

THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL

Applicant: Mrs Catherine Renouf
Represented by: Advocate Thomas Crawford

Respondent: The States of Guernsey (acting by and through the Policy and
Resources Committee)
Represented by: Mr Glen Symons

Tribunal Members: Mr P Woodward (Chairman)
Ms Alison Girollet
Mrs Christine Le Lievre

Hearing date(s): 9, 10 and 11 November 2016

Decision of the Tribunal

The Applicant, Mrs Catherine Renouf, claimed that she had been unfairly constructively dismissed within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended. The Applicant also claimed that the Respondent had discriminated against her as defined in the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. The Respondent contested these claims.

Having reviewed and duly considered all the evidence submitted and the representations of all parties to the hearing, whether specifically recorded in this judgment or not, the Tribunal finds that the Applicant was unfairly constructively dismissed under the provisions of Section 5(2)(c) of the Employment Protection (Guernsey) Law, 1998, as amended. The unfair dismissal claim is upheld and an award of £21,635.52 is made.

The claim of sex discrimination is also upheld, and an award of £10,817.76 is made in accordance with Section 46(3) of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

Mr Peter Woodward
.....
Signature of the Chairman

25 January 2017
.....
Date

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

The Legislation referred to in this document is as follows:

The Employment Protection (Guernsey) Law, 1998, as amended (the Law)

The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (the Ordinance)

Extended Reasons

1.0 Introduction

1.1 The complaints by the Applicant Mrs Catherine Renouf were of alleged unfair constructive dismissal and sex discrimination.

1.2 The Respondent, the States of Guernsey (acting by and through the Policy and Resources Committee), resisted the complaints.

1.3 Mrs Renouf was represented by Advocate Thomas Crawford and gave evidence on her own behalf. She called the following witness:

- Mrs Deborah Sarre (By witness statement)

1.4 The Respondent was represented by Mr Glen Symons and called the following witnesses:

- Mr Gary Hind
- Mrs Lisa Bolton
- Mrs Julia Le Tissier
- Mrs Elizabeth Van Vliet
- Mrs Aimee Scullion
- Mrs Josephine Wilson

Summoned to appear by the Tribunal

- Mrs Jessica Lee

1.5 A joint bundle, ER1, was submitted. In addition the following documents were submitted by the parties:

- For the Applicant: EE1
- For the Respondent: ER2, ER3, ER4, ER5

1.6 The Applicant had been in receipt of one half of her normal gross earnings for the 26 weeks prior to the Effective Date of Termination of employment under the applicable contractual Maternity provisions. Prior to her Maternity Leave the Applicant had been in receipt of gross earnings for 26 weeks of £21,635.52.

2.0 Facts Found

- 2.1 The Applicant was issued with a 'Letter of Appointment' for a fixed term as a 'Newly Qualified Teacher' (NQT) on a part-time (50%) basis to cover Planning Preparation and Absence (PPA). This employment was to end 31 August 2009. (ER1, Page 65 refers).
- 2.2 A further Letter of Appointment was issued to the Applicant on 25 June 2009. This letter confirmed the permanent post of Year 4 Class Teacher at La Houquette Primary School, in the service of the Education Department, (ER1, Page 68 refers).
- 2.3 On 25 June 2012 the Respondent issued the Applicant with a 'Variation of Contract of Employment' appointing her as Year 4 Class Teacher at Vale Junior School for a fixed one year period, 1 September 2012 to 31 August 2013. This letter stated that 'The Education Department will offer you a suitable teaching post with effect from 1 Sept 2013, however if you decide for any reason not to accept the position offered, the Department will not guarantee that an alternative position will be offered to you, and in which case your employment with the States of Guernsey will end'. (ER1, Page 85 refers).
- 2.4 On 16 August 2013 the Respondent issued a letter to the Applicant headed 'Class Teacher: Vale Primary School; Education Department'. This letter confirmed her permanent appointment as a Class Teacher in the service of the Education Department, (ER1, Page 87 refers). The Applicant understood that it was no longer a fixed arrangement for her to teach Year 4 but that she would be directed by the school each summer term as to the class assigned for each upcoming academic year. (Confirmed in Paragraph 10 of the Applicant's witness statement ER1, Page 258).
- 2.5 On 16 January 2015 the Applicant received an email from the Human Resources Department (HR) with the Respondent's Maternity Policy attached in PDF format. The date of this Policy was stated as 1 April 2012. (ER1, Page 89 refers). This Policy may be found at pages 73 to 83 of the bundle and on page 75 under the heading 'Right to return to post on same terms and conditions' the Policy states the following: "A teacher who becomes pregnant has the right return to her post on the same terms and conditions not later than 1 year from her last expected working day".
- 2.6 On 31 January 2015 the Applicant placed a deposit with a local nursery school to book term time cover in the period commencing April 2016. (ER1, Page 261, Para 21 refers).
- 2.7 On 9 March 2015 the Applicant received an email from HR with an attachment for a Maternity Leave Application form. (ER1, Page 90 refers).
- 2.8 The Applicant completed the Maternity Leave Application and dated it 10 March 2015. In section A of this form she recorded her title as Class Teacher Vale Primary (Year 5). The Applicant confirmed her expected return as 25

April, start of summer term, 2016; the form was countersigned by the Applicant's Headteacher, Mr Gary Hind. (ER1, Pages 92 to 94 refer).

