the witness statements, I am satisfied that it is accurate. It chimed with Mrs. Montague's own evidence about the parental concern at the school gate. I know from the contents of her email of the 13th July 2018 that some of the discussion was ill informed. Faced with this resistance the school reflected and rebadged the parade as "Proud to be Me Parade". It is plain that the content remained unchanged. Some parents were still concerned and there was rumour of a planned protest. Accordingly the parents were no longer invited and the Parade took place in the morning.

114. The Second and Third Claimant argued in evidence that the above scheme of work, was an avowed attempt to promote LGBT rights over other beliefs and that the inclusion of the other work was simply to mask the true nature of the work. It is the Claimants' case that the school decided to further LGBT issues over other beliefs, especially those that were critical of a LGBT lifestyle. As a result, they suggested that the school had an animus against the Claimants for their Christian belief. During the trial they have argued that it is plain from the evidence that the school viewed Christian views about homosexual behaviour as homophobic and this was clear from the evidence of Ms. Papas, Ms Boylan and Mr. Askey. The suggestion was that, in formulating this curriculum, the school fell into the trap of eliding Pride and Stonewall with equality. The result was that the school were proselytising on behalf of LGBT issues under the cloak of equality and changing minds so that LGBT conduct was acceptable. Mr Philips argued that this was exemplified by the determination of the school to ensure that students were compelled to take part in the PCPs as evidenced by the email of Rachel Evans of the 20th June 2018 which makes it clear that the suggestion of labelling this as SMSC was to ensure compulsion.

115. Equally Mr. Phillips pointed to a disagreement between Mr. Cluer and Ms. Papas on the eve of the Parade. Mr. Cluer mooted the idea of running an alternative activity for those who objected to the Parade because there was not time to convene a complaints panel. Ms Papas response was to emphasise that the children were not marching under a rainbow flag but making their own flags. She went on:

> "I don't think it is appropriate for governors to overrule any lessons being planned by the teachers, especially as this lesson is simply singing songs and walking around school with a flag that demonstrates what you are proud of. If governors decide to overrule the staff, you may have a much bigger problem on your hands!"[46]

[46] Email Mr. Cluer to Ms Papas [752] and reply [754]

Mr Phillips argued that this was proof positive that the school were determined to drive the LGBT agenda through compulsion. In his submission the true mind of Ms. Papas could be seen from the insight provided by an email of Ms. Papas dated the 6th July 2018 in which she responded to a message of support;

> "Thank you so much for your message of support. Your kind words are really appreciated. This parent really does have a very strange (and offensive) take on the world; we are working hard to make sure that the children in our schools don't share this view!"[47]

Mr. Phillips posed the question, "What views would she be referring to if not to Mrs. Montague's Christian beliefs about sexual morality? This admission cannot be any more explicit. The aim of the Defendant's headteacher was specifically to undermine the Second Claimant's religious views in how it delivered education."

116. The school argued that they were simply applying the legal requirements of s.78 Education Act and that there was no intent to promote the LGBT agenda over any others. Mrs. Papas made the point that this would be contrary to the whole ethos of the year's teaching and the Department for Education investigation came to the same conclusion. In that respect I make it clear that the Department's report is not binding on me and indeed they were considering different issues from me. All I can say is that the report is part of the evidential matrix.

117. In my judgment the focus of the teaching in the last half term of the 2017/2018 academic year was intended to focus on the existence of LGBT families and people. The plan included the posters and work designed to highlight the existence of such families and to 'normalise' them, to the extent that they were not seen as abnormal and the legitimate object of abuse. I do not accept that, as formulated, the curriculum the teaching I have outlined, was designed to promote LGBT beliefs over others. The difficulty that the Claimants face is that they have focussed on one aspect of a year long SMSC curriculum. There was very little examination of and criticism of the other five elements of the teaching. By throwing an intense concentration on one sixth of the teaching they have lost sight of, and distorted, the overall SMSC curriculum. One cannot properly describe the totality by a description of a single constituent part. In my judgment the Defendant was unnecessarily defensive about the links between the teaching and LGBT. I will turn to the delivery shortly. At this stage I content myself with saying that the school were under a duty to meet the requirements of the Education Act and, bearing in mind the low grade homophobic language it was legitimate to include LGBT issues as one of the six elements to the annual SMSC teaching. Indeed I confess that I am very uneasy about some of the comments being made at the school gate and it is important for the children's responsibilities and experiences in later life that there is some corrective to the ill informed views which were being articulated by some of the parents.

118. One has to understand the framework that the school were operating in. They were under a duty to comply with s.78 to provide a balanced and broadly-based curriculum promoting the spiritual, moral, cultural, mental and physical development of pupils and

[47] Email of 06.07.18 [1106]

which prepared pupils at the school for the opportunities, responsibilities and experiences of later life. Plainly discrimination against those adhering to an LGBT lifestyle is outlawed by the Equality Act. The definition of discrimination for the purpose of the act is 'less favourable treatment'. It follows that the school were under a duty to address all forms of discrimination. While the Second and Third Claimants agreed with teaching about colour or racial discrimination they opposed the same approach to LGBT teaching, arguing that such teaching has not place in school and should be left to the parents. I cannot accept that proposition.

119. It seems to me that the Code of Guidance materially assists in this respect. As part of the development of children the school were required to show that they were promoting what the government terms, 'Fundamental British Values' of democracy, the rule of law, individual liberty, and mutual respect of those with different faiths and beliefs and that pupils must be encouraged to regard people of all faiths, races and cultures with respect and tolerance.[48] I appreciate that the parents have cavilled at the term, Fundamental British Values', constructing it as a suggestion that those who do not support LGBT as being in some way un-British. I have some sympathy with that position, I am not sure that to label such attributes as 'British' assists an understanding of the teaching and it certainly obscured it in this case. Nevertheless this is the duty imposed on the Defendants by the State. Further support for this position is found in the guidance issued by the Department for Education in 2014. I have already noted that it addresses precisely the position that the school were in, namely:

> "A school does a project to mark Gay Pride Week. A heterosexual pupil claims that he finds this embarrassing and that it discriminates against him on grounds of his sexual orientation; a Christian or a Muslim pupil objects to it on religious grounds……
>
> 2.11 All of the above are examples of complaints against the content of the curriculum, and none of them would give rise to a valid complaint under the Act."

I return to my observation that this is guidance and not of statutory effect, however it acts in harmony with the statutory provisions. As such I can detect no conflict between the guidance and the statutory framework.

120. Accordingly I am bound to reject the parent's suggestion that the LGBT teaching has no place in schools. Were the school to abstain from teaching LGBT issues it would run the risk of treating those who adhere to that lifestyle less favourably. I appreciate that there are real issues for those holding the belief that the Claimants do. There is a potential for a dissonance between the approach taken by the school and the family situation. Mr. Phillips reliance on paragraph 52 of *Kjeldsen* and on *Dahlab* emphasises that parents of young children may be considered to be the primary educators and one has to be susceptible to the influence that teachers have over children. Equally decisions such as *Kjeldsen, Osmanoglu and Kocabas* emphasise the latitude that the state has in setting the requirements for the curriculum.

[48] See 'Promoting fundamental British values as part of SMSC in schools.

121. I have considered the evidence that the Claimants have marshalled to persuade me of the view that the school was proselytising in its formulation of the curriculum. I consider that Mr. Phillips' criticism of Ms. Papas describing Mrs. Montague's comments as homophobic are misplaced. He has taken the comments out of context. Ms Papas was cross examined and defined homophobia as a person being treated adversely because they were gay. In those terms she felt that saying that a homosexual that they would go to hell would be homophobic. If you say to a homosexual that they cannot enjoy the benefits of marriage as others can, that too would be homophobic. While I am not sure that I would define homophobia as broadly, Ms Papas was simply saying that the parents wanted to treat homosexuals less favourably than heterosexuals and, in her terms, that was homophobic. Accordingly I draw no adverse inference from her evidence in this respect. It was an accurate portrayal of the parent's position. The intellectual leap taken by Mr. Phillips from this definition to classing it as homophobic as he and I might understand it was not a proper reflection of the evidence. Equally Ms. Boylan described the beliefs that she had heard as homophobic which she defined as promoting intolerance. Again, I might debate this definition, but it was the one that framed her reply. This was a reflection of her view in 2023 and she had heard some of the more extreme sentiments expressed by Mrs. Montague as I have described them. Again the conclusion Mr Phillips sought to draw from this evidence does not take a proper account of the context in which it was given.

122. I accept that the school were drawing a line and not permitting parents to opt out. That is made clear by the Rachel Evans email and the exchange with Mr. Cluer. In relation to the latter, Mr. Phillips sought to suggest that the threat in the email was evidence of Ms. Papas propensity to aggressively advance the LGBT issues. As Ms. Papas explained in evidence, the issue was somewhat different. It was a question of who held the reins in relation to the creation and delivery of the curriculum. It is plain to me that Ms. Papas was drawing a clear line, that the formulation of lessons and their delivery were for the qualified staff and it was not for the Governors to aggregate to themselves that function. This had nothing to do with the Parade and everything to do with demarking areas of responsibility. As I suggest, it seems to me that, on a proper application of the law, there was no scope for the school to permit and opt out unless this was RSE education.

123. Equally the answer to Mr. Phillips question as to what views Ms. Papas saw as 'strange and offensive' in the Second Claimant's views, the answer lies in the contents of the emails from the Second Defendant to the school which went beyond a simple and reasoned exposition of Christian views and descended into unwarranted criticism of the Executive Head Teacher for applying the curriculum. I am afraid that the Claimants will have to accept that the contents of the emails were not limited to a furtherance of Christian beliefs as I have identified them. Indeed and in fairness to the second Claimant she accepted the emails should have been written when she was calmer.

124. As Mr. Clarke has submitted, the question of whether the teaching was RSE teaching was raised in the pleadings and Claimant's skeleton argument. However Ms. Papas and Ms. Copeman-Papas made it clear that this was not RSE teaching. This was not challenged nor explored by Mr. Phillips. As such it was not raised a contested issue. In any event I would have held that this was not RSE teaching. Earlier I addressed the legal framework for a consideration of whether the curriculum constituted RSE education. I refer to the distinction I drew between interpersonal relationships and

more general tolerance. It will be apparent that my findings demonstrate that the proposed teaching was directed to a general acceptance of those of different faiths or beliefs. As one would expect with young children, the teaching was rooted in the structures that were personal to the children. Thus they were taught of family structures and encouraged to demonstrate what they were proud of. However the focus was not on the inter-personal aspects of those relationships, but what they tell us about people in general. I have taken into account the email from Rachel Evans of the 20th June 2018 where she certainly considered that there was scope for interpretation. She was not applying the same definition that I have arrived at from my consideration of the law and I do not consider that the email supports a conclusion that this teaching constituted RSE. I am satisfied that this was not RSE education, applying the definition I have identified.

125. In relation to the question of whether the school were promoting partisan political views. This rests heavily on the notion that school were promoting Stonewall's campaigning worldview. Thus Mr. Phillips made the following observation in his closing comments:

> "The Defendant conflated the equality duty owed by the school with the promotion of LGBT campaigning worldview, the latter being inherently partisan and political. Being homosexual and LGBT campaigning are not synonymous. The former is about sexual attraction and the latter about political activism and worldview. Not all people who are homosexual are LGBT campaigners, and not all LGBT activists are homosexual."

It might equally be said that not all LGBT symbols are those of Stonewall or any political or campaigning organisation. This is contrary to Mr. Phillips' submission that to "suggest that LGBT symbology, and other elements of LGBT education, including cooperation with Stonewall, is politically neutral is demonstrably false". If one assumes, as the Claimants do, that a rainbow or a song is associated with LGBT Pride, it does not follow anyone that wears a rainbow T-shirt or sings the song is a paid up member of Stonewall or any other campaigning group. There is a dangerous inference that anyone who associates or sympathises with LGBT toleration is an LGBT campaigner. I am not sure that this is what Mr. Philips wanted to suggest, but it does demonstrate that one requires more cogent evidence to translate a sympathiser into a campaigner. Providing the teaching is given neutrally and does not amount to promotion of LGBT to the detriment of other beliefs or lifestyles, there is no political element. Indeed if Mr. Phillips was correct in his analysis, then the s.78 requirement to promote the SMSC development of pupils at the school and of society, and preparation of pupils at the school for the opportunities, responsibilities and experiences of later life would be shorn of effect. In Mr. Phillips' terms, the moment one used any LGBT symbology, and other elements of LGBT education one would be breaching s.406. Thus one could not teach LGBT tolerance. The argument is self defeating and too restricted in its view of what constitutes political views. It will be apparent from my findings that I consider that the school did not involve itself in promoting any political views within the meaning of s.406.

126. I confess that I am unclear as to whether the Claimants abandoned one aspect of the complaints about the curriculum, mentioned as a PCP, namely the lack of consultation about the content of the curriculum.[49] As I understood Mr. Phillips position, he abandoned all aspects of this part of the claim. In an excess of caution I would indicate that I would have dismissed this aspect of the claim. The content of the curriculum is for the Defendant and the Defendant alone. Quite properly Mr. Phillips emphasised that under Article 2 of the First Protocol the parents have a right to require the State to teach in conformity with their religious beliefs. This requires an environment which is calm and free from proselytisation (*Lautsi*). I appreciate that *Ali v Lord Grey School* has indicated that the right to education is a comparatively weak one and that there is no guarantee of education of a particular type however I do not interpret this to mean that the safeguards sewn into Article 2 should be diluted given the weight I attach to the word 'respect'. I have already observed that this is a right and requires the State to give a meaningful expression to it. Of course this right has to be balanced with the reservation to Article 2. The caselaw does not require a school to consult parents on the contents of the curriculum and I have been directed to no authority that suggests that such a right exists.

127. It seems that the parents consider that consultation is a duty that arises from a proper operation of the HRA articles relied upon, principally Article 2. I recognise that consultation may be an aspect of giving meaningful effect to the Article 2 right. However once one begins to examine how the right may operate, it poses more questions than it answers. What aspects of the curriculum are covered? What form should the consultation take? How does the school balance a LGBT family who want such teaching with a Christian family that oppose such teaching? The Claimants addressed none of these issues. The school would become lost in the thickets of such consultation that could render the development of curriculum an impossible exercise. It seems to me that *Kneldsen* properly identifies the practicalities of the situation in paragraph 53 observing of Article 2:

> "It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. The same is true of religious affinities if one remembers the existence of religions forming a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature."