- 2.9 In section A of the Maternity Leave Application form the Applicant confirmed as follows "I propose to return to my post at the same conditioned hours as I currently work", this being a standard written term in the form. The Applicant also confirmed in this form that she undertook that if she did not return to her employment for a minimum period of 26 weeks she might be liable to repay the monies received in accordance with the Maternity Policy. (ER1, Pages 92 to 94 refer).
- 2.10 On further inspection of the Maternity Leave form the Tribunal notes that section C refers to the application for a 'Career Break ' that might be granted for a period of up to five years. In that event the Tribunal notes that the Respondent indicates there is no guarantee that the individual would return to current post or school on their return.
- 2.11 On 20 April 2015 an Occupational Health Advisor Medical, wrote a report to Mr Hind, the Headteacher of Vale Primary School. In this letter it was confirmed that the Applicant was fit to continue work until the end of the summer term when she would be 38 weeks pregnant. It was recommended that risk assessments should be conducted at regular intervals until the end of that term. (ER1, Pages 95/96 refer).
- 2.12 On 22 April 2015 Mr Hind carried out a risk assessment using the General Risk Assessment Guidance form, it defined the Applicant's job title/role as "Class Teacher". (ER1, Pages 97/99 refer).
- 2.13 On 20 May 2015 the Applicant received a letter from the HR Department acknowledging her Maternity Leave Application. This letter confirmed the details of the paid Maternity Leave to which she was entitled; the letter noted the period of paid leave and the rules governing the timing of her return to work. (ER1, Pages 100 to 102 refer).
- 2.14 Sometime in mid-June 2015 the Applicant met with Mr Hind to discuss her Maternity Leave and her return to work. No notes were kept as to the matters discussed at this meeting but the evidence from both parties supports that the Applicant shook hands with the Headteacher after gaining apparent agreement that she would return to work as Year 3 Class Teacher for the summer term, 2016.
- 2.15 On 17 June 2015 the Applicant emailed Mr Hind to request that her Maternity Leave start earlier. She requested that the leave should commence on Monday 22 June 2015 instead of 18 July 2015. This request was based on advice from her physiotherapist. This letter stated that the Applicant's return date would be unchanged, as Monday 25 April 2016. (ER1, Pages 103 and 104 refer).
- 2.16 On 19 June 2015 the Applicant emailed an Education Department administrator to confirm her commencement of Maternity Leave meaning that her last working day was that day. The Applicant then completed a new

'Application for Maternity Leave/Career Break' form to formalise this request and the form was approved by Mr Hind on the same date. In the form her job title was recorded as "Year 5 Class Teacher at Vale Primary". Section A of this form confirms "a proposal to return to my post at my same conditioned hours. If I do not return for 26 weeks I will be liable to repay the monies received in accordance with the Maternity Policy".

Whilst this form differs from the format of the document of the 10 March 2015 the Tribunal notes that in section C an employee who is granted a Career Break for a period of up to five years has no guarantee that they would return to current post or school.

- 2.17 On 30 June 2015 an email was issued by Mr Hind to the Applicant and to Jessica Lee, an NQT. It contained the Year 3 Class list for the academic year 2015/2016. (ER1, Page 110 refers).
- 2.18 On 9 July 2015 the HR Department issued written confirmation to the Applicant detailing the arrangements for paid and unpaid Maternity Leave in the period ending 24 April 2016. (ER1, Pages 111 to 113 refer).
- 2.19 On 31 July 2015 Mrs Jessica Lee was issued with an offer letter for the post of 'Permanent Primary Class Teacher'; it stated she would be a "Key Stage 2 Class Teacher at Vale Primary School on a two term fixed contract". (ER1, Pages 114 to 117 refer). As an NQT she was subject to the 'Induction Framework' which can be found on pages 118 to 152 in bundle ER1.
- 2.20 The Applicant's baby was born on 8 August 2015.
- 2.21 On or around 22 August 2015 the Applicant sent a text message to Mr Hind informing him of the birth. Mr Hind acknowledged this text approximately a week later. (ER1, Page 264, Paragraphs 47 and 48 refer).
- 2.22 An email exchange took place over the period 15 December 2015 to 18 January 2016 between Mr Hind and Julia Le Tissier, Human Resources Manager, detailing various staff assignments at Vale Primary School for the spring term 2016; the email of 18 January was copied to Mrs Lisa Bolton, Education Development Officer. The email included the following statements:
- "At the same time SM only goes up to April to cover our NQT (Jessica Lee) as she is due to leave/go to another school for the summer term. This is because Cath Dodds (currently on maternity leave) is due to return.*
- Lisa Bolton has had a conversation with Jessica about applying to the pool and what this will entail. However it may come to pass that Jessica continues at Vale for the summer term, if there isn't a vacancy for her to fill at another school. If this is the case, then it may be that SM's cover will not end in April, but go to the end of the academic year."* (ER1, Pages 153 and 154 refer).
- 2.23 On 3 March 2016 Mrs Renouf telephoned the Vale School Secretary, to provide her required notice of return on 25 April 16 and arrange transition sessions. The Tribunal notes that both parties agree that prior to this date

there had been no contact since the exchange of text messages in August 2015.

- 2.24 On or around the end of February 2016 or early March 2016 Mr Hind contacted Mrs Bolton, the Education Development Manager, and during this discussion it was agreed that Jessica Lee would remain in the post assigned to her as Year 3 Class Teacher for the summer term 2016.
- 2.25 On 7 March the Applicant met Mr Hind and he informed her that she would not return to Class 3 for the summer term 2016; no notes were made by Mr Hind at this meeting. (ER1, Pages 266 and 267, Paragraphs 66 to 70 refer).
- 2.26 On or around 14 March 2016 the Applicant rang the Respondent's HR Department and requested the following documents:
- Original copy of her letter of appointment
 - Copy of her appointment Letter for Vale School
 - Copy of her Application for Maternity Leave
 - Copy of her Maternity Leave letter

(ER1, Page 305 refers).

- 2.27 On or around 16 March 2016 the Applicant made a further request to HR for the Maternity, Adoption, Maternity Support and Career Break provisions; these documents were posted to her.
- 2.28 On 16 March 2016 Mr Hind sent an email to the Applicant. In this email he advised her in the following terms:

*"Now the Primary Pools interviews have been completed I believe the situation regarding your return to work for next term to be as follows; Jessica Lee is due to stay at Vale until the end of the academic year to complete her NQT fully with us as there is not a vacancy/place for her in another school on island.
You are due to return to Vale following your maternity leave ending but this would mean we could, as we talked about, utilise your skills in different ways over the summer term.*

As we also discussed, I don't have a problem with you teaching in Year 3 from September but as you know, we'll need to see what positions are available nearer May, but in principle I'm happy for you to be allocated a class in Year 3 from September this year." (ER1, Page 168 refers).

- 2.29 On 17 March 2016 in an email exchange between the Applicant and Mr Hind it was agreed they would meet on 21 March 2016.
- 2.30 On 17 March 2016 the Applicant contacted the HR Department and requested a confidential meeting with Julia Le Tissier. (ER1, Page 268, Paragraphs 74 and 75 refer).

- 2.31 The Applicant met with Julia Le Tissier on 18 March 2016 and in that meeting Mrs Le Tissier confirmed she had already spoken with Mr Hind. (ER1, Page 268, Paragraph 76 refers). No written record of this meeting was kept by Mrs Le Tissier.
- 2.32 On 21 March 2016 The Applicant attended a meeting at Vale Primary School with Mr Hind and Mrs Le Tissier. At this meeting Mr Hind described the role he wished the Applicant to perform during the summer term 2016. No notes were made of this meeting either by Mr Hind or Mrs Le Tissier.
- 2.33 Later that same day Mr Hind emailed the Applicant a copy of the 'timetable' that he proposed she should follow for the summer term 2016. This was a detailed work plan listing daily assignments in May, June and July 2016. (ER1, Pages 170 to 174 refer).
- 2.34 On 23 March 2016 Mr Hind sent the Applicant a further email with a listing of Vale teaching staff assignments for the summer term 2016. (ER1, Pages 175 and 176 refer).
- 2.35 On 4 April 2016 Mr Hind sent an email to the Applicant requesting feedback on the proposed timetable; he needed her agreement to this document as he wished to issue it to staff prior to the school holiday period.
- 2.36 On 5 April 2016 the Applicant responded by email, in this email she stated the following:

"Apologies for the delay, I have been seeking legal advice.

As discussed in our meetings, and also with Julia le Tissier, I have serious concerns about the new role which you have informed me I will be required to fulfil for summer term. I am not happy to accept the conditions of the new role that has been created for my return from maternity leave." (ER1, Page 178 refers).

- 2.37 On 7 April 2016 Mrs Le Tissier responded in an email to the Applicant as follows:

"I understand from your email below that you do not agree to the schedule of work that Gary sent through to you and which was prepared in anticipation of your return to work at the outset of the summer term on 25th April 2016 (but which is an OAT day).

We have explained to you that the Department considers it is in the best interests of the pupils to maintain teaching continuity for the remainder of the academic year. You will resume teaching Year 3 at the beginning of the academic year in September 2016 when pupils move to their new classes.

Following your return to work, and for the duration of the summer term you will carry out teaching duties, but, so that teaching continuity may be maintained for class 3L for the remainder of the academic year, you will be required to follow the schedule that Gary has put together and which he sent

to you with his email of 21 March 2016. Please note that the schedule will be circulated to other relevant staff at the school before the end of this week, when term ends, and so it is imperative that you let Gary know as soon as possible if there are any aspects of the schedule that you would like to discuss amending.

I understand from our discussion that you are concerned about not returning to a particular class until the beginning of the academic year. I am sorry that this is not something that the Department feels able to accommodate but please be assured that the decision has been taken for purely operational reasons and you will not be detrimentally affected in terms of your salary, benefits or status as a teacher I understand that Gary and the staff at Vale Primary are very much looking forward to your return.

In the meantime if there are any matters at all that you would like to discuss concerning your return to work please contact me or Gary to discuss in good time for your return at the beginning of the summer term.” (ER1, Page 179 refers).

2.38 On 8 April 2016 the Applicant’s representative replied to Mrs Le Tissier with a formal response setting out the Applicant’s prospective claims. (ER 1, Pages 180 to 184 refer).

2.39 On 14 April a States of Guernsey legal advisor wrote to the Applicant’s representative, acting on behalf of the Respondent. In this letter there was a rebuttal of the Applicant’s claim and it was stated that there was ‘no custom or practice’ in respect of teachers returning from maternity leave during an academic year.

2.40 On 18 April 2016 the Applicant resigned and sent copies of her resignation to Mr Hind and Mrs Le Tissier by email and in a letter. In this letter the Applicant stated the following:

“The reason for my resignation concerns the School’s and the Department’s steadfast refusal on conflicting grounds to allow me to return to my post of Class Teacher of Year 3 on 25 April 2016 following the end of my maternity leave, as more fully set out in my advocate’s letter to Mrs Le Tissier of 8 April 2016. The Department’s response to that letter has only served to reinforce my constructive dismissal.” (ER1, Pages 188 to 189 refer).

2.41 On 18 April 2016 Mrs Le Tissier responded to the Applicant’s communication by setting out the Respondent’s position as follows:

“Given that it is presently the Easter Holidays you are not expected to present for work until the start of term on the 25th April 2016. I am therefore, on behalf of the Department, inviting you to carefully reconsider your position in respect of your resignation before you are required to attend work.

The Department has confirmed in writing that you will return from maternity leave on the 25th April 2016 on the same salary, benefits and status as you were on before you chose to take maternity leave. The Department has

offered to discuss with you any concerns that you may have about your scheduled return to work whatever they may be. That offer remains open. Please do contact me should you wish to discuss any concerns that you may have about your return to work.