The Equality Act reaches a similar conclusion and if ever there were a paradigm example of a step that would be incompatible with efficient instruction and training it is this and thus I am satisfied that the reservation to Article 2 is engaged. Accordingly I find that there is no duty on the school to consult on the inclusion of LGBT teaching in the curriculum.

VIII THE DELIVERY ISSUES

[49] See paragraphs 4, 28 and 33 of the Particulars of Claim [37]

128. The above sets the scene for the delivery issues. I observe that the delivery is located within the PSED placed on the Defendant. Insofar as they are taking proper steps to eliminate discrimination, advance equality of opportunity; and foster good relationships between persons who share protected characteristics they are discharging a duty prescribed by law. I have already recognised that the Equality Act and HRA jurisprudence draws a sharp distinction between the content of the curriculum and the delivery of it. It is plain that the school should abjure from any steps that would amount to proselytisation or promoting LGBT issues over other forms of belief. I take proselytisation to mean active steps to convert or attempt to convert someone from one religion, belief, or opinion to another. The guidance to the Equality Act makes it clear that using the teaching to promote or denigrate any belief is contrary to the duty placed on the Defendant. The importance of objective, neutral and pluralistic delivery is recognised in *Kjeldsen* and *Hasan and Eylem Zengin.* In this respect I adopt the observations I made concerning the importance of the right of the parents to respect for their religious beliefs. I also remind myself that any dilutions of the HRA rights are subject to the requirements of necessity and the specific wording of the rights (*R v Shayler*). I have already recognised the importance of the parents as educators (*Kjeldsen*) and the need to recognise the special power of teacher to influence children (*Dahlab* and *Chassagnou*).

129. The core of many of the complaints of the Claimants lie in the delivery of the curriculum. In my judgment there is something of an indistinct line to be drawn between what constitutes the content of the curriculum and the delivery of that curriculum. The definition of curriculum embraces all learning and experiences that the school plans for its pupils. At one level the line is clear, if it is 'planned' then it is curriculum and if it is the practical application of the plan then it is 'delivery'. However I am uneasy at this bright line. If the school had planned to design and display posters that said that women were inferior to men and then delivered on that plan, would they be protected by s.89(2) and paragraph 53 of *Kjeldsen*? In my judgement such an interpretation would be to strip the legislation of the important safeguards for parents. Thus I adopt a wide definition of what constitutes delivery.

130. The specific complaints concerning delivery are the Pride Events identified in paragraph 3 of the Particulars of Claim:

> "a. The school's building was decorated with posters of a well-known 'LGBT Pride' campaigning organisation, Stonewall, with Stonewall's logo and the slogan: "Some people are gay, get over it!".
>
> b. The school's building was decorated with other posters affirming that homosexual relationships, and/or various relationships outside marriage, are normal and acceptable.
>
> c. The school's building was decorated with rainbow flags, which are a known symbol of the 'LGBT Pride' movement;
>
> d. Children were encouraged to create posters and banners celebrating 'LGBT Pride'.

e. Children were encouraged to wear bright rainbow colours.

f. Children in classes were taught about the existence of homosexual couples and that it was 'normal' to have two 'parents' of the same sex;

g. Books about 'families' based on homosexual relationships were read to children in class.

h. Children in older years were taught 'LGBT history'; on at least one occasion, Year 4 pupils were shown a video which depicted two men kissing. [50]

131. I pause at the last of these assertions. I make it clear that the claim is based on the teaching delivered to the First Claimant and that the Claimants will have no claim in relation to teaching delivered to other years in the school. Of course such teaching might give an insight into the manner of the delivery but will not sound in a remedy. The rights conferred by the Equality Act and the Human Rights Act are personal to the Claimants and it is not open to them to claim for breaches of the legislation against other children or parents.

132. An obstacle for the parents is that they have no direct knowledge of the delivery of the teaching beyond the visible manifestations of that delivery. Two passages of Mrs. Montague's witness statement contain the principal evidence for the Claimants. She stated:

> "It [The Pride Event] was to be held in conjunction with wider Pride events across the United Kingdom. Children were encouraged to wear bright colours and create banners for the parade. Rainbow flags were displayed all around the school, and Stonewall posters declaring, "Some people are gay, get over it!" were prominently on display in the entrance hall. In classrooms, children were taught about being "proud". Books about having two parents of the same gender were read to children as young as four and five. Posters affirming any combination of male or female parents as normal were hung on walls and doors. I felt that all this material created an atmosphere that sought to solely promote certain LGBT values." (paragraph 9)
>
> "I questioned the necessity for a Pride parade. In addition, I objected to the school's disproportionate focus on LGBT issues. In my view, this had reached an unacceptable level given the age of the pupils in question. It appeared that LGBT focused material had pervaded the whole of the curriculum. I was informed by parents in years 1, 3 and 4 that the history of the first gay man was being taught, videos were being watched of two men kissing each other, and fiction books promoting homosexual family units were being read to the class. My friend's daughter was in year 1 at the time and told me that she was taught that she could be her mum's husband. In

[50] See Particulars of Claim – paragraph 3 – [30]

> addition to this, my own child was taught that different children can have many mums and dads, if they want." (paragraph 12)

I am bound to say that Mrs. Montague's evidence relies in part on recycled information from other parents. Bearing in mind the febrile atmosphere among some parents, they carry little evidential weight save where they are corroborated by the school. Mr Matyjaszek gave evidence that at the entrance to the school he noticed there was a prominent poster from Stonewall advocating same-sex partnerships and families.

133. I do recognise that, on the 19th September, Ms. Copeman-Papas was wearing a T-Shirt bearing the slogan, "*Why be Racist, Sexist, Homophobic, Transphobic, when you could just be quiet?*". The evidence was that this T-shirt had been worn on a number of occasions. In short this was an environment where such a T-shirt was considered acceptable. Equally it has to be recognised that this was a declamation against multiple forms of phobia and cannot be said to promote LGBT issues over others. Thus it is difficult to take this as a bolster to the Claimants' suggestion that the school were pursuing an avowedly pro LGBT agenda, abandoning the impartiality that is required of the school. Whilst I concur with Mr. Cluer and question whether the T-Shirt was appropriate in a primary school, it is advocating an anti phobic message in general. I did not take the parents to be objecting to anti-racist or anti-sexist messages. In fact Mrs. Montague made it clear that these were legitimate issues for the school to address and, at one stage she seemed to be concerned that LGBT issues were being 'lumped in' with these issues.

134. The oral evidence amplified the written evidence in terms of the posters. There was no dispute that there were posters displayed at the school. The Defendant's witnesses confirmed that one of the posters contained a message that "some people are gay, get over it!". Atalanta Copeman-Papas and Ellen Boylan confirmed that there were other posters emanating from Stonewall, at least one of which depicted about ten family situations along the lines of "Mum+Dad = Love, Aunt+Uncle = love, Mum+ Mum = love and Dad+Dad = love. It may have been this poster that Mr. Matyjaszek referred to. Accordingly I am satisfied that these posters were displayed in the school. I am equally satisfied that they emanated from Stonewall and that they would be visible to reception year children, as Ms. Boylan told me. There was no evidence as to the content of any other poster said to affirm the proposition that homosexual relationships, and/or various relationships outside marriage, are normal and acceptable. The Claimants' case in this respect must stand on the above. Equally I accept the unchallenged evidence of Mr. Cluer that there had been other posters relating to black history, suffragettes and disability at other times of the year co-ordinating with the SMCS teaching in each half term, a fact attested to by Ms. Copeman-Papas. Accordingly the use of visual representations to support the SMCS teaching was a common practice in the school as one might expect when the pupils would have varying reading ages. They covered a wide range of issues, depending on the focus for that part of the academic year.

135. It was accepted that there were flags displayed at the school and that these covered a number of colours. Mr Askey's evidence was that the bunting represented the countries of the world and that they were a permanent fixture and had not simply been erected for LGBT based events. I accept this evidence. In short the bunting was not displayed as part of the Pride Event. However, I also saw a photograph of a rainbow flag draped

over the school sign on the date of the Parade and a rainbow flag is visible at the back of the playground when the children were being addressed by the local MP on the day of the Parade. There is an uneasy tension in the Claimants' position. On the one hand I have accepted that their claim is about delivery and not content and also that they repudiate all attitudes and actions which victimise or diminish people whose affections are directed towards people of the same sex. Yet on the other hand they seem to object to any manifestation of LGBT symbolism. It may be that this tension arises from the dissonance between their oral evidence and the case that they have advanced through Mr. Phillips, the former was more restrictive than the latter. I have already recognised that this part of the academic year focussed on LGBT issues, just as earlier parts had focussed on other issues, including gender, race, environment and disability. It is acceptable that the school adopt a blended learning experience for the children which will include, discussion, making activities and visual representations. The display of a rainbow flag does not constitute the aggressive proselytisation that the Claimants contend for. The demonstration of a flag is no more than support for a community. At present our country is festooned with Ukrainian flags, not because there is a belief that Ukraine is superior to the UK or that it should be preferred, but because it is a visible manifestation of support for that country.

136. I agree with the Claimants that the delivery of the teaching was timed and designed to reflect a wider campaign by commercial enterprises to nationally mark Pride Month. This fact was recognised by Ms. Papas who pointed out that commercial enterprises also adopted Pride symbols during Pride Month. This would have the additional effect of normalising LGBT issues to the children. In a form of symbiosis, they would see the visual representations in the wider community which would resonate with their teaching and vice versa.

137. Turning to the actual delivery, the best evidence of the actual teaching of Izaiyah came from his teacher Ellen Boylan. Her unchallenged evidence was that the children were encouraged to create placards. Contrary to the original plan, the placards were focussed on the children's family and what they felt proud about. It was interesting that Mrs. Montague confirmed that Izaiyah had come home with a cloud placard and she recollected that they had written that he was proud of going to church and playing with his cousins. This placard formed part of a poster display on the wall of Izaiyah's class. Ms Boylan told me that there was no discussion of LGBT relations as that was not appropriate. She did read the Todd Parr *Family Book* which contained a page stating that some families had two Moms and two Dads. This was the only such book read to the children. This chimed with the Stonewall poster of Mum+Mum = Love and Dad+Dad = Love. She also gave the children gender based toys and discussed with them that the use of the toys was a matter of choice and should not be governed by gender. She told me that during the week leading up to the Proud To Be Me parade they also had an international food day, where each child bought in food from home and spoke about their families.

138. Ms Boylan challenged the notion that the rainbow design was a conscious attempt to resonate with LGBT issues. In her view rainbows are a common symbol for young children and she agreed with my suggestion that they were prominent in the windows of homes thanking the NHS during the covid crisis. Thus context is key in relation to this symbolism. Mr. Matyjaszek had sought to persuade me that the school deliberately encouraged the children to draw six colour rainbows (as opposed to seven colours) and

he sought to suggest that this was a well known symbol of gay pride, representing the aggressive proselytisation of LGBT issues. Ms. Boylan rejected this notion and commented that the accuracy of the rainbows was a little bit off and the children used a variety of colours.[51] She confirmed that the way in which the colours were presented to the children was that it was a number of colours all getting on well together and working in harmony. She rejected the suggestion that there was promotion of LGBT relations. The focus for her was children valuing their families and what made them happy whatever the family structure. When pressed she indicated that the focus was having pride in your family and if that was a husband with twelve wives and everyone was happy, then that should be celebrated. She did talk to the children of differences in family. She gave an example that Billy may eat meat while Emily was a vegetarian, it did not matter, we should all get along. She confirmed that the children made rainbow hats and that these were worn during the parade.[52]

139. In relation to the parade, Ms. Boylan told me that Izaiyah's class were not in the hall for the whole event, it was not considered that they would patient for that length of time. The children were encouraged to wear bright clothing, this was in contradiction to the usual uniform policy. Some children came in their cultural costume and she was able to point out one child in such costume in photos of the event. Another child came dressed in black and told her "I do not do colour!". In short there was encouragement but no pressure on children to wear colour and the colours were not prescribed. The children wore their hats and led the parade from the school hall into the playground ground. Ms. Boylan confirmed that the children sang the three songs and volunteered that they changed the words of 'We are family' so as to sing "I have my *brothers* and sisters with me." In total this took about 5 to 10 minutes.

140. I accept all this evidence which gave a detailed and vivid account of the teaching delivered to Izaiyah. It is plain that some of the Claimants' case has simply not come up to proof. On the evidence I do not accept that children in classes were taught that it was 'normal' to have two 'parents' of the same sex. There is a distinction between 'normal and 'acceptable'. The thrust of the teaching was there was no hierarchy of equalities. I do not accept that books about families based on homosexual relationships were read to children in class, save to the extent that the *Family Book* formed part of the delivery. One page in this book acknowledges that same sex families existed and no more than that.[53] I do not accept that this constitutes being read stories about LGBT families. A book was used as a basis for discussion. Only one page referred to LGBT families. As I have indicated, it formed a small minority of the content. Indeed it is hard to imagine a more diverse content or a better discharge of the PSED. The evidence before me is that this gave rise to discussions. There is no evidence that LGBT was actually discussed, whereas vegetarianism was. It is suggested by the Claimants that the teaching staff were told to teach the message through the prism of LGBT rights, and in support the Claimants rely on the original proposal.[54] There is no evidence before me that this formed the delivery. As I have observed there was an initial proposal which was prepared by a single member of staff. I have agreed that the

[51] As is borne out by the photographs of the event [620 *et seq*]
[52] Again these are plainly visible in the photographs of the event. [621]
[53] The entire book is found at [560-593], a single page refers to same sex families in the terms I set out earlier in this judgment.
[54] See paragraph 8 of the Claimants' closing argument.

proposal closely linked the teaching to LGBT events. However it is equally clear that there was no instruction to the teaching staff to carry out the proposals. It was a draft for discussion. It is also clear that the actual delivery of the teaching did not include any references to LGBT, as Ellen Boylan made clear. Rather it was directed towards the diversity of family structures, what made the children happy (and thus secure) in their families. In this respect the school blog is telling. As part of the Pride blog, some classes were encouraged to design a shield as part of their work. The slogans mention pride in family, cousins, sisters and friends.[55] In short I could detect no mention of LGBT. These came from classes other that the reception class but seem to support Ms. Boylan's account. Again as Ms. Boylan suggested, the drawing of six colour rainbows was not borne out, indeed the photographs suggested that some of the rainbows were indeed off in their colouring.