To repeat the Department's position it does not consider that you are suffering any detriment in the course of your return to work. Whilst it is not operationally desirable to return you to a class at this late stage of the academic year given the potential disruption that that may cause to the pupils, the Department fully intends that you should resume teaching a particular class at the outset of the new academic year in September 2016. The measures that it proposes to put in place until that time are intended to strike a balance between preserving your position until the new academic year and maintain teaching continuity for the pupils in the final term of the year. You have not at any stage set out precisely how you feel that this arrangement is to your detriment. Should you contact me to discuss your particular concerns the Department will consider whether there is anything that it can reasonably do to address such concerns." (ER1, Page 190 refers).

- 2.42 On 19 April 2016 Advocate Crawford emailed the States of Guernsey legal advisor, advising that the Applicant did not wish to reconsider her position. (ER1, Page 192 refers).

3.0 Mrs Catherine Renouf

- 3.1 Mrs Renouf was an employee of the Education Department of some seven years' standing. The Applicant informed the Tribunal that she had initially performed PPA and 'Supply' teaching assignments but derived no satisfaction from these roles and did not enjoy them. She found teaching different classes and age groups, often at short notice, to be unsettling and unpredictable.
- 3.2 In the event she came to be employed as a Class Teacher, mostly at the Vale Primary School. This post provided her with the stability of teaching the same class of her own pupils each academic year. In her evidence she summarised the primary duties and responsibilities of a Class Teacher as follows:
- A Class Teacher has their own class for each academic year of up to around 25 pupils and teaches them the majority of the lessons every day, whereas non Class Teachers are constantly changing class and age-group.
 - The Class Teacher is able to build good relationships with their pupils as they get to know them well and vice versa. Non Class Teachers do not get to build such meaningful bonds which can affect teaching as it is difficult to know the children's educational, needs, learning styles, and personalities.
 - A Class Teacher has the opportunity to build a relationship with parents and offer guidance, advice and follow-up activities, whereas non Class Teachers have very little such opportunity.

- A Class Teacher is based in their own classroom with their own resources and responsibility for planning lessons and teaching and assessing their class; whereas non Class Teachers have no base, they move constantly around the school and between buildings or different schools and they have no responsibility for planning work.
- A Class Teacher is able to be organised and prepared in advance whereas non Class Teachers are not able to be so, they are very reliant on Class Teachers planning the work and being provided with it upon entry to the classroom or at best the night before.
- A Class Teacher has full responsibility for marking, assessment and follow-up work, whereas non Class Teachers have little responsibility for marking and no responsibility for assessment or follow-up work.
- The Class Teacher takes full ownership of their class's education, whereas non Class Teachers deliver the Class Teachers' plans and have no ongoing responsibility for that class's education beyond a small one-off input.
- A Class Teacher must attend inset/OAT days and staff meetings whereas non Class Teachers have no such obligations.
- A Class Teacher is part of the team and is respected amongst their peers whereas non Class Teachers necessarily work very independently.
- A Class Teacher should have support from a senior management team whereas non Class Teachers have no such support as they move from school to school and have to work very independently.

- 3.3 The Applicant, on becoming pregnant, particularly noted that the Maternity Leave document that she was issued gave her the right to return to her post on the same terms and conditions as previously held; provided she returned no later than one year from her last expected working day. Believing she could rely on this provision the Applicant submitted her Application for Maternity Leave in March 2015, this being subsequently granted.
- 3.4 Sometime in mid-June 2015, before she left for her leave, she expressly agreed with Mr Hind that she would return for the summer term to teach a class in Year 3. She told the Tribunal that she was very relieved to have this agreement with Mr Hind and that she shook Mr Hind's hand in gratitude; the Tribunal notes that Mr Hind agreed that he shook hands with the Applicant. He did not qualify this agreement with any concerns of teacher continuity or changing needs of the class.
- 3.5 The witness understood that the NQT, Mrs Lee, would be responsible for Year 3 for the first two terms of the academic year 2015/2016 and then she herself would return from Maternity Leave in April 2016 to take responsibility for Year 3 in the summer term. The Applicant received corroborative documentation that this agreement would be maintained including the Year 3

Class list on 30 June 2015 with both her name and that of Mrs Lee sharing the class (Page 110 ER1 refers) and noted on the staff list (ER1, Page 176 refers).

- 3.6 The Applicant also referred the Tribunal to an email dated 18 January 2016 between Mr Hind, Mrs Le Tissier and Mrs Bolton. This email included a statement by Mr Hind that Mrs Lee was due to leave her post in April 2016 due to the Applicant's return from Maternity Leave.
- 3.7 Mrs Renouf commenced her two-term absence on Maternity Leave on 20 June 2015 after completing an amended application to bring forward her last day of work.
- 3.8 The Applicant contacted Mr Hind by text message, on or around 22 August 2015, informing him of the birth of her child and approximately one week later Mr Hind replied via a text message congratulating her. This was the last communication with him for the duration of her Maternity Leave until she contacted the School prior to her return in March 2016, almost seven months later. It was alleged by the Applicant that this contravened the Respondent's maternity provisions which provided that Headteachers are expected to maintain appropriate contact with a teacher during her Maternity Leave in order to ensure that the teacher does not feel forgotten about or marginalised and to assist with a less stressful return to work.
- 3.9 This lack of contact from Mr Hind or anyone within the Education Department made Mrs Renouf feel aggrieved and increasingly disregarded; precisely what the maternity provisions were designed to prevent.
- 3.10 On 3 March 2016, in the absence of any contact from the School or the Education Department, the Applicant telephoned the Vale School Secretary. She told the School Secretary that she wanted to arrange some transition sessions in order to ease her return to work by meeting her Year 3 Class, talking to her replacement teacher and having the chance to discuss planning, gain an update on individual pupil information and meet with Mr Hind. The School Secretary made an arrangement for the Applicant to observe her Year 3 Class on 7 March 2016.
- 3.11 A short time later on 3 March 2016 the School Secretary telephoned the Applicant to inform her she was not allowed to visit the Year 3 classroom and that instead she must meet with Mr Hind on 7 March 2016.
- 3.12 At the start of the meeting on 7 March 2016 the Applicant informed Mr Hind of her desire to visit Year 3 Class, meet the replacement teacher and to allow the children to become familiar with her and vice versa.
- 3.13 In response Mr Hind informed the Applicant that the Education Department had potentially made an error and had employed an NQT to cover the Applicant's Maternity Leave but now they had no post for the NQT for the summer term.
- 3.14 Mr Hind then stated that the NQT would probably be staying at the School in her post in order to complete her year, that a different role would be found

for the Applicant and that the Applicant could teach a class again from September which in theory could still be in Year 3. In addition Mr Hind stated that the Education Department had considered placing her in a different school for a term so as not to disrupt the NQT.

- 3.15 The Applicant was very disturbed by this information and stated it should be the NQT who needed to move. She informed Mr Hind that a move to another school would breach the terms of her employment contract. Mr Hind responded by saying "I thought you'd say that".
- 3.16 The Applicant stated that Mr Hind was very non-committal about the Education Department's plan for her return and said it was out of his hands and he would be in touch with her when he knew more.
- 3.17 The Applicant asked Mr Hind if it would be a Class Teacher role or more of a support role. In response Mr Hind said that he believed the Applicant would be placed in the role of 'supernumerary', he explained that in essence it meant a 'spare' or additional member of staff whom the Education Department had agreed to fund for the summer term.
- 3.18 The Applicant immediately concluded that it appeared to her that Education Department staff had had discussions about this situation during her Maternity Leave without any consultation with her and had made a decision to keep the NQT as Class Teacher for Year 3.
- 3.19 The Applicant then reminded Mr Hind that they had made an agreement that she would be returning to teach a class in Year 3 for the summer term and she did not understand why she had not been told of the change of plan before. In response Mr Hind said the decision had only just been made in the last week but was not finalised.
- 3.20 They concluded the meeting with Mr Hind informing the Applicant that he had not had time to consider what he would use the Applicant's skills for in the summer term. In addition he was due to attend a further meeting at the Education Department when the results of the interviews for the 'Primary Pool' would be known and final assignments of teachers for the summer term would be made.
- 3.21 On 16 March 2016 the Applicant received an email from Mr Hind confirming that Mrs Lee, the NQT, would stay in post for the summer term with the Year 3 Class so that she could complete her NQT year. He informed the Applicant that there was not another vacancy/place in another school on the Island for Mrs Lee to complete her NQT commitment.
- 3.22 On 17 March 2016 the Applicant contacted the Respondent's HR Department in order to arrange a confidential meeting regarding her Maternity Leave and the concerns she had, given her recent discussions with Mr Hind.
- 3.23 On 18 March 2016 the Applicant met with Julia Le Tissier and was informed by her that she had already been in contact with Mr Hind.

The Applicant recalled that she briefed Mrs Le Tissier in the following manner:

- That she had come to Mrs Le Tissier for advice, given she was very concerned about not being able to return to her post as a Class Teacher and the new post that was been foisted on her.
- The proposed changes communicated by Mr Hind breached her contract of employment and her right to return to her post. The Policy clearly stated that if she went on Maternity Leave for less than 12 months that she had a right to return to her post on the same terms and conditions.
- In her eyes the arrangement amounted to a demotion because the opinion of the pupils, staff and parents towards her would change and might suggest that she would have difficulty in returning to work after her Maternity Leave.
- She queried why nobody had contacted her during her Maternity Leave to discuss these new arrangements and consult her for her feedback.
- She felt she was being treated disadvantageously whilst, on the contrary, the NQT was treated more favourably.
- She was concerned as to the lack of reassurance regarding her longer term position after the summer term in September 2016.
- The proposed arrangement would cause her undue anxiety on her return to work as it involved lots of changes, an inability to form relationships with a single class and an expectation for her to change her plans at short notice.
- Why was the NQT being kept in post when the Respondent had ample notice of the period of her Maternity Leave and her expected date of return?
- She felt she was being asked to do something different and still unknown at this point and certainly would not agree to anything that was not in writing.
- Would it be reasonable to ask Mr Hind for a new job description for the post?

3.24 Mrs Renouf thought that Mrs Le Tissier dismissed these issues with little or no consideration. In summary she recalls Mrs Le Tissier's responses as follows:

- It was unnecessary for her to be provided with written confirmation of her return to a Class Teacher role in September 2016.

- Her employer had the right to move her wherever they wanted and there was nothing she could do about it.
- The Respondent had done nothing wrong and was acting in accordance with employment law, in respect of which she was well versed.
- The view expressed by the Applicant that she was being treated differently and disadvantageously for having taken Maternity Leave whilst the NQT was being treated more favourably was an interesting perspective.
- The fact that an NQT had filled her role whilst she was on Maternity Leave was a decision based on the needs and best interests of the cohort of pupils in Year 3; it was best for the NQT to continue fulfilling this role for the summer term.
- If the Applicant was feeling really stressed then she could be referred to Occupational Health for counselling.
- It would be very reasonable and sensible to ask Mr Hind for a new job description for the new post.