141. I do not accept that the school was legion with posters. There were certainly a number of posters, but I only have direct evidence as to, the content of two of them as I have described. It is suggested that gender stereotypes were challenged. While I can understand why the Claimants think this is about LGBT it might equally be construed as part of gender or Women's History. To typify it as aggressive proselytisation in favour of LGBT is not sustainable. Indeed I would go further, it is clear that there was an element of drawing the year's teaching together. Hence the school blog carried blogs about various of the topics covered during the year. LGBT Pride (18.06.18), Windrush (21.06.18) and Millicent Fawcett (25.06.18). In short there is unchallenged evidence before me that there was a considerable attempt by the school to meet their statutory requirements and to foster equality, diversity and tolerance across six broad spectra.

142. In terms of the parade, Izaiyah's class were not present for a large part of the celebration. They did process into the hall. They were encouraged to wear bright clothing, most did, and some did not. Some wore cultural dress. They were wearing rainbow hats and they sang the three songs that I have identified. Mr. Phillips sought to bolster his case by the late admission of extracts from *Wikipedia* and *Encyclopaedia Britannica* purporting to show that the three songs, '123 It Is Good To Be Me', We are Family' and 'True Colours' were gay anthems deliberately introduced to support the proselytisation and he advanced the texts as if they were unchallenged and conclusive evidence. I was not assisted by the extracts, no permission was given to adduce expert evidence and the provenance is opaque. In any event context is important in this respect, indeed I note that it is suggested in Wikipedia that True Colours was written as a gospel song. There is no evidence that these are gay anthems in the context in which they were deployed. I am satisfied that Ms. Papas was unaware that there was any such alleged association between the songs and LGBT as she told me in evidence. Interestingly Mr. Askey was also unaware of the alleged connection between the songs and LGBT. He volunteered that the children particularly liked the song because it was used in the children's movie 'Trolls' a year before. In short the significance for the children had nothing to do with LGBT issues and lay elsewhere. Again we had the evidence of Ms. Boylan that the words of 'We Are Family' were altered to make it more inclusive. Mr Askey thought that it was a song about sisterhood and women's rights song. He told me that the school had used the songs over many years and Ms.

[55] See blog [600 *et seq*]

Boylan told me that she uses the songs in her new school. I am not saying that elements of the LGBT community do not use the songs and identify with them, but I am satisfied that, in terms of the delivery of the curriculum, these songs resonated with the children for entirely different reasons and that they sat within in matrix of pride in themselves and self worth.

143. I am conscious that the Claimants consider that the Parade was a Pride March in support of LGBT. I have no doubt that the initial conception was that it should resonate with the wider LGBT celebrations of Pride Month and that the children would be exposed to pride based materials in a number of situations in the wider community. Consideration of the teaching plans and its delivery demonstrates that there was some evolution between the initial proposal and the final delivery. I concur with the school's assessment that their communication was poor. There is not doubt that they initially championed the parade as part of the wider diversity work and the LGBT issues relevant to that part of the academic year. In truth it was part of a more diverse, year long SMSC curriculum. Given the evidence I heard about the attitudes of some parents, any suggestion of a Pride Parade was likely to engender just the charged atmosphere that emerged. What is important is that the school appreciated their error and rebadged this as 'It is Good to Be Me'[56] That was the message that was delivered and was consistent with the learning plans that I saw and the teaching described by Ms. Boylan. It is interesting that the teaching materials from the inception referred to diversity and 'proud to be me'. The school misdescribed the event at the outset hence they only rebadged the event and did not have to alter the content.

144. It is against this background that I have to consider whether the delivery of the teaching breached the Equality Act or the Human Right Act. Mr Phillips has emphasised the importance of age appropriateness, safeguarding duties, and obligations relating to political neutrality. I would add the importance of the right or parents to respect for their views. In assessing those views I have already described the difficulty in identifying a fixed view. Mr. Phillips told me that the Second and Third Claimants did not object to Izaiyah receiving LGBT education. This would be consistent with the contents of the BPRH which provides, "We affirm God's love and concern for all human beings, whatever their sexuality, and so repudiate all attitudes and actions which victimise or diminish people whose affections are directed towards people of the same sex." I am afraid that was not the preponderance of the oral evidence of the Second and Third Claimants. I have described the fluid nature of the evidence of the Second and Third Claimant. There is no escaping that a significant element of the oral evidence was that they opposed Izaiyah receiving any teaching relating to LGBT issues. Mrs Montague told me when she was recalled to give evidence, "for my child there should be no mention of LGBT." and such teaching had to await teaching of the full entity. If that is the case then clearly the Claimants were treating the LGBT community less favourably than the disabled, black and women groups teaching to which they did not object in the main[57]. Indeed Mrs. Montague's complaint was that LGBT was, in her terms, lumped in with women and black history. However I will assume, as Mr.

[56] See for example the blog dated the 26th June 2018 [611]

[57] I accept that there were passages of Mr. Montague's evidence when she objected to any teaching other than the core subjects of reading, writing and arithmetic as Ms Boylan told me or as Mrs. Montague stated in oral evidence that the role of the school was to teach the children so they could learn and excel. This was not a constant theme and was contradicted on occasions.

Phillips would have me do, that the Claimants do not object to the teaching, but to the delivery despite this evidence.

145. To an extent my analysis of the constituent parts of the delivery is unfair on the Claimants. Their case is not rooted in the individual elements of the delivery but in the totality. I have acknowledged that the assessment of the curriculum has to be broad and encompass all the arrangements for its delivery. One has to step back and decide whether the totality amounted to aggressive interference with the Second and Third Claimants' ways of educating their son about sexual ethics and/or about the nature of family and proselytisation. In truth Izaiyah was not taught any LGBT issues. He was taught general equality issues. He was taught, using age appropriate materials and in an age appropriate manner. In the last half of the Summer term the teaching was delivered in the context of LGBT included families with two Mums and two Dads. The Claimants have been unable to direct me to a single element of material that suggested that the school were promoting LGBT issues as being any better than any other of the diversity issues they had tackled during the year.. I include the two posters to which I have referred. A poster that says that Mum+Mum=Love or Dad=Dad=Love, when these are two of about ten variants on family structure is not promoting any LGBT lifestyle. As I suggested to Mrs. Montague, a poster that says, "I am gay, get over it!", is actually saying that one looks beyond the label at the real person, this is precisely what the BPRH advocates. I confess that I question whether the tone is somewhat strident and appropriate for a school, but it is not promoting LGBT beliefs over any others.

146. I acknowledge that the parade had elements that an outsider might connect with LGBT issues, for example the use of the rainbow flag draped over the school sign. The bright colours and the posters would all highlight LGBT issues and resonate with similar imagery in the wider community. I agree with the Claimants that the parade had a patina of linkage with LGBT issues. They are right to observe that the LGBT posters outweighed any other beliefs. This has to be seen in a context where the parents believed that LGBT relations are sinful and where they wanted their son to grow up within that structure. However Mr. Phillips asks me to accept that they also professed to believe that LGBT could be taught to their child providing it was done in an age appropriate manner and consistent with the terms of the BPRH.

147. I would make a number of observations about the Parade. The first is to return to my observation that the Claimants are looking at only one sixth of the overall SMSC curriculum. The unchallenged evidence was that there were other parades and that five other half terms focussed on other aspects of equality and SMSC. It is unacceptable for the parents or the Court to judge the delivery on such a lop sided view. The second is to recognise that the school would have run the risk of breaking the law if they taught LGBT issues any less than other issues remembering their PSED and other Equality Act duties. They were under a legal duty to avoid treating them less favourably than the other groups. Mrs. Montague's objection to lumping the LGBT issues in with black and women's issues would have rendered the school vulnerable to challenge by a member of the LGBT community. Thirdly the parade was taught as a 'Proud to Be Me' parade. The parents may cavil and suggest that this is window dressing, pointing to the earlier iterations. But when I drill down into the reality demonstrated by Ms. Boylan's evidence, by the photos, the shields in the blog, this was not window dressing. It was the reality and the overall message.

148. I also bear in mind that the governors of the school considered offering alternatives to the Procession as is clear from an exchange of emails between Graham Cluer and Ms. Papas. It will be recollected that on the 25th June Mr. Cluer as chair of the governors floated the idea of offering an alternative activity.[58] Ms. Papas reply is revealing, she described that this lesson is simply singing songs and walking around school with a flag that demonstrates what you are proud of.[59] This reveals that the school were considering the views of the parents. I have no doubt that this was under the threat of the controversy that the parade had caused. However serious thought was given to providing alternative arrangements. It equally provides an insight into the teaching staff's view of the Parade and that it did not have the trappings that the Claimants attribute to it. Mr. Phillips sought to portray this as Ms. Papas simply driving through her LGBT agenda. However when one takes into consideration the teaching plan and Ms. Boylan's evidence, it is clear that this was an accurate reflection of the intended delivery. I readily acknowledge that the school's communication was poor and placed too much emphasis on the LGBT issues. In reality they probably misdescribed the teaching in calling it a Pride parade and the reality in terms of delivery was that this was 'Proud To Be Me Parade'.

149. On the above basis, plainly the school did not transgress the line between proselytisation on the one hand and objective and pluralistic delivery on the other hand. In short their delivery did not breach the Equality Act and HRA. Lest I am wrong and the delivery as I have found it to be did breach primary duties owed to the parents. I would recognise that the school are under the duty imposed by s.78 Education Act and the PSED. To that extent they are required to conform with those provisions which are prescribed by law. The undoubted right of the parents to respect for their religious beliefs have to be weighed in a broader spectrum of relevant considerations. The right to education is a weak one and does not extend to education in a particular form. I refer to the comments in *Begum* and note that interference is difficult to establish. I am satisfied that the State has a legitimate right to mandate teaching designed to protect the rights and freedoms of the LGBT community and to prevent disorder and crime. I amplify this below. If teaching the existence of the LGBT community infringes the HRA rights then this is a necessary and proportionate step in pursuit of a legitimate end.

150. For completeness I would independently address two remaining issues. The first is the suggestion that a proper recognition of the rights of the parents would have allowed for the withdrawal of Izaiyah from the parade and the second that he was being asked to associate with a belief that he did not hold.

151. I have already recognised that Izaiyah's Article 9 right includes the right not to manifest a belief. I accept also that the right under Article 9 has been successfully invoked in cases where a party is compelled to manifest a belief that runs contrary to their views (*Young James and Webster Commodore of the Royal Bahamas Defence Force v Laramore* and *Lee v Ashers Baking Co Ltd*). However I am specifically guided by the observations in *Begum* and *Kalaç* that the right is very fact specific. I also have

[58] See email of 25th June 2018 [752]
[59] Email Ms. Papas to Mr. Cluer – 25th June 2018 [754]

to factor in that the parents were able to change school and this the observations in *Begum* and *Kjeldsen* are engaged. I have already observed that Izaiyah's tender age means that I should adopt the view that his beliefs coincided with the parent's views. I have also recognised that there is a particular link with the Second and Third Claimants' Article 8 rights. In terms there is a potential infringement of their right to a private and family life where their son is exposed to information which conflicts with their religious beliefs.

152. The potential infringement of the Claimants rights could have been avoided had Izaiyah been exempted from the parade. In evidence the Second and third Claimant asserted that such a request had been made. I have already touched on this. Mrs. Montague deposed in her witness statement that she had written a letter to the school on the 26th June 2018 asking for Izaiyah to be excused from the parade. Mr. Montague made the same assertion in his witness statement. During the course of oral evidence it became clear that this was wrong, and that Mrs. Montague stated that she had spoken to a member of staff at the school and had been refused permission to withdraw Izaiyah. The school have been unable to trace the call or conversation. On balance I am not satisfied that the call was made. Frankly the Claimants' evidence on this point was in some disarray. There was no satisfactory explanation for the change of evidence, nor was there any credible explanation for why both parents had independently made the same error. I also refer to my previous comments about the credibility of the witnesses and I factor in that the school have been unable to verify the call. The call was not made and there was no application to exempt Izaiyah from attendance.

153. At one level this finding is of limited significance because the school have confirmed that they would have refused the request had it been made. As Ms. Papas deposed in her witness statement:

> "Parents do have the right remove their child from SRE lessons. However, as the parade and teachings did not fall within the SRE curriculum, with a focus on teaching tolerance and equality, we did not agree to requests from parents to withdraw their child from participating.

The one exception to this was a Jehovah's Witness on the basis that their faith does not permit them to partake in any celebration. The evidence on this issue was somewhat confused. It seems that the teaching staff believed that an exception was made. Ms. Copeman-Papas as the school manger thought no such exemption was given.

154. I bear in mind that there is an obligation on the school to deliver education to all their students and there is an equal obligation on parents to ensure the attendance of their children at school. Exemption from school is not permitted in the usual course of events. As Ms. Papas and Ms. Copeman-Papas testified, such an exemption has been considered by Parliament and allowed in very limited circumstances in relation to Sex and Relationship Education ('SRE'). I also bear in mind that SMSC is mandatory and required teaching (s.78 Education Act). Parliament has thus considered the issue and declined to permit exemption for events such as the Parade. On the face of it, it is questionable what power the school has to exempt a child from part of the mandatory curriculum, and I have been directed to none. Thus I would hold that there is no power to exempt Izaiyah from the Parade. In this respect I note that when Mr. Cluer was

questioning the wisdom of all pupils being involved in the parade, he was not considering exemption but rather alternative teaching.

155. I am conscious that this aspect was not explored in any detail during the evidence. Lest I am wrong in the foregoing and that the school did have such a discretion, I would hold that the refusal of the school did not infringe the Claimants' rights. I rest on my finding as to the content and background to the Parade. It was taught and delivered as a 'Proud to be Me' parade. It had links to the LGBT iconography, but these were not the focus of the Parade. All the evidence suggests that the main focus of the parade was diversity (different family structures, what made people happy about themselves and inclusiveness), as I have indicated, I cannot detect that there was any dissonance between the beliefs advanced by the Claimants and the content of the Parade.

156. Alternatively, and on the assumption that there was an inconsistency between the Parade and the beliefs of the Claimants, they have no claim. The Article 9 right is not absolute but is subject to Article 9(2) and can be trammelled where 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. I have already observed that this teaching is mandated by s.78 Education Act. It is rooted in the need to avoid prejudice and criticism in society. Those adhering to LGBT practices must be free to live, develop and excel free from fear of violence or that their sexuality will adversely affect them. It is a sad fact that some people believe that such people should be killed or incarcerated. 'Gay bashing' occurs and homophobia exists (even in the Metropolitan Police), to the detriment of a pluralistic society based on individual liberty, and mutual respect of those with different faiths and beliefs. It is necessary that prejudice against the LGBT community is addressed from the earliest stage so it become part of the psyche of the next generation. The limitations in Article 9(2) are engaged and would defeat any claim based on the HRA. Finally I adopt the observations in *Begum* about the rights of the Claimants being preserved by the right to change school. A step they took when they fell into conflict with the school.