- 3.25 Mrs Renouf felt that Mrs Le Tissier was being hostile and obstructive rather than helpful and that the meeting had not progressed well. In her opinion these responses made her feel that the Respondent had no confidence in her abilities as a Class Teacher. She made it clear to Mrs Le Tissier that the lack of communication with her and the apparent disregard for her opinions about the matter had not filled her with confidence about her return to work following her Maternity Leave. This had certainly not turned out to be the smooth transition the Respondent had promoted in their maternity provisions. Mrs Le Tissier responded by saying that perhaps lessons could be learned.
- 3.26 As the meeting drew to a close Mrs Le Tissier told the Applicant that she already knew she was meeting with Mr Hind on 21 March 2016 and offered to accompany her to the meeting.
- 3.27 Mrs Renouf told the Tribunal that after this meeting she gave further thought to what she had been told and was very concerned. She was aware of Class Teachers in the past returning from Maternity Leave of up to a year to teach their class partway through the academic year. If the arrangement that was now being proposed was really about teacher pupil continuity issues and doing what was best for the pupils, then it would follow that no teacher returning from Maternity Leave would ever be entitled to resume a role as a Class Teacher unless it was at the start of the academic year.
- 3.28 On 21 March 2016 the Applicant met with Mr Hind and Julia Le Tissier. At the outset of this meeting the Applicant explained to them the intended outcome for the meeting was to be able to have some input into the new post being

foisted on her, to request a job description for the role and to obtain formal documentation.

- 3.29 Mr Hind then proceeded to hand the Applicant the proposed timetable for the summer term 2016 and read it out, in its entirety day by day, which allowed little input from the Applicant. (ER1, Pages 171 to 174 refer).
- 3.30 The timetable involved the Applicant sitting in different classes to observe other teachers teaching different year groups each day, sometimes in the morning, sometimes in the afternoon and teaching multiple year groups in a day.
- 3.31 The implication of the timetable was that over the course of the 12 weeks of the summer term the Applicant would be teaching different classes on 33 separate occasions including one two-week period in which she would be required to move hourly from one class to another in short cover slots.
- 3.32 The timetable also made provision for changes without advance notice where, for example, the Applicant was required to cover staff that were off sick. The timetable also made provision for staff training days which Mr Hind told her she only needed to attend if she wanted to, whereas these training days were compulsory for a Class Teacher.
- 3.33 The timetable therefore clearly made provisions of the duties that would not require a Class Teacher and removed the continuity and stability enjoyed by a Class Teacher of teaching a single class of pupils.
- 3.34 After Mr Hind had read out the timetable Mrs Le Tissier asked the Applicant if it was what she had expected. The Applicant said it was not and that she had been expecting to be in more of a support role, perhaps planning interventions for small groups and helping pupils with targets. In the Applicant's opinion it was apparent to her that the timetable constituted the role of a Supply Teacher, something that she had not expected when she was in her initial discussions with Mr Hind earlier in the month. The Applicant queried with Mr Hind whether it was in fact a Supply Teacher role. Mr Hind responded by telling the Applicant it would be 'cover' but her salary would not be affected.
- 3.35 During the conversation Mr Hind also confirmed that the Applicant would not be expected to plan lessons and would instead deliver the prepared plans of the relevant Class Teachers. He would inform her Class Teacher colleagues that she was returning in a Supply role in order that they would know that she would not be planning lessons.
- 3.36 The Applicant emphasised to both Mr Hind and Julia Le Tissier her anxieties about being placed in the post of Supply Teacher as it amounted to a materially different position and would alter how staff, pupils and parents would view her. The Applicant also emphasised that this was a role she was not used to and felt it would cause undue stress, dealing with so many different people and unexpected timetable changes.

- 3.37 To her best recollection she believed that Mr Hind replied to this point by telling her that: *“as an additional member of staff, I’m afraid that is your responsibility and you will be the first port of call so undoubtedly that will happen. This is an unusual situation sand we’ve not had to do it before so you’re just going to have to suck it and see”*.
- 3.38 Mr Hind’s response seemed to be a clear acknowledgement that ad hoc decisions were being made by the Respondent and that they had little regard for her contract, the Maternity provisions and what had previously been agreed in relation to her return from Maternity Leave. Given these concerns the Applicant asked again for written confirmation that the role was temporary and that she would return to her Class Teacher role in September 2016.
- 3.39 In response to this Julia Le Tissier said it was really not necessary but reluctantly agreed to put something together while restating that her salary had not changed.
- 3.40 The Applicant then proceeded to query whether Maternity Leave and this new arrangement would affect her progression on to the next upper pay scale in September 2016. Mr Hind replied by saying that it would be more prudent to discuss this issue on her return to work.
- 3.41 The meeting closed with the Applicant stating again that she very anxious and unhappy about the decision that had been made and felt that she should at least have some input into the proposed new post and have the ability to discuss things further.
- 3.42 On 21 March 2016 Mr Hind provided the Applicant with a copy of the timetable and asked her to let him know when he could circulate it to the staff.
- 3.43 On 23 March 2016 Mr Hind emailed the Applicant again asking if he could circulate the timetable to the staff to allow them to begin to plan accordingly. He also attached a copy of the school staff listing which did not reference the Applicant’s name.
- 3.44 On 4 April 2016 Mr Hind sent a further email checking if it was okay to circulate the timetable as it was the last week before the holidays and he needed to circulate it, ideally by 5 April 2016. He stated that if he had not heard from her that he would assume it was okay to go ahead.
- 3.45 On 5 April 2016 the Applicant sent an email to Mr Hind and Mrs Le Tissier stating the following:

*“Apologies for the delay I have been seeking legal advice
As discussed in our meeting and with Julia Le Tissier I have serious concerns about the new role which you have informed me I will be required to fulfil for the summer term. I am not happy to accept the conditions of the new role that has been created for my return from maternity leave”*

- 3.46 Mrs Le Tissier replied on 7 April 2016 advising her that the Respondent considered it in the best interests of the pupils in Year 3 to maintain teaching continuity for the remainder of the academic year and that for the duration of the summer term the Applicant should carry out the teaching duties as required by the timetable; the Applicant concluded she had been given no other option than to accept this arrangement. She also noted that she had not received a job description for the new role or a letter confirming her return to a Class Teacher role.
- 3.47 The Applicant responded via her legal adviser on 8 April 2016 to put the Respondent on notice that she had grounds to resign and claim constructive dismissal.
- 3.48 The Respondent replied on 16 April 2016 stating that it stood by its decision that she must take the role described in the timetable.
- 3.49 Given the communication of 16 April 2016, the Applicant believed she had no choice but to treat herself as constructively dismissed and communicated this decision by email and by letter on 18 April 2016.
- 3.50 On the same day Mrs Le Tissier responded by email urging the Applicant to reconsider her decisions and her threat of legal proceedings. The Applicant responded via her legal advisor on 19 April 2016 to confirm that there would be no reconsideration of this decision and that she had irrecoverably lost all trust and confidence in the Respondent.

4.0 Mrs Deborah Sarre: By witness statement

- 4.1 Mrs Sarre has worked at Vale Primary School for 13 years as a Class Teacher; she has undertaken this role with year groups ranging from 3 to 6.
- 4.2 When she became pregnant in 2014 she followed the usual protocol to apply for Maternity Leave. Initially she informed her Headteacher, Gary Hind and then, at a later date, the Education Department was also informed. Dates of her Maternity Leave were agreed and the relevant paperwork was signed and returned to the Education Department.
- 4.3 She left for Maternity Leave on Friday 19 December 2014 and returned on Monday 4 January 2016. When she left in December 2014 she was a Class Teacher and she returned one school year later as a Class Teacher.
- 4.4 She had not previously arranged with the Headteacher as to which year group she would be returning to; but she was informed in July 2015 that it would possibly be a Year 4 class.
- 4.5 Another teacher at the school then became pregnant and was due to leave in December 2015. The witness was informed during the autumn term that she would be taking over her role as a Class Teacher for Year 4. There were no discussions about teacher-pupil continuity in her return to teach a class part way through the academic year.

5.0 Mr Gary Hind

- 5.1 Mr Hind has been employed as Headteacher at Vale Primary School for almost five years and prior to this he was Headteacher of a primary school in England; in total Mr Hind has over 25 years teaching experience.
- 5.2 When he took up his post the Applicant was working as a teacher at another school; she started at Vale Primary School in September 2012 and became a permanent Class Teacher with effect from September 2013.
- 5.3 Mr Hind confirmed that he had countersigned the Applicant's Application form for Maternity Leave on 19 June 2015; this Application was subsequently approved by the HR Department.
- 5.4 Mr Hind met with the Applicant before she went on Maternity Leave. He recalled that during this meeting he discussed with the Applicant that when she returned from Maternity Leave in April 2016 she would likely be teaching a Year 3 Class for the summer term, and that the teacher who would be covering her Maternity Leave in that class would leave at the end of the spring term. The witness confirmed he did not keep any record of this meeting and stated that it would not be normal for him to minute such a meeting.
- 5.5 Mr Hind confirmed that the Applicant was particularly determined to return from Maternity Leave to the Year 3 Class, he had led her to believe that this would likely be so and they had shook hands on this agreement.
- 5.6 Mr Hind denied that during the period of the Applicant's Maternity Leave he had not maintained appropriate contact with her. In his opinion appropriate contact is made one or two months prior to the scheduled return.
- 5.7 Mr Hind confirmed that prior to meeting with the Applicant on 7 March 2016 he had discussed with Mrs Bolton whether Mrs Lee should stay in post for the summer term 2016. They both reached a conclusion that it was best for the children for Mrs Lee to remain in place. In particular the children's needs had changed significantly; special measures had been invoked for some children and Mrs Lee had set up support structures with appropriate agencies. Pupil continuity with Mrs Lee had become a high priority.
- 5.8 Under cross-examination Mr Hind could not recall when he arrived at this agreement with Mrs Bolton, although he knew it must have been before 3 March 2016. Neither could he recall when he communicated this agreement to Mrs Lee. He concurred there was no formal written record of either of these meetings.
- 5.9 The witness stated that he also needed to consider reasonable adjustments for the Applicant as she returned from her Maternity Leave. In his experience this often included a reduced timetable; possibly some reduced teaching duties and/or an Occupational Health referral.