157. To a certain extent these findings also dispose of the suggestion of an independent breach of Article 9 by compelling Izaiyah to attend the parade. Of course this claim is weak, as Izaiyah did not attend the Parade and no action was taken. In short the Claimants obtained a *de* facto as opposed to a *de jure* exemption. Thus it is hard to see how this would sound in damages. In any event Izaiyah was not being asked to celebrate anything that contradicted the professed views of the Claimants as advanced by Mr. Phillips. This is not a situation akin to those found in *Lee v Ashers, Buscarini v San Marino* or *Begum*. In each of those cases it was clear that the Claimant was being compelled to manifest a belief he did not have. In this case the Parade was designed to celebrate the differences between people and that they were a cause for celebration as opposed to division. This message chimed with the beliefs of the Claimants as I have identified them.

158. I adopt the analysis relating to Izaiyah being withdrawn, I take into account that SMSC teaching was mandatory and that the Parade was part of that delivery. There was nothing in the parade that sought to promote LGBT over other beliefs, indeed I am struck by the diversity of the beliefs engaged. In any event any infringement of the

Claimants Article rights were necessary and proportionate in pursuit of a prescribed requirement placed on the school

159. I return to my observations about the belief in the concept of 'pride' as set out above. It is plain that the use of 'pride' and 'being proud' was directed to self identity and esteem and there was no suggestion that this displaced the position of God. One only has to look at the material produced to see that it was directed to what made the children happy and developed their self esteem. The Claimants own involvement is proof positive that this is the approach that they adopted. It will be recollected that Izaiyah was asked to insert into a cloud what he was proud of and that this formed a feature of the displays in his class. Mrs. Montague and he completed the cloud with two concepts. One was seeing his cousins and the other was his church. In short the very recognition of God which was important to the Claimants appeared in the cloud and formed part of the display in the school. In this respect the teaching fostered the core values of the Claimants despite the use of the word 'pride'.

160. In conclusion, it is instructive to pause and return to the issue, posed by Mr. Cluer, how this teaching, as I have found it to be, infringed the beliefs of the Claimants. The case they have advanced through Mr. Phillips is that they are not contesting the receipt of LGBT teaching but how it was delivered. This is reflected in the written evidence of the Second Claimant who wrote:

> "I have no problem whatsoever with LGBT people. As a Christian, I love all people regardless of any characteristic; protected or otherwise. I do not condemn anyone for engaging in other forms of non-Biblical relationship. However, this does not mean that I, or my child should celebrate such relationships."[60]

This coincides with the passages of the BPRH to which I have referred. If it is right that this represents the Claimants' beliefs, then the teaching did not conflict with their belief at all. Indeed the Claimants' belief is that there is a distinction between those who 'incline' to a LGBT relationship as opposed to those who 'practice' it. The Claimants embrace those who incline to a LGBT lifestyle as God's creatures. There has been no suggestion that the teaching went beyond the existence and acceptance of LGBT lifestyle. There was no teaching that the went remotely close to the practice of LGBT sexual practices. The Claimants have focussed on the use of the word 'celebrate' seeking to instil it with the suggestion that it was advancing LGBT issues over other lifestyle forms. The delivery of the teaching does not bear this out. The celebration was of diversity and acceptance of the differences between people; no hierarchy of equalities. Thus there was little in the Parade that was inconsistent with their beliefs. The Claimants have argued that the Parade and the teaching in general amount to weaponising education to undermine parental teaching to undermine parental teaching and foster the school's view. In the cold light of day I cannot ascertain the divergence between the teaching and the Christian views. This assumes Mr. Phillips' case is accurate and the parents have abandoned their more restrictive evidence given at trial and do not object to teaching of the existence of LGBT members of society. In short there was no moral re-education and there was no case for exemption.

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[60] Witness statement of Second Claimant – paragraph 4 [103]

161. Thus, the claim relating to the delivery of the curriculum fails for the reasons I have set out. I am impressed by the delivery of the SMSC issues at Heavers Farm. It was rooted in the experience of the children and designed to break down barriers between those of different beliefs. It was holistic in introducing notions relating to disability, environment, mental health as well as different cultures. The suggestion that this was premeditated proselytism of LGBT foundered on the absence of any evidence to support this analysis and the wealth of evidence to the contrary. The Claimants' evidential case simply did not stand scrutiny and the teaching would have been permissible in any event. I return to the concept of discrimination contained in the Equality Act. Because there was no inconsistency between the Claimants' beliefs and the delivery, there was no discrimination. Similarly none of the HRA rights were infringed by the teaching or the Parade. Indeed I am satisfied that the delivery of the teaching was calm and free from proselytisation.

IX THE COMPLAINTS ISSUES

162. The complaints of the Claimants cover two areas, the Pride Events and the detention of Izaiyah. I deal with the latter aspect of the complaint in the following sections and confine myself to the Pride Events.

163. The factual situation relating to the dispute is largely agreed. As I have indicated, the school failed in their communications with the parents and there was a groundswell of concern among some parents at the LGBT teaching at the school. There was a suggestion in the Claimants' pleading and evidence that there was no notification to the parents of the event. In oral evidence it was accepted that there was considerable notification via the school blog, to which I have referred. It seems that the Claimants do not access the blog and this source of information was not available to them. They also accepted that a letter dated the 19th June 2018 was sent. In parenthesis I do wonder if the school have given sufficient thought to the digitally disadvantaged and those who choose a more traditional approach to obtaining information. Again this may be an aspect of the failure of the school in their communications. In any event Mr. Askey gave evidence that the staff were on hand and did discuss the plans with parents who were concerned and were able to allay concerns from some of the parents. A number of witnesses testified to the charged atmosphere among some parents, and I have already referred to the tenor of some of the comments.

164. On the 19th June 2018 the school sought to diffuse the concerns with a letter to the parents. It referred to the work on black history and suffragettes, setting those in the context of challenging stereotypes. It introduced the current teaching as

> "learning to have 'pride' in ourselves and our families, and showing respect for families and people who differ from our own……We are required by law to teach this and include the fundamental British values where pupils must be able to 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"[61]

[61] See email [154]

The letter stressed that the information given to the children was carefully vetted to ensure that nothing inappropriate was taught. It concluded:

> "We would love for you to come into school on the 29th June, and join your child, when we will be celebrating the rainbow of things that make them and their family special, and offer you the opportunity to come into our classrooms and see the wonderful, inclusive work the children have been participating in throughout the year. Our celebration parade will be in the afternoon of the 29th June with more details to follow."

165. Mrs. Montague did not avail herself of the opportunity to discuss the plans with the school thus she did not have any communication with Ms. Papas about the issue. She accepted in evidence that she relied on what she read in the press and comments of other parents. She told me that she considered the letter of the 19th June was aggressive, lectured the parents and inferred that those who oppose LGBT teaching were un-British. Instead she went to the press including the Croydon Advertiser and the Daily Mail, using an alias of Ruth Anderson and she started a petition.[62] Of course we now know that the correspondence with the press included the suggestion that Ms. Copeman-Papas was suspected of being involved with the LGBT community.

166. On the 13th July 2018 Mrs. Montague wrote a letter of complaint to the Federation Governance manager[63]. It commences with the allegation that Ms. Papas had been "obnoxious, arrogant, undermining, unsympathetic/unempathetic, biased, disrespectful, dishonest and undemocratic". She accused the Executive Head of courting media attention, of behaving like "the head bully of a corrupt organisation". It continued that Ms. Papas was Christophobic, Islamophobia and Anti-Semitic, disrespectful and disregarding. She referred to various provisions of the ECHR and suggested that the Parade was about celebrating LGBT issues and that Izaiyah's rights had been overridden. It accused Ms. Papas of suggesting that her family were un-British because they did not support LGBT issues and it suggested that the school should concentrate on drugs, knives and gang crime.

167. The email was acknowledged on the 16th July 2018 and referred to the chair of Governors, Graham Cluer who responded on the 29th July 2018. He noted that there were some inaccuracies in the email and told Mrs. Montague that she needed to contact Ms. Papas directly, he went on to say:

> "If you wish to raise this as a formal complaint you will also need to write to Ms. Papas and she will respond in writing (see our complaints procedure which is attached). However even if you raise this as a formal complaint I can assure you that the Governors will still consider the points you raise."[64]

The school complaints policy provides that if the complaint is about the Executive Headteacher, the matter should be referred to the Chair of Governors via the Governance Manager.[65] Accordingly the suggestion of a referral back to Ms. Papas

[62] witness statement – paragraph 11 [106]
[63] See email 19.06.18 [157]
[64] Email 29th July 2018 [316]
[65] The policy document appears at [685] in the bundle.

was not in conformity with the school's published policy. Nevertheless Mrs Montague agreed to submit her complaint to Ms. Papas. The parents are critical that no action was taken during the summer holidays.

168. At the commencement of the new term Mrs. Montague sent a further email dated the 3rd September 2018[66]. It was very similar in content to the previous email of the 13th July 2018. As a result a meeting was arranged for the 19th September 2018 to discuss the complaint. The school's evidence is that it was planned that Ms Papas, Mr Askew and the Deputy Executive Head Teacher Jo Read would be present. Mr and Mrs Montague were to be joined and supported by Mr. Matyjaszek. It seems that Mrs. Montague and Mr. Matyjaszek arrived and were waiting. There has been no challenge to Ms. Papas evidence that an issue arose with a child and that Jo Read was the dedicated teacher and line of communication with the parents. In these circumstances she had to drop out of the meeting at the last moment. Accordingly Ms. Papas asked Ms. Copeman-Papas to join the meeting as a note taker. As I have recorded, Ms Copeman-Papas was wearing a T-shirt upon which the slogan "*Why be Racist, Sexist, Homophobic, Transphobic, when you could just be quiet*" was written and was in clear view during the meeting. Additionally Ms. Papas had taken advice from lawyers and sought to lay down ground rules at the start of the meeting. This included that she would terminate the meeting if anyone made what she considered to be homophobic comments.

169. I have heard various accounts of the meeting. It is the Claimants' case that the conjunction of the slogan and the opening speech from Ms. Papas engendered an impression that the school were labelling the parents as homophobic and had no interest in resolving the complaint. The Claimants' account is that they raised the issues canvassed in the previous emails, that Ms. Copeman-Papas launched into an impassioned speech about LGBT rights and the linkage with black rights. Mr. Matyjaszek considered that Mrs. Montague was visibly astonished at this outburst. The Claimants consider that Ms. Papas brought the meeting to a premature end.

170. The school's account is somewhat different. It is agreed that Ms. Papas made the introductory comments attributed to her. She then asked how the parents wanted to proceed. In evidence Mr. Askey and Ms. Papas suggested that the Claimants and Mr. Matyjaszek came with an agenda. They demanded of the school staff that they agree with various religious propositions advanced by Mr. Matyjaszek. When the teachers indicated that they simply did not have the theological knowledge to express a view, the Claimants became frustrated. I found Mr. Askey's depiction of the meeting convincing. He considered that it is impossible to unpick all the threads of the meeting, that it was fast moving and there were numerous different themes. Occasionally it got unpleasant. He denied saying that he called the parent's views ludicrous but accepted that he grew frustrated at the lack of direction or progress, that he rolled his eyes and sighed. He told me that he was exasperated at the rapid succession of points that were made. He did not recall specifics of the meeting. All agreed that no satisfactory conclusion was arrived at. I was directed to minutes of the meeting taken by Ms. Copeman-Papas but again it was accepted that these were incomplete and not verbatim, and they did not assist me.

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[66] See email – 03.09.18 [163]

171. This is an aspect of the evidence where I benefited from seeing the participants in the witness box. I have no doubt that Ms. Papas was, as she told me, nervous and apprehensive about the meeting and that this was exacerbated by the loss of Jo Read just before the start of the meeting. As Mr. Askey told me, there was no opportunity for the school team to discuss the meeting in advance. In my judgment it was remiss of Ms. Papas and Ms Copeman-Papas not to appreciate the likely affect of the slogan on the T-shirt conjoined with the opening comments on the Claimants. Taken together they could be interpreted as a hostile injunction labelling the Claimants as potentially homophobic and being told to be quiet. I accept Mr. Askey's evidence that this was a T-shirt worn by Ms. Copeman-Papas on previous occasions. I take into account that it was not envisaged that Ms. Copeman-Papas would have any part in the meeting. Accordingly I am not satisfied that this was a deliberate act on the part of the school. However I fully accept that this set an entirely wrong tone and it was entirely reasonable for the parents to view this as a hostile message. Instead of using the two emails as an agenda, Ms. Papas lost control of the meeting at the outset providing a platform for Mr. Matyjaszek to explore religious issues. In oral evidence Mr. Matyjaszek sought to give authoritative evidence on a range of subjects even when it was apparent that they were unsustainable (for example insisting that the school were using six coloured rainbows, when the visual evidence showed that the rainbows drawn by the children were much more haphazard). As I have suggested he was partial in his evidence. Thus the evidence given by Mr. Askey as to the approach of Mr. Matyjaszek chimed perfectly with the witness I saw. Equally I am satisfied that Ms. Copeman-Papas did intervene in the meeting with a discourse on the history of LGBT. I remind myself that she has a masters degree in culture diaspora and ethnicity and she had written the school blogs on the history of the Stonewall riots. In the witness box she made it clear that she prided herself on her intellectual achievements in the fashion I have described. In short it seems to me that the meeting descended into chaos because of the different agendas, the personalities and the circumstances pertaining at the outset of the meeting. I do not accept that the school made any comment that was disparaging of Christianity. This would have been totally contrary to the purpose of the meeting. I also take into account my assessment of the reliability of the evidence of the Claimants and Mr. Matyjaszek. In truth it seems to me that the meeting was chaotic and the parties were trying to recall events of some years ago. Further I have read the email written by the parents on the day of the meeting and note that it is confined to the slogan issue and that wider complaints were not made.[67]

172. The school wrote a formal letter of response dated the 8th October 2018.[68] In essence the school rejected the notion that the Executive Head Teacher had courted the press and indicated that she had only responded to press enquiries. It accepted that the Parade had divided the parents and that there had been disputes between them. It recorded that the school had received considerable support from parents and some of the discord was caused by some openly homophobic comments emanating from parents. The school agreed that their communication had been poor and that ineffective. It indicated that the school had taken legal advice and felt that they had not breached the ECHR. It reiterated that the purpose of the Parade and the teaching was inclusive and tolerant and rejected any notion that they had sought to exclude any pupil.

[67] See email 19.09.2018 – Second Claimant to the school [184]
[68] Letter of 18.10.18 [179]

173. The parents were not satisfied with this response and escalated it to the Governors chaired by Moses Bukenya, Chair of the Complaints Panel who met the First and Second Claimants on the 20th November 2018. They formally responded in a letter of the 20th December 2022.[69] They upheld the Claimants complaints about communication and apologised for this. They also upheld the complaint about the T-shirt slogan, apologised and advised Mrs. Montague that the panel would be asking the Governing Board to review its Staff Dress Code with a recommendation that slogan T-shirts of any kind should not be worn by members of staff in school. They found no evidence that anybody has been labelled for their faith or cultural beliefs as homophobic and upheld the school in all other respects, including issues relating to the detention of Izaiyah to which I return. Effectively that concluded the school's involvement with the complaints. As I have indicated the complaint was further escalated to the Department for Education who found no breaches other than in relation to the school's complaints policy.

174. Part of the complaint against the school is that they failed to uphold the Second Claimant's complaint in relation to Miss Copeman-Papas' slogan.[70] I confess that I am not clear why these claims were pursued when plainly the parents' complaints were upheld in this respect and remedial action taken.

175. The kernel of the Claimants' case is that the school discriminated against the Claimants alternatively breached their human rights because of their Christian belief in the following respects:

(i) Failure to consider the Second Claimant's complaint in relation to the Pride events at School fairly, respectfully, and/or in good faith,

(ii) In particular, 'but without limitation, the wearing of an inappropriate and provocative slogan by Miss Copeman-Papas at the meeting on the 19th September 2018

(iii) The dismissal of the Second Claimant's complaint in relation to the Pride events at School, as pleaded in para 16 above.

(iv) Failure to uphold the Second Claimant's complaint in relation to Miss Copeman-Papas' slogan, as pleaded in para 22 above.

176. I refer to my observations on the law. I am satisfied that the complaints were protected acts if made bona fide. Insofar as I am satisfied that there are potential breaches of the ECHR or the Equality Act there must be a sufficiently close and direct link between the act of manifestation and the underlying protected characteristic (*Eweida and Others* and *Page*).

177. I have already commented that I was concerned at the marked contrast between the intelligent and engaging Claimants I saw in the witness box and their actions in relation

[69] Letter Moses Bukenya to the Second Claimant 20th December 2018 [236]
[70] See Particulars of Claim paragraphs 31(g), 40(g) [36 *et seq*]

to the complaints. While Mrs. Montague conceded that she was angry and that her emails of the 19th June and the 3rd September might make uncomfortable reading, she really did not grasp the reality of the situation. I refer to my findings about the delivery of the teaching at the school. The allegations in the email were misplaced. I also take into account that Mrs. Montague told me that she was a scientist. A scientist gathers the available information, forms a hypothesis, tests that hypothesis and then forms conclusions. That was not Mrs. Montague's approach, she made no attempt to discover the true situation before she launched her campaign. Others did and some were reassured. She made serious allegations that Ms. Papas was obnoxious, arrogant, undermining, unsympathetic/unempathetic, biased, disrespectful, dishonest and undemocratic, further that she was Christophobic, Islamophobic and Anti Semitic without even approaching the Executive Head Teacher. In truth Ms. Papas had little input into the teaching, though she was the figurehead of the school. As I have found, the teaching was designed to foster integration and tolerance.

178. I simply cannot accept Mrs. Montague's evidence that she interpreted the letter of the 19th June as seeking to indoctrinate LGBT values. She is an intelligent and articulate woman. It cannot have escaped her attention that the letter makes no mention of LGBT lifestyles. The nearest it comes is the extract set out above. There is simply nothing in the letter that objectively could be called 'arrogant, lecturing or advocating forced indoctrination'. In my judgment the genesis for her actions lay elsewhere.

179. I am particularly concerned at the question posed in the email of the 13th July, "Why would a head teacher allow the school & parents to be so exposed to media attention?" This was verging on the dishonest. Mrs Montague was the person who approached the press using a pseudonym. She must have known that the school was only reacting to the steps that she had contributed to, yet she did not vouchsafe this information. Indeed Ms Papas pointed out that she was compelled to respond to the misinformation being propagated by the Second Claimant and other disgruntled parents. The photograph in one of the papers, which Mrs. Montague complained of, was a library photograph taken years earlier. Ms. Papas wistfully commented on how much younger she was in the photo. Something Mrs. Montague would have appreciated. Ms. Papas was not courting the press, Mrs. Montague was.

180. The email of Ms. Montague to a local paper, 'Inside Croydon' dated the 19th July 2018 causes me considerable concern. In it the Defendant repeated comments in the same tenor as were contained in her earlier email to the school. She accused Ms. Papas of being Christophobic, Islamophobic, and Anti-Semitic. She suggested that Ms. Papas was trying to radicalise the children. She indicated that she considered that LGBT was not a disadvantaged group and that the school were manipulating children into 'ACCEPTING LGBT' [her capitals]. It described Ms. Papas as a law breaker and called for her suspension. She repeated that Ms. Papas was behaving like a mafia boss. These were allegations should not have been aired until the Second Claimant had established the facts and probably not at all.

181. A further concern is Mrs. Montague's treatment of Ms. Copeman-Papas. In the email she said, "She [Ms. Papas] has personal agendas as her daughter [Ms. Copeman-Papas] is suspected of being part of the LGBT community, so Susan Papas did this for herself". In short Mrs. Montague was prepared to disregard Ms. Copeman-Papas' human rights to have a private family life. Moreover the evidence I have accepted was

that there were severe homophobic sentiments being voiced at the school gate. I pointed out to the Second Claimant that she potentially placed Ms. Copeman-Papas in physical peril. She accepted this was the case but explained that she was hurt and angry. It was with some disappointment that I noted her victim was sat less than five metres from her in the public gallery having to listen to this self justification. For the record, there was no evidence that gave any indication of Ms. Copeman-Papas sexuality or affiliations, the allegation was without foundation. I recognise that Mrs. Montague felt passionately about these matters. It is admirable that people retain philosophies that should make the world a better place. She has a right to adhere to those beliefs, but they were misplaced in the context of Ms. Copeman-Papas.

182. These findings have a twin relevance. Firstly whether the Claimants complained in good faith and secondly as a possible explanation for the conduct of the school. Notwithstanding my findings I am satisfied that Mrs. Montague' motivation arose from her Christian beliefs. That is a clear theme in all her initial actions both to the school and to the press. While I may deprecate the way in which she went about the exercise, she does not lose the protection of the legislation. I have considered whether there came a time in a dynamic process that Mrs. Montague was primarily motivated by factors other than her Christian belief. The content and form of her correspondence and actions suggest that she came close to the line, however on balance, I am satisfied that her prime motivation were her religious beliefs and thus she retains the protection of the legislation.

183. I am satisfied that the school did breach their complaints procedure. I can understand that Mr. Cluer considered that the initial complaint was more of a general concern about the school as opposed to a personal complaint about the Executive Head Teacher. He was bound to take into account the fact that Mrs. Montague had not had direct dealings with Ms. Papas about the teaching. However it is plain that the attack was personalised and if there was any doubt in his mind, the school should have sought clarification in order to direct the complaint in the right direction. They did not and they breached their policy.

184. I am equally satisfied that it was wholly inappropriate for Ms. Copeman-Papas to display the T-shirt in the meeting of the 19th September 2018. I note that these findings are not controversial and coincide with the findings made by the School Governors. To this extent the outcome of the Governors investigation go some way to undermine the allegation that the school failed to consider the complaint respectfully and in good faith. In these respects the Claimants were successful, they received an apology and confirmation that the dress code for staff was being reviewed. This is indicative of a process that was taking the complaints seriously. Of course the Claimants' allegations extend beyond the final outcome and include the process of the complaints.

185. The difficulty that the Claimants face in relation to these allegations is that they have no direct evidence that the matters complained of were motivated by the Claimants' Christian belief. They are really asking the court to find on balance of probabilities that there is a necessary inference that the failings of the school were due to the protected characteristic. There is no documentary evidence to support such a finding. Indeed, as I have indicated, some of the internal emails suggest that the school were not antipathetic to Christianity but were trying to be inclusive. The very opposite of what the Claimants

have sought to prove. The school considered making changes and made some changes while rejecting others.

186. In considering the fallings of the school in relation to the 13th July 2018 email, I return to the observations concerning the importance of a nexus between the schools' conduct and the protected act (*Eweida and Others v. the United Kingdom* and *Page v NHS Trusts Development Authority*). While I have found that the school breached their complaints policy in relation to the first email, there is nothing to suggest that this was a result of the Claimants' beliefs. Rather the school were faced with an ill informed and hostile email. As Mr. Cluer observed at the time, it was based on a number of misconceptions. On balance Mr. Cluer sought to iron out those misconceptions by a conversation with Ms. Papas. I am satisfied that in doing so, he was not seeking to delay or obstruct the process but rather was looking at a practical solution to the matters raised in the email of the 13th July 2018. The school were bound to take into account the tone of the email and the threat of further action contained in it. It was natural that he would seek to defuse the issue by the exchange of information which would have placed the issues engaged by the email in a different light and shown that the assumptions underpinning it were misplaced. As I have found, he was wrong to take this approach. In essence he had two options (a) seek clarification of what the missive was intended to be or (b) treat it as a complaint against the Executive Head Teacher and refer it to the Complaints Panel Of The Governors. He did neither. But there is simply no evidence at all to suggest that the beliefs of the Claimants figured in his thinking at all.

187. Similarly I am not satisfied that the events of the meeting of the 19th September 2018 were motivated by the Claimants' Christian beliefs. I accept that it was not anticipated that Ms. Copeman-Papas would be in the meeting, as a consequence nobody envisaged that the slogan on the T-shirt would have been seen by the Claimants or Mr. Matyjaszek. Without doubt either the Executive Head Teacher or Ms. Copeman-Papas herself should have appreciated the likely interpretation that the Claimants would put on the slogan, especially when Ms. Papas knew that she was going threaten to ban any homophobic comments at the outset of the meeting. Was this oversight due to the Claimants' beliefs? I have come to the conclusion that it was not. As with the other allegations there is no evidence beyond the account of the meeting by the Claimants which I have rejected and the proper inferences to be drawn from the evidence. I consider that the oversight of the school was a combination of the disruption caused by the safeguarding issue that took Jo Read away from the meeting, a lack of planning and a nervousness on behalf of Ms. Papas who knew she was going to have to face a woman who had written as she had on the 13th July and 3rd September. To have engineered the situation would have exacerbated the situation, been counterproductive and provided support for the Claimants' case as it has. Of course I factor in that the complaint about the T-Shirt element was upheld by the Governors.

188. The dismissal of the complaints about the Pride Events was entirely justified and in conformity with the law as I have found.

189. As I have indicated the final stage of the complaint was that dealt with by the Governors who upheld two aspects of the complaint but rejected the balance. Consistent with my findings I am satisfied that they were entirely within the range of acceptable responses in doing so. The fact that the Claimants had partial success

detracts from any suggestion that the School were not giving proper and respectful scrutiny of the complaint.

190. Overall I am satisfied that the school made errors in the handling of the complaints but there is no evidence to suggest that there is any nexus between those shortcomings and the Claimants religious beliefs. This aspect of the claim must fail.

X THE DETENTION ISSUES

191. The background to this allegation is rooted in the school's behaviour policy. The material aspects of the policy provide different sanctions for different tiers of the school. Izaiyah had just moved into year 1 and was the subject of the following regime:

- WARNING The child will be discreetly spoken to (carefully ensuring that the other children are not aware) and told why their behaviour is not acceptable and be reminded of the consequences of their behaviour. *The child should be praised as soon as they do the right thing*.

- REMINDER 1 - The child's name will be added to the adult's behaviour list. The adult will annotate it to indicate that this is '**reminder 1**'. The child should be discreetly told why their behaviour is not acceptable and be reminded of the consequences of their behaviour. *The child should be praised as soon as they do the right thing*.

- REMINDER 2 – The child's name will be annotated on the adult's behaviour list to indicate that this is '**reminder 2**'. The child will be asked to go to the **shared area** for a maximum of five minutes and they will be asked to complete an **incident sheet**. *The child should be praised as soon as they do the right thing*.

- TIME OUT 1 – The child is sent to the next-door class with a **reflection sheet**. The child should be given 10-minutes time out. In addition, the child will have **10-minutes detention** during lunchtime. *The child should be praised as soon as they do the right thing*.

- TIME OUT 2 – The child is sent to the LEADERSHIP ROOM where they **may fill out a detention sheet**. The child will be given further time out, at least until the end of that session (e.g. until lunchtime, or the end of the day). Children will be asked to complete their classwork in the leadership room. In addition, the child will **spend the whole of their lunchtime in detention**. .[71]

Additionally there was a provision for a fast track procedure which provided:

FAST TRACK

[71] See internal page 10 of the policy [785]

Fast track is when a child is sent for time out with the leadership team (bypassing the first 4 stages of the behaviour policy)

- Inappropriate language or remarks (e.g. swearing, discriminatory comments and/or behaviour, sexual behaviour, bullying, extreme rudeness).
- Unprovoked and inappropriate physical contact (e.g. fighting, punching, kicking).
- Refusal to comply with an adult's request/instruction which results in serious disruption to class or puts child, peers or adults at risk.

The compliant of the Claimants is that this represents unreasonable chastisement because of their religious beliefs and is contrary to the HRA and Equality Act.[72]

192. This is another example of the Claimants' evidential problem of having a paucity of direct evidence as to what actually happened. Thus they are thrown back on seeking to discredit witnesses and on an analysis of the documentary evidence to support the inference that they have asked me to make. They elected to agree the witness statement of Diane McInerney the lunchtime supervisor, dated the 17th July 2022.[73] Accordingly it is agreed that Ms. McInerney noted that Izaiyah was misbehaving with two other children during lunch break. This included having their cutlery sticking out which impeded the passage of other children. She asked them to behave, and they did not. She moved the three children to separate seats. The other two children then settled. Izaiyah did not and he stood in the aisle and had a tantrum. He was warned that he should sit down or he would be taken to the office. His conduct degenerated and he shouted and screamed because he did not want to move. Accordingly Ms McInerney decided that she would have to remove Izaiyah to the Leadership room because it was not appropriate that he should remain in the dinner hall. Izaiyah dragged his feet which meant that it took 10 minutes to get him to the Leadership room as opposed to a couple of minutes. Mr Askey was in the Leadership Room and came to assist Ms. McInerney who put his lunch in the Leadership Room. Izaiyah was being sulky and deliberately uncooperative. She stated that her treatment of Izaiyah was no different from any other child and that she was compelled to remove Izaiyah in order to de-escalate the situation. She did not notice any suggestion by Izaiyah that he was ill.

193. I pause at this point to repeat that this was unchallenged evidence. Not only did Ms. McInerney give evidence as to what happened but also to her motivation and reasoning. This has not been challenged either. In short the Claimants have no case in respect of the events leading to Izaiyah being taken to the Leadership Room. Thus the focus moves to subsequent events. I was told that Mr. Askey, Ms. Copeman-Papas, Sarah Faulding, Jo Read and Rachel Evans were present in the Leadership Room at various times when Izaiyah was there.

194. Mr. Askey gave evidence that he did not see Izaiyah as particularly challenging. He was more in the nature of being grumpy. He described Izaiyah as being 'fast tracked into the room'. He was not present for much of the time, and he may well have gone for his lunch.

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[72] See paragraphs 31 and 40 of the Particulars of Claim
[73] witness statement Diane McInerney [348]

195. Ms Copeman-Papas told me that Izaiyah did misbehave. He threw his food on the floor, took his shoes off, he kept leaving his seat and refusing to sit down. A threat was made that his parents would be called, in the hope that this would induce him to behave. It is said that Izaiyah then started screaming and this was so loud that it caused the fire door to close. Ms Copeman-Papas indicated that she would count to ten and then call his father. By the count of ten Izaiyah had stopped screaming. He continued to refuse to put his shoes on and refused to read a book, as he was expected to do schoolwork even though he was removed from class. Ms. Copeman-Papas' evidence was that she considered returning Izaiyah to class but that he was still being disruptive. He then said he had a fever, his temperature was taken and was normal. By 2.30 Izaiyah had calmed down and was returned to class. Ms. Copeman-Papas' view was this was a fast track incident and that Izaiyah would require a lunchtime detention on the following day, the 9th October 2018. She explained that according to the school's behaviour policy, a fast-track in the afternoon means a whole lunchtime detention the following day.

196. Mrs. Montague suggested that there was no reason for the detention recorded, that Izaiyah was given no work to do. She has made a number of allegations in her witness statement that are simply not part of the claim including that her son was assaulted. In her witness statement she said that she believed that this whole reaction from Ms Papas was the direct result of her request to withdraw her son from LGBT teaching and events. She wanted to withdraw Izaiyah because of her Christian beliefs and convictions. Mr. Phillips has argued that there was no history of Izaiyah having a detention, that on the day that a letter of the 8th October 2018 (described as threatening and full of invective) Izaiyah received a detention suggesting the animus that the school felt against the Claimants. He has argued that there were numerous anomalies in the way in which the school treated the detention and that they did not adhere to their own policy. He contrasted that Mr. Askey's impression that this was relatively minor conflict with Ms. Copeman-Papas' account. Mr. Phillips has argued that a key element to the victimisation claim is that a second day's detention was given and that if the first lengthy detention was not punitive, then the second detention most certainly was. The thrust of his argument is summarised by paragraph 84 of his closing argument:

> "There was no justification for it [the second detention] and that the second detention shows that this was done to victimise the claimants because of the animus the school held toward them and in particular C2, because she dared push back at the school for introducing themes to her child which she believed to be harmful to his moral and religious development and how she and her husband wished to raise him."

Hence he has argued that his case is made out in this respect.

197. As far as the factual evidence is concerned Ms. McInerney's evidence has set the scene. There can be no doubt that Izaiyah was behaving as she has set out. I have considered that apparent tension between the evidence of Mr. Askey and Ms. Copeman-Papas. I take into account that the agreed evidence was that Izaiyah was having a tantrum, he was shouting and screaming and was refusing to calm down. This is similar to the description given by Ms. Copeman-Papas. I fully accept that this may have been unusual behaviour but there is a consistent theme on the day. There is no contradiction between Mr. Askey and Ms Copeman-Papas. His evidence was confined to getting

Izaiyah into the Leadership Room and possibly directing him to a toilet after which he thinks he may have gone to lunch. Ms. Copeman-Papas did not arrive in the Leadership Room until lunchtime or slightly after. While they may have been together for some time, it is plain that Mr. Askey was not there for the full time. Given that Ms. Copeman-Papas' evidence was similar to that of Ms. McInerney it seems likely that Izaiyah was continuing the conduct which led to his removal to the Leadership Room.

198. Mr Phillips has suggested that an indication of the animus that the school felt with regards the Claimants is the alleged coincidence of the detention and the letter sent on the 8th October 2018 summarising the school's findings in relation to the first complaint. That overlooks that the fact that he has accepted Ms. McInerney's evidence as to her motivation for sending Izaiyah to the Leadership Room. In short there is no issue as to why Izaiyah was sent to the Leadership Room and it has nothing to do with animus against the Claimants, a matter they have not challenged.

199. At the outset of the trial I cautioned against the hyperbole that seemed to have infected some of the communications prior to the trial. It seems that this fell on stony ground. I have re-read that letter of the school dated the 8th October 2018 which Mr. Phillips alleged to contain invective. Anyone who reads the letter will find a measured document seeking to explain the school's position. In part it agrees with some of the criticism of the school and that they mishandled communications and identifies steps that had been taken to improve face to face communication with the parents. It suggested that the school had taken legal advice and did not believe that they had broken the law. It stressed that the aim of the teaching was to be inclusive. The contrast between the letters of the Second Claimant to the School and this reply could not be more marked. Contrary to Mr. Phillips' view there is no invective. If anything it is proof positive that the school were trying to be reasonable and engage with the parents. To that extent Mr. Phillips has failed to satisfy me as to the linkage he sought to demonstrate.

200. It will be appreciated that a focus of Mr. Phillips' comments relate to the alleged harshness of the detentions and that there was no justification for the second detention. Ms Copeman-Papas was clear in her oral evidence that the events of the 8th October 2018 were a fast track. This did not sit happily with paragraph 51 of her witness statement in which she justified the second period of detention a follows:

> "I explained to Sinead (O'Rouke) that lzaiyah would have a detention the following day, as his behaviour was a "fast-track" incident that happened in the afternoon. According to our school's behaviour policy, a fast-track in the afternoon means a whole lunchtime detention the following day"

Looking at the policy there is no provision in relation to a fast track for an additional detention. However that very wording appears in the Time Out 2 procedure.

201. Trying to fit the events to the policy, I am satisfied that, as Ms. McInerney set out in her witness statement, that Izaiyah represented a danger to other children seeking to pass him, both by reason of his cutlery and his demeanour. This represented "Refusal to comply with an adult's request/instruction which results in serious disruption to class or

puts child, peers or adults at risk."[74] Thus engaging the fast track procedure and bypassing the staged approach in the behaviour policy. Mr Phillips sought to argue that this was lunch time and there was no disruption to class. My emphasis is that children, peers or adults were at risk the policy was properly implemented at this point. Izaiyah's conduct met the criteria for a Fast Track within the meaning of the policy. Mrs. McInerney was entirely within her rights and probably under a duty to remove Izaiyah to secure a safe environment for the safety of himself and others. It seems to me that some confusion arose because a Fast Track was being treated as a punishment. This is not how I read the policy. It is intended to circumnavigate the staged process set out in the policy. As such it is a process not a punishment. Accepting, as I do Ms. Copeman-Papas evidence that Izaiyah was not behaving well enough to be returned to class at the start of the afternoon session, it was permissible to detain him for a longer period of time out as the policy states. In suggesting the detention should have finished at the end of lunch. I accept that the conduct continued, as Ms Copeman-Papas told until after the lunch period and into the afternoon lessons.

202. If I am incorrect and the detention was unlawful, I return to my comments derived from *Glasgow City Council v Zafar*. I must still be satisfied that this is due to the animus that Mr. Phillips described and that the required nexus between the detention and the Christian beliefs of the parents existed. Of course parts of Mr. Phillips' thesis have fallen away. I have already found that that the school had not been behaving illegally in the Pride Events. I have found that the interpretation put upon correspondence from the school by the Second Claimant and contained in the closing argument are simply not justified. I do not accept that the meeting of the 19th September 2018 failed solely due to the school's behaviour. In short the basis for the animus has fractured and fallen away. I have no doubt that the Claimants believed that the school were targeting them because of their belief. The difficulty they face is the gulf between the allegation contained in their letters to the press and the school and the reality of the situation revealed in a dispassionate analysis. There is simply no evidence of animus and the inference that Mr. Phillips is compelled to rely on is simply much too weak to satisfy me on balance of probabilities that there is any nexus between the behaviour and the parent's beliefs.

203. In truth the school were trying to promote inclusion an equality and any suggestion of targeting the parents would be wholly contrary to that ethos. Part of the tension between the parents and the school may lie in the requirement on the school to teach these matters even handily while the parents made it very clear in evidence that they did not believe that LGBT issue should be lumped in with other equality issues and taught at all. I am afraid that there was something of a gulf between the evidence I heard and the protestation of Mr. Phillips that the parents' concern was the delivery of the teaching. While that was an issue it was not the only one. I am satisfied that the real cause for the division between the parents and the school lay in the fact that the parents could not and cannot accept that the school are under a legal duty to teach inclusion for the reasons I have referred to. The background for the inference of animus is absent.

[74] Permitting a Fast Track approach. See [787]

204. I consider elsewhere that it is likely on balance that the school were not particularly good on stopping and considering their procedures before seeking to implement them. An example is provided by the failure to properly implement the complaints procedure and the failings in that respect that I have identified. This is not such a situation. Thus I am not satisfied that the necessary nexus exists, and this element of the claim must fail.

205. I return to the handing of complaints as it relates to the detention. The events are well documented. On the 8th October 2018 Mrs. Montague wrote to the school about the detention. The thrust of that complaint was that Izaiyah was not given work to do.[75] Of course this was not correct because Ms. Copeman-Papas gave unchallenged evidence that Izaiyah refused to read the book that he was given. In the email Mrs. Montague demanded an urgent investigation. What is striking is the certainty with which Mrs. Montague asserted facts of which she was totally unaware. The emails convey an impression of accusation as opposed to enquiry. Ms. Papas has given uncontested evidence that she was not in Heavers Farm on the 8th October 2018, but on receipt of the email that she spoke to staff. On the following day Ms. Papas confirmed that Izaiyah had been removed for legitimate reasons and referred Mrs. Montague to Izaiyah's form teacher, Ms. O'Rourke. The response was a somewhat abusive email from the Second Claimant which made a series of accusations including that Ms. Papas had not investigated the incident and that it had happened in Leadership Room as opposed to the class. Later that day, Mrs. Montague declared that she would carry out her own investigation and that all the staff should be questioned.[76] Ms Papas responded and corrected Mrs. Montague's impression that no work was given and referring the Second Claimant to the school's complaints procedure and that this was considered to be a stage 1a complaint. On the 10th October 2018 Mrs. Montague raised the suggestion that Izaiyah had been inappropriately touched and assaulted by Mr. Askey.[77] The following day the school contacted the Local Authority Designated Officer ('LADO') seeking guidance as to who should conduct the investigation. The LADO suggested that the investigation should be internal, but school and Local Authority needed more information as the allegation was vague.[78] This further information was obtained by Ms. Faulding from the Second Claimant. By the 15th October 2018 an investigation had been conducted by Sarah Faulding the Designated Safeguarding Lead at the school who concluded that "adults acted in an appropriate manner towards Izaiyah and no part of this allegation rises to the level of a safeguarding concern. Therefore I will not be recommending any further action."

206. In his closing submissions Mr. Phillips talked of the school blocking any attempt by the Second Claimant to get information about what had happened to Izaiyah. That is not his pleaded case. The above narrative is pleaded at paragraph 19 of the Particulars of Claim and at paragraph 21 the Claimants plead "The Defendant's failure to engage with the First Claimant fairly in informing her about what had happened and addressing her concerns". Damages are sought for:

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[75] Email Second Claimant to Ms. Papas – 18.10.18 [188]
[76] Email 09.10.18 [196]
[77] Email Second Claimant to S. Papas – 10.10.18 [214]
[78] Email Jane Parr to Ms. Papas – 11.10.18 [223]

- Failure to consider the Second and Third Claimants' complaints on those matters fairly, respectfully, and/or in good faith, as pleaded in paras 11-22 above. (paragraphs 28) and

- Failure to uphold the Second Claimant's complaint in relation to the First Claimant's detention, as pleaded in para 22 above. (paragraph 31(f)) and 40(f).

I am faced with something of a problem because the Particulars of Claim plead no specific allegations in relation to the general assertion and certainly do not allege 'blocking' of information. In short insufficient particulars were given and I refer to my comments on *Towler* above. All I can say is that the above narrative indicates that the school received the first complaint on the 8th October 2018. The complaint was not static but evolving, commencing with the assertion that Izaiyah was denied education and culminating in inappropriate touching. Within a week the school had sought the advice of the Local Authority, followed the advice of the LADO, spoken to the participants and produced a five page report. I appreciate that complaint was made during the hearing of the fact that Ms. Faulding was present during part of the incident. However I cannot detect any allegation being made against her that might impair her impartiality. It is difficult to know what else the school could have done. I appreciate that the Claimant may not like the conclusions of the report and assert that they were not carried out in good faith. I can only say that two external organisations have scrutinised the situation (the Department for Education and the Court) and found that they applied their procedure and conducted an effective enquiry that came to the same conclusion as I have. In those circumstances I am satisfied that the Claimants' case in respect of the handling of the complaints has not been made out.

XI THE BARRING ISSUES

207. On the 12th October 2018 the school banned the Second Claimant from telephoning the school or being on the premises until the 8th January 2019. The letter of that date from Susan Papas informing the Second Claimant of the ban contained the following justifications:

- That Mrs Montague had been intimidating in telephone calls, she had been threatening in the calls, including threats to call the police if she was not phoned back by member of staff or if anyone from the leadership team had any contact with Izaiyah.

- That on 10th October 2019 she had complained when Ms. Papas wrote to her, alleging that Ms Papas should not be contacting her as this was intimidation.

- Mrs. Montague had repeatedly called the school and shouted at members of the staff on the telephone when they school had not returned her calls within her timescale. She had been confrontational when staff explained that they were only answering the phones and that person she wanted to speak to were not available. This had led to members of the staff asking for support in dealing with her.

- On the 11thOctober 2018 Mrs. Montague had approached a member of staff (Mr. Askey), had been aggressive to him and made him feel unsafe.

- On another occasion she had approached Ms. Papas in the playground and had threated that she should "watch out" and "see what happened".

- She had tried to 'out' a member of staff to the press.

- That she had written numerous emails which were untrue, libellous and amounted to harassment. This included allegations that:

  i. Ms Papas was a "head bully", intolerant and a dictator.
  ii. That Ms Papas had deliberately obstructed investigation of the school.
  iii. The school was corrupt.
  iv. That the school had abused Izaiyah
  v. School staff were "brainwashing" and "radicalising" children, "intimidating", "discriminating" and "bullying" Izaiyah and "racially and religiously targeting and discriminating" against him.
  vi. Staff "hid behind" policies so that they could intimidate, discriminate and bully Izaiyah.
  vii. That Ms Papas was "Christophobic" and had a hatred of Christian beliefs. [79]

Arising from the above it was asserted that members of staff have the right to work without fear of violence or abuse. The school expected parents and other visitors to behave in a reasonable way towards all members of school staff, this had not been the school's experience of Mrs. Montague, hence the ban.

208. The Particulars of Claim seek damages and other remedies for the banning of the Second Defendant, while not expressly pleaded I infer from paragraph 20 of the Particulars of Claim that it is alleged that the banning was a direct result of emails on the 9th and 10th October from Mrs Montague indicating that the school had discriminated against Izaiyah and that there would be a further ongoing formal compliant. The issue is whether the actions of the school in barring the Second Claimant were a genuine response to unacceptable behaviour or retribution for a protected act or acts dating back to June 2018.

209. Of course much of the background is not controversial, however Mrs Montague denied the incidents with Mr. Askey and with Ms. Papas had occurred as described, at one stage she denied trying to 'out' Ms. Copeman-Papas and she denied being abusive or intimidating on the phone.

210. I have already resolved the issue of whether Mrs. Montague tried to 'out' a member of staff. She did. She initially denied this, but when confronted with the email from the editor of 'Inside Croydon' dated the 19th July 2018, she altered her evidence and admitted that the email was hers. In answer to my question she accepted that she put Ms. Copeman-Papas in physical peril given the atmosphere among some parents. Ultimately she accepted the truth of this allegation.

[79] Letter of 12th October 2018 [233]

211. I turn to the incident with Mr. Askey which allegedly took place on the 11th October 2018. His evidence was that Mrs. Montague approached him at the school gate and was angry and aggressive and that he felt threatened by her. In oral evidence he told me that she stood a foot or two away from him, that she was pointing and shouting. He was concerned that the interaction took place in the vicinity of parents and pupils. He pointed out that there are ways to complain as set out in the school website. He felt that holding this sort of confrontation in the presence of others was not appropriate.

212. Mrs Montague accepted that she had gone up to Mr. Askey and asked why Izaiyah had been given a detention and about the complaint's procedure. She denied in oral evidence that she had acted inappropriately. The way in which Mr Phillips addressed this in his closing submissions was that, "when Mr Askey was approached by the Second Claimant, his perception was not that he was dealing with a distressed mother, but that he was being accosted by an angry religious bigot." This was because he had described some of Mrs. Montague's comments as homophobic a matter I have already rejected.

213. I have no hesitation in preferring Mr. Askey's account of the incident. I say this for the following reasons:

- I refer to my assessment of the credibility of the Second Defendant and Mr. Askey set out above and there was no corroborative evidence to support her version of events.

- This contrasted with a body of contemporaneous written material that supported Mr Askey's version of events. Thus on the day of the incident he wrote an email to Ms. Papas describing that Mrs. Montague had been pointing at him and accusing him of keeping her child in. He described that he felt that Mrs. Montague was persecuting him because of his involvement in the meeting of the 19th September 2018. He said that he did not feel safe engaging with her because she was making things up about him[80]. I do note that the thrust of Mr. Askey's discomfort seems to have been the accusations as opposed to the physical aspects of the meeting. However in an internal email of the same day from Ms. Papas to Mr. Cluer she described:

  > "This is becoming very nasty. She [Mrs. Montague] approached Robert Askey at the gate this morning, pointing her finger at him and speaking to him in an unpleasant manner. He has complained to me saying that he feels unsafe around her,"[81]

  Thus the contemporaneous emails of the 11th October correspond with the Defendant's case and go to support Mr. Askey's version of events.

- Further there is the tone of the correspondence from Mrs. Montague to the school. I return to this shortly however the entire tone was more consistent with Mr. Askey's account than Ms. Papas. I particularly take into account that

[80] See email Robert Askey to Susan Papas – 11.10.2018 [397]
[81] See email Susan Papas to Graham Cluer – 11.10.2018 [392]

the Second Claimant had written an irate and demanding email on the 8th October 2018.[82] She followed this with an email in similar tone on the following day accusing the staff of "bullying, intimidation, discrimination against my son". [83] She went on, "I will not have you, your family members or any staff member hide behind policies so that you can intimidate, discriminate & bully my child". In a further email of the same date she announced that she would conduct her own investigation into the detention of Izaiyah and that, "all other members of staff should be questioned about what happened at lunchtime that led to this Discrimination action."[84] I have already commented that the tone of this correspondence was not one of enquiry but accusation. In short this was a person who was hostile to the school, accusatory in tone, determined to conduct her own investigation and to question members of the staff about the events. This ties in with Mr. Askey's account.

- I also take into account that Mrs. Montague was so lacking in self control that she had already taken steps which could have exposed Ms. Copeman-Papas to physical harm. Throughout the trial the Claimants and Mr. Phillips have sought to portray the Second Claimant as a wounded and hurt mother. I regret that is not the way in which the correspondence reads and is not supported by the evidence. Her actions throughout the complaint are more consistent with the person Mr. Askey described.

214. The alleged interaction with Ms. Papas is similar to Mr. Askey's complaint. Ms. Papas described that she was with Jo Read and that they were looking for a child who had gone missing. Mrs. Montague approached them. Ms. Papas explained that they could not discuss matters because of the concern for the lost child. Nevertheless Mrs. Montague shouted at Jo Read and got quite close. Ms, Papas asked her to step away when Mrs. Montague threatened them saying, "watch out" and "you wait and see what happens".

215. Mrs Montague agreed that she saw Ms. Papas at the school gate but denied the threats that she is alleged to have made.

216. Again I prefer the Defendant's account. My reasons are similar to those that relate to Mr. Askey:

- Again there is no evidence to support the Claimants' account, this is hardly surprising in the circumstances, and I attach no weigh to the absence of any corroboration. However it does mean that I am required to accept Mrs. Montague's version if she is to be successful. Thus I am thrown back on the observations that I have made about the credibility of the witnesses.

- I take into account the similarity of the conduct alleged in this incident and that relating to Mr. Askey. Again the allegation is of an irate and threatening

[82] See email Mrs Montague to Susan Papas – 08.10.2018 [188]
[83] See email Mrs Montague to Susan Papas – 09.10.2018 [192]
[84] See email Mrs Montague to Susan Papas – 09.10.2018 [196]

mother, coming close to members of staff and being angry and aggressive. I have commented that the tone of her emails was accusatory and demanding as opposed to being framed in the spirit of enquiry.

- Unlike the confrontation with Mr. Askey, there is not the same level of contemporaneous emails confirming the incident. However I do attach significance to the email exchange between Ms. Papas and Mr. Cluer on the 11th October 2023. In the email she observed that Mr. Askey had "asked that I issue her with a warning but I think that this would be "inflammatory right now."[85] In short she was trying to avoid a warning and the banning and would be unlikely to fabricate an incident of this nature at a time when she was seeking to avoid the banning. To complete this aspect of the chronology, Mr. Cluer advised that the banning should go ahead. He was not challenged on the contents of his witness statement which explained his view was that the school could not treat Mrs. Montague's behaviour differently because she had made the complaint. He reminded Ms. Papas of the school's duty to protect their staff. He concluded that he recognised the Executive Head Teacher's concern that "preventing Mrs Montague from accessing the school premises might escalate the already strong views of Mrs Montague, our primary concern was the safety of the children and staff."[86] Ms. Papas was a person trying to de-escalate events as opposed to fabricate them. That is inconsistent with any notion of fabrication and indeed undermines the suggestion of an animus against the Second Claimant.

- There is also a strange reference to this incident in an email of Mrs. Montague dated the 19th October 2018. She wrote:

  > "only 2 days before, Susan Papas & co ignored my husband and myself when we wanted to speak to her for 5 minutes with concerns over the abuse at Heavers Farm primary school of our child. I don't understand why Susan Papas had to antagonize me after I had stated no contact,"[87]

  Thus we have confirmation of the incident and that Mrs. Montague felt that she was being ignored when she wanted five minutes with the head teacher. However she also points out that, at this time she had said that she had stated that she wanted no contact with the Leadership Team. So this confirms that Ms Papas and Jo Read tried to disengage and that Mrs. Montague objected to this. The tenor of the email correspondence at this time is confrontational and tends to support Ms. Papas version of events.

Thus I conclude that Mrs. Montague did approach Ms. Papas and Jo Read when they were unable to talk to her because of the lost child. Possibly in frustration, the threats attributed to the Second Claimant were made.

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[85] Email S. Papas to G Cluer – 11.10.18 [392]
[86] witness statement Graham Cluer – paragraph 44 [288]
[87] Email Mrs. Montague to the Federal Governance Manager – 19.10.18 [418]

217. In relation to the treatment of the reception staff. The evidential situation is somewhat reversed. I have heard no direct evidence from any member of the reception staff about being shouted at. Mrs. Montague denied that this was the case. Ms Copeman-Papas told me that as School Manager she had been approached by the reception staff. At paragraph 60 of her witness statement she stated:

> "On several more occasions, Mrs Montague called the office and the office staff reported feeling upset after the phone calls. On one occasion, I had to enter the front office as I could hear Mrs Montague shouting on the phone at Sandra Patrick, who works on the school reception. On another occasion, Sandra, was very upset and came into the office to tell me that Mrs Montague had threatened to call the Police on her if she did not get somebody from the senior leadership team to call her back immediately."

This chimes with the email of the 10th October 2018 from Mrs. Montague to the Montague to the Federal Governance Manager in which she twice threatened to call the police. She had threatened the involvement of the police if the school continued with its behaviour. Of course the allegation was made in the banning letter of the 12th October 2018 and does not seem to have been contested by the Second Defendant. Indeed in evidence she told me that she had actually called the police claiming that she did not know where her son was. If this is true, then it was a somewhat disingenuous stance to take.

218. I have also taken into account an email of the 9th October 2018 from Ms. Papas which referred to the allegation. In it she wrote:

> "I would also like to take this opportunity to ask you to speak respectfully to the office staff when you telephone the school. This morning your voice was so loud that the member of staff had to move the handpiece away from her head in order to comfortably continue the conversation with you."[88]

Plainly this suggests that the reception staff had made the complaints that appeared in the banning letter. While the evidence is much less clear, on balance, I am satisfied that there is sufficient evidence to make out this allegation.

219. Against this background I must decide whether the Claimants have persuaded me that the banning was an act of retribution because of the Claimants' Christian beliefs, or an application of the school's policies actuated by the unacceptable conduct of the parents. The relevant policy is the 'Policy on managing aggressive behaviour from parents and visitors to our school'[89] The definition of unacceptable behaviour includes,

> "shouting at members of the school staff, either in person or over the telephone; physically intimidating a member of staff, for example standing very close to her/him, the use of aggressive hand gestures; and threatening behaviour."

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[88] See email [201]
[89] Policy document [800]

While the policy provides that the first stage is seeking to resolve matters through discussion and mediation, the policy also provides:

> "Where all procedures have been exhausted, and aggression or intimidation continue, or where there is an extreme act of violence, a parent or carer may be banned by the head teacher from the school premises for a period of time, subject to review."

I confess that, while the Second Claimant has not relied on it, there is an apparent breach of the school's policy in writing the banning letter. The policy provides:

> "This bar, if immediate, will be provisional until the parent(s) have been given the opportunity to make formal representations. The bar will then be confirmed or removed."

I cannot detect that Mrs. Montague was given any opportunity to make representations in relation the ban. There is no mention of it in the letter and plainly there should have been. This could be indicative of a school that was riding roughshod over the parents' rights because of an animus against the Claimants because of their complaints.

220. Against this I have to factor in the factual situation on the ground. If I focus on the uncontentious aspects of the case, it makes uncomfortable reading for the Claimants. Since the 13th July 2018 the Second Claimant had been writing correspondence that can only be described as hostile, intemperate and confrontational. One might have hoped that the summer holidays would have provided an opportunity for passions to cool and given an opportunity to reflect. This was not the case, almost as soon as the new term started the email of the 3rd September 2018 was sent drawn in very similar terms to the original email complaints. It was a plain declaration that the Second Claimant was continuing her complaint to the school in the same vein. Of course the Second Claimant had taken no steps to verify her understanding of the situation. The correspondence deteriorated further after the detention of Izaiyah. There is no avoiding that the correspondence contained threats. The school wrote a measured letter on the 8th October 2018, the response was renewed allegations that Izaiyah was being targeted, of abuse by indoctrination, bullying, intimidation, and discrimination against Izaiyah. There were threats that if the Leadership Team contacted Mrs. Montague she would call the police. This is coupled with her complaint that Ms. Papas had not spoken to her for five minutes. There is no doubt that the Second Claimant was threatening members of the school. There is also the fact that Mrs. Montague had placed a member of staff in physical danger when trying to 'out' Ms. Copeman-Papas. It was plain that Mrs. Montague was unpredictable. This alone could have justified an immediate ban.

221. When I factor in the incident with Mr. Askey and with Ms. Papas, the Second Claimant was representing a threat to the welfare of the teachers at the school and was in breach of the policy. She was also conducting acrimonious discussions in the playground with the risk that the children would have been exposed to her behaviour. Her conduct amply justified the ban.

222. I attach some considerable weight to the discussions between Mr. Cluer and Ms. Papas on the 11th October 2018. The Executive Head Teacher did not want to ban the Second Defendant which goes a long way to undermine the Claimants' case. This was not a

school that was looking for a reason to punish the Claimants for their beliefs. The true reasons for the ban are apparent from Mr. Cluer's evidence. I observe that he was not employed at the school, he was somewhat removed from the day to day difficulties. It was he who pointed out the duty the school owed to the children and the staff. This duty is important. The school knew of the attempted 'outing' and the possible consequences, the Assistant Head had reported an incident when he felt threatened and that was similar to an incident a few days before experienced by Ms. Papas. Two of the incidents were in public where they might be viewed by the children who should not be exposed to such altercations. If the school had taken no action they would have been open to the suggestion that they were in dereliction of their duty of care to the staff and children. They banned the Second Claimant in discharge of their duty to the children and the staff as opposed as an act of retribution against the Second Defendant.

223. While I recognise that there was an apparent failure to comply with the policy though this was not part of the Claimant' case. However, on balance I find that there is no evidence that this breach was motivated by the Second Claimant's Christian beliefs and thus it did not represent a breach of her ECHR rights, nor any breach of the Equality Act and I dismiss these aspects of the Claimants' claim against the school. It is a further example of a concerning failure to refer to polices that the school were seeking to implement.

224. It follows from the foregoing that the Claimants' claims as framed under the HRA and the Equality Act have failed and I dismiss them. The final claim is that of breach of statutory duty.

XII BREACH OF STATUTORY DUTY

225. The Claimants pursued their argument that the school's teaching amounted to 'sex education' within the ambit of s. 403 to 405 of the Education Act 1996 and that there were breaches of ss. 403(1), (1A) and 405 Education Act 1996. So far as is relevant, the Education Act 1996 provides:

> **403 Sex education: manner of provision.**
>
> (1) The governing body and head teacher shall take such steps as are reasonably practicable to secure that where sex education is given to any registered pupils at a maintained school (whether or not as part of statutory relationships and sex education), it is given in such a manner as to encourage those pupils to have due regard to moral considerations and the value of family life.
>
> (1A) The Secretary of State must issue guidance designed to secure that when sex education is given to registered pupils at maintained schools—
>
> (a) they learn the nature of marriage and its importance for family life and the bringing up of children, and
>
> (b) they are protected from teaching and materials which are inappropriate having regard to the age and the religious and cultural background of the pupils concerned……
>
> (1B) ……..
>
> **405 Exemption from sex education.**

(1) If the parent of any pupil in attendance at a maintained school requests that he may be wholly or partly excused from receiving sex education at the school, the pupil shall, except so far as such education is comprised in the National Curriculum, be so excused accordingly until the request is withdrawn.

(2) In subsection (1) the reference to sex education does not include sex education provided at a maintained school in England as part of statutory relationships and sex education.

(3) If the parent of any pupil in attendance at a maintained school in England requests that the pupil may be wholly or partly excused from sex education provided as part of statutory relationships and sex education, the pupil must be so excused until the request is withdrawn, unless or to the extent that the head teacher considers that the pupil should not be so excused.

226. The Particulars of Claim allege that the school was in breach of its duties in this respect in that they breached their statutory duty to:

- Take such steps as reasonably practicable to secure that sex education is given in such a manner as to encourage pupils to have due regard to moral considerations and the value of family life (s. 403(1) of the Education Act 1996);

- To have due regard to the guidance issued by the Secretary of State under s. 403(1A) of the Education Act 1996, which prohibits "promotion of sexual orientation" as "inappropriate teaching";

- To excuse the First Claimant from receiving sex education by participating in the said 'pride events' upon the Second Claimant's request (s. 405 of the Education Act 1996).[90]

Additionally they pleaded that LGBT Pride, same sex marriage and / or same sex parenting are partisan political activities within the meaning of s.406 of the act. Accordingly they pleaded a further breach of the Education Act 1996 in that the school failed to:

a. Forbid the pursuit of partisan political activities by its students and/or the promotion of partisan political views in the teaching of any subject in the school, under s. 406(1) of the Education Act 1996; and/or

b. to secure balanced treatment of the said political issues under s. 407 of the Education Act 1996.

s.406 Education Act 1996 provides:

406 Political indoctrination.

[90] Paragraph 41 of the Particulars of Claim [39]

> (1) The local authority, governing body and head teacher shall forbid—
>
> (a) the pursuit of partisan political activities by any of those registered pupils at a maintained school who are junior pupils, and
>
> (b) the promotion of partisan political views—
>
> (i) in the teaching of any subject in the school (in the case of a school in England), or
>
> (ii) ……

The success of this claim will depend on three issues. Firstly whether there is a civil remedy for breach of the Education Act 1996. If there is, whether the education described above is 'sex education' and whether the parade represented 'partisan political views'.

227. Uncontroversially Mr Phillips relied on the decision in *X (minors) v Bedfordshire CC* [1995] 2 AC 633, per Lord Browne-Wilkinson:

> The basic proposition is that in the ordinary case a breach of statutory duty does not, by itself, give rise to any private law cause of action. However a private law cause of action will arise if it can be shown, as a matter of construction of the statute, that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty. There is no general rule by reference to which it can be decided whether a statute does create such a right of action but there are a number of indicators. If the statute provides no other remedy for its breach and the Parliamentary intention to protect a limited class is shown, that indicates that there may be a private right of action since otherwise there is no method of securing the protection the statute was intended to confer. If the statute does provide some other means of enforcing the duty that will normally indicate that the statutory right was intended to be enforceable by those means and not by private right of action: *Cutler v. Wandsworth Stadium Ltd.* [1949] A.C. 398: *Lonrho Ltd. v. Shell Petroleum Co. Ltd. (No.2)* [1982] A.C. 173. However, the mere existence of some other statutory remedy is not necessarily decisive. It is still possible to show that on the true construction of the statute the protected class was intended by Parliament to have a private remedy. Thus the specific duties imposed on employers in relation to factory premises are enforceable by an action for damages, notwithstanding the imposition by the statutes of criminal penalties for any breach: see *Groves v. Lord Wimborne* [1898] 2 Q.B. 402. [Emphasis added].

Mr Phillips' argument was that sex education should be broadly defined to include any material of a sexualised nature or which promotes or celebrates any specific sexual orientations. As set out above, Mr. Phillips cited *HJ v. Secretary of State for the Home Department*, at paragraph 78, as authority for proposition that sexual orientation and sexual practice are inextricable. The latter is a manifestation of the former and sexuality and sexual practice both relate to identity. He also suggested that the campaigning elements of the school's LGBT teaching were politically partisan in nature.

228. Building on the above, Mr. Phillips submitted that the facts of this case satisfied the requirements to impose a breach of statutory duty namely (i) that they are intended to protect a limited class of the public, (ii) the breach of the duty would cause harm to the class intended to be protected and (iii) There is no adequate alternative remedy. Descending to more detail it was submitted that;
    - The above duties are intended to protect a limited class being students and their families, in particular to protect those who hold religious views incompatible with the teaching of sex education in the school.

    - If there is a breach of the provisions of ss. 403-405 then this would indisputably cause harm to those contained in the class and

    - That there was no adequate remedy. Mr Phillips acknowledged that there is remedy in the form of Judicial review or complaint to the Department for Education. But this might only affect a change of policy as opposed to compensate for breaches that have occurred.

    - In his closing submissions Mr. Phillips argued that the existence of an alternative remedy is not a decisive factor.

229. Mr Phillips made the submission that, precisely stated, the principles in *X v Bedfordshire* create a two-fold test:
    - If the statute clearly intends to protect a class of people but does not provide for a private law remedy, then such a remedy should be inferred.
    - Second, even if a remedy exists within the statute (e.g. JR), if it can be shown that Parliament intended a private remedy, then one shall be inferred.

230. Mr. Phillips further argued that there is a twin significance to the breach of statutory duty argument. First the element of compensation but secondly that an unlawful act cannot be 'prescribed by law' for the purpose of any qualification of HRA rights.

231. Mr Clarke dealt with the matter very briefly in his submissions and skeleton argument. He accepted the three categories proposed by Mr. Phillips and argued that the teaching did not amount to sex education.

232. I am bound to say that both parties treated this claim as very much of an afterthought in their submissions, both written and oral. Accordingly I have not been assisted by the submissions, which I found to be somewhat superficial and rested largely on *X v Bedfordshire*. There was no conscious attempt by the Claimant to take the analysis beyond the simple propositions advanced by them or to consider the statute as a whole. In my judgment the situation is more nuanced.

233. As *X v Bedfordshire* stated, the point of departure for consideration of this claim is that in the ordinary situation breach of a statutory duty does not give rise to a private law cause of action. It is for the Claimant to satisfy me that a proper interpretation of the statute Parliament intended to confer a private law remedy and that is the overarching

consideration.[91] I entirely accept that the three elements considered by Mr. Phillips are all identified in *X v Bedfordshire* as providing a framework for interpretation. It is accepted by both parties that the statute is silent on enforcement any remedy and thus I am required to consider a number of indicators. The weight to be attached to the indicators depend on the terms of statute, its subject matter, the damage claimed and the legal matrix within which it is situated.

234. The question of whether the statute is enacted for the protection of a particular class of individuals is not as straightforward as the Claimants suggest. The requirement is to consider the statute as a whole, not just to cherry pick certain sections as the Claimants have.[92] I have in mind that in *Phelps v Hillingdon LBC* [2001] 2 A.C. 619;[93] the court addressed the Education Acts 1944 and 1981 and held, that while provisions relating to the identification and adjustments arising out of special needs were for the protection of a class of pupils, the Act was essentially a structure for all children who fell within its provisions and refused to imply a private law remedy. Mr. Phillips made no attempt to address this issue and it seems to me that, absent any special considerations in relation to the 1996 Act, I should not infer a private law remedy. Of course I have been directed to none.

235. At this point it is instructive to consider the Act. It is described as "An Act to consolidate the Education Act 1944 and certain other enactments relating to education, with amendments to give effect to recommendations of the Law Commission." This strengthens the observations of the House of Lords in *Phelps* in relation to the Education Act 1944, the direct forerunner of the 1996 Act. Turning to s.403, this is cast as a broad general duty which is suggestive that a private law remedy is not contemplated.[94] The section requires that sex education "is taught in a manner as to encourage those pupils to have due regard to moral considerations and the value of family life." S. 406 prohibits the promotion of partisan political views. Both these provisions provide a benefit to the entirely of society. Of course s.403 goes on the provide that (a) children learn the nature of marriage and its importance for family life and the bringing up of children, and (b) they are protected from teaching and materials which are inappropriate having regard to the age and the religious and cultural background of the pupils concerned. Again this seems to be directed towards all children and their families, the thrust is to achieve a degree of harmony between home and school. In these circumstances, I interpret the provisions as providing a general framework for the benefit of parents and children. This interpretation is supported by the claim in this case. The claim for breach of statutory duty is advanced by the parents and Izaiyah. In short they consider that the provision protects both parents and children. In short it has not been put in place for the protection of a limited class of the public.

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[91] "The only rule which in all circumstances is valid is that the answer must depend on a consideration of the whole Act and the circumstances, including the pre-existing law, in which it was enacted", per Lord Simonds in *Cutler v Wandsworth Stadium Ltd* [1949] A.C. 398 at 407.
[92] *Issa v Hackney* [1997] 1 W.L.R. 956.
[93] See also *Carty v Croydon LBC* [2005] EWCA Civ 19; [2005] 1 W.L.R. 2312
[94] See, for example *Watt v Kesteven CC* [1955] 1 Q.B. 408 or *Human Fertilisation and Embryology Authority v ARGC Ltd* [2016] EWHC 460 (QB)

236. I also bear in mind that that even where legislation is intended to protect a class of individuals that is not determinative of the matter. Thus it has been held that the Children Act 1989 is enacted for the protection of a class, namely children, but does not give rise to a private law remedy.[95] So *R. v Deputy Governor of Parkhurst Prison Ex p. Hague* [1992] 1 A.C. 58 HL. repeated that the primary question in relation to an action for breach of statutory duty is always whether the legislature intended to create a civil remedy for victims of a breach of a statutory requirement (in that case the Prison Rules):

> "The fact that a particular provision was intended to protect certain individuals is not of itself sufficient to create a private law right of action upon them, something more is required to show that the legislature intended such conferment."

This reinforces that framework I have identified.

237. I accept that if there is a breach of s.403 then harm may result to the Claimants.

238. I also take into account the issue of remedy. I accept that the Act does not provide for remedy. The question does not rest there. I have to consider whether there is alternative remedy. I accept, as Mr. Phillips' has submitted, that this is not determinative of the matter, however it is a useful aid to interpretation. I am conscious that, in both *M v Newham LBC* [1995] 2 A.C. 633 at 671. and *X v Bedfordshire CC* the Claimants were unsuccessful in their claims to statutory duty. Nevertheless they successfully challenged the UK and obtained an award from Strasbourg.[96] This clarifies that there is already a private law remedy. Of course this decision pre-dated the Equality Act 2010 which would also provide a potential remedy. Accordingly I take into account that are avenues open to a Claimant who asserted a breach of s.403. Thus far I have focussed on judicial remedy and, in passing it seems to me that there is also Judicial Review and non judicial complaints and avenues open. (see the discussion in *M v Newham LBC*).

239. I return to my observations about the parties' approach to this claim. The burden lies on the Claimants to satisfy me that the Act provides for a private law remedy both in relation to s.403 and s.406. They have not committed themselves to any analysis beyond the bald assertions to which I have referred. My analysis demonstrates that a detailed consideration of the provisions is required. That analysis suggests that there was no intention by Parliament to provide for a private law remedy. I will dismiss the claim for breach of statutory duty.

240. It will be apparent from my previous findings under Part VII (Curriculum Issues) that this head of the claim would have failed in any event because the school's teaching was not sex education, and the school were not involved in the promotion of any political views for the purpose of s.406.

CONCLUDING COMMENTS

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[95] Similarly there is no private law action for breach of s.117 Mental health Act 1983 (*Clunis v Camden and Islington HA* [1998] Q.B. 978 CA.)
[96] *TP and KM v UK* and *Z v UK* [2001] 2 F.L.R. 549

241. For the reasons set out above I have considered all the claims advanced by the Claimants, save for the contractual issue abandoned at trial. I dismiss the claim.

242. I confirm that this decision was written by me, and I had no communication with the assessor while writing it, save in relation to logistics for the hand down hearing, and to send him a draft of this decision. He has read it and approved it.

243. It only remains for me to thank my assessor: Mr. Schofield and the advocates, Mr. Phillips and Mr. Clarke for their assistance during the trial which I now do.

HHJ Lethem