- 5.10 Mr Hind agreed that it was the Applicant who instigated contact in March 2016, he stated that his concerns at the time were far more with well-being of his pupils together with on-going discussions with Mrs Bolton; it was a coincidence that the Applicant had made contact at that particular time. He had not sought to contact the Applicant earlier as nothing was definite in relation to the summer term.
- 5.11 Mr Hind informed the Applicant on 7 March 2016 that the decision to retain Mrs Lee was still only probable not definite. He informed the Tribunal that he communicated it in this way because there was still time at that point to change the plan. It was only after his participation in the Primary Pool process on 16 March 2016 that he knew there was no suitable post elsewhere for Mrs Lee.
- 5.12 Mr Hind also stated that typically NQTs undertook their qualifying process in three consecutive terms. He agreed however that the NQT Policy allowed flexibility, such that any three terms out of six consecutive terms could be used for this process. It was his experience that the NQT qualification process could only be viable in a stable Class Teacher role.
- 5.13 Mr Hind was challenged as to who actually made the decision for the NQT to remain and he responded by saying it was a joint decision in consultation with the Education Department.
- 5.14 To the best of his belief he thought discussions with Mrs Lee, as to her possibly continuing into the summer term 2016, commenced around February 2016. He confirmed that he did not discuss the possibility of any 'Floating' or supernumerary roles with her.
- 5.15 Mr Hind agreed that there was no written policy on continuity and the retention of a particular post; it was custom and practice that teachers could be assigned to PPA or Floating roles as well as that of Class Teacher. It was an implied tenet of the service, as was the understanding that reassignments may occur on the basis of pupil teacher continuity. It was his normal practice to assign changed roles by mutual agreement.
- 5.16 Mr Hind accepted that he saw the role he wished to assign to the Applicant as 'like a Supply Teacher role'; but this was only in response to the Applicant's concern as to the preparation of lesson plans; it was an allusion that he hoped would reduce her concerns as to the role required in the summer term.
- 5.17 Mr Hind did not accept that the planned role for the Applicant was a demotion but did agree he used the expression that the Applicant would have to "suck it and see" as to how the role would develop over the period of the summer term. He was firmly of the opinion that the Applicant would have remained just as much a teacher as if she was still in the Class Teacher role.
- 5.18 The witness confirmed a Class Teacher has the overall responsibility for teaching a particular group of pupils over a period of time, ensuring that resources were in place to facilitate this and providing pastoral care. In

comparison the Floating Teacher role was one of support to colleagues across several pupil categories. The Supply Teacher role was temporary with individuals being called in at short notice to cover a few days' work and remunerated on that basis.

- 5.19 It was put to Mr Hind that the purpose of the meeting on 21 March 2016 was to pressure the Applicant into accepting the post; he denied this vigorously. He confirmed that no record was kept of this meeting.

6.0 Mrs Lisa Bolton

- 6.1 Mrs Bolton is an Educational Development Officer and has had significant experience, since 1989, in primary schools both in the UK and overseas. During the academic year 2015 to 2016 she worked closely with five schools across Guernsey as the Lead Development Officer.
- 6.2 Specifically in relation to Vale Primary School, she has been the Lead Officer for this establishment since January 2014 and stated that as well as scheduled monitoring, challenge and support visits she performed the following activities:
- Supporting the school through some transitional phases and having regular catch up discussions with the Headteacher covering a wide range of issues, topics and plans.
 - Helping the Headteacher to manage recruitment processes; overseeing any NQTs during their first year of teaching.
 - Supporting the school through an inspection from Education Scotland.
 - Holding delegated responsibility for the Headteacher's performance management.
 - Working with the literacy leader to audit literacy provision and carrying out monitoring visits.
- 6.3 The Tribunal asked for clarification as to the delegated responsibility for the Headteacher's performance management.

She stated the following:

- She agreed the objectives for the forthcoming year for the Headteacher.
 - She agreed and set the standards for the performance of these objectives.
 - She monitored the Headteacher's performance against the standards.
- 6.4 The witness oversaw the appointment and placement of the NQTs and in particular she was responsible for the appointment of Mrs Jessica Lee in

spring 2015. Mrs Lee had been recruited through the Primary Pool and such individuals were given permanent or five-year licences with the Education Department and were then allocated school placements.

- 6.5 Mrs Lee was offered a placement at Vale Primary late in the summer term 2015. This placement was originally a maternity cover for two terms, to cover the absence of the Applicant, on the understanding that at Easter 2016 Mrs Lee would likely be offered an alternative placement school. This alternative placement might itself have been to cover an absence or a long-term placement depending on the needs of the Island schools.
- 6.6 Mrs Bolton assured Mrs Lee that the Department was committed to enabling her to complete her NQT year and it was probable that she would remain at Vale Primary School, although in what capacity it was not known. It was known at that time that the Applicant would potentially be returning as the Year 3 Class Teacher.
- 6.7 In giving evidence Mrs Bolton confirmed they had over-recruited for the September 2015 intake but in light of past experience of changes in staffing levels, anticipated attrition etc., there was the hope that the staffing levels would balance out the teaching placements over the year. However, as time progressed into March 2016 there were still no vacancies arising in other schools to facilitate the movement of either the NQT or the Applicant and Mrs Bolton confirmed this with the HR Department. Mrs Bolton was aware that as Vale Primary was the largest primary school, it was best able to accommodate both Mrs Lee and the Applicant.
- 6.8 In light of this situation Mrs Bolton started to discuss the issue with Mr Hind. Initially consideration was given to Mrs Lee taking on the role of a Floating Teacher; however neither Mr Hind nor Mrs Bolton thought that this was in the best interests of the children in Mrs Lee's class.
- 6.9 The witness also stated that it was her opinion and her experience that, teachers who are returning from a long absence, especially towards the end of the academic year, are not best placed into another specific class-based role. In this particular case both she and Mr Hind believed that it would be appropriate to retain Mrs Lee in the class and to direct the Applicant to undertake a Floating role across the school for one term. (ER1, Paragraph 8, page 297 refers).
- 6.10 Mrs Bolton stated that Mrs Lee was informed by Mr Hind in March 2016 of the decision to keep her at Vale Primary School; she would remain in charge of the Year 3 Class until the end of the summer term. (ER1, Paragraph 9, page 297 refers).
- 6.11 Mrs Bolton stated that this decision was in the best interests of the children in the Year 3 Class. It seemed to her that Mrs Lee had established effective relationships with the class and could ensure continuity of teaching and learning. Mrs Bolton believed that as Mrs Lee had worked with the children for two terms her retention would avoid the disruption of having a new teacher for this group both at Easter 2016 as well as in September 2016.

- 6.12 The second reason for this decision was to provide the Applicant with a smooth transition back into the workplace. As she was an experienced teacher, Mr Hind and Mrs Bolton thought that the Applicant would be able to offer support to colleagues across the school without the demands of the planning, preparation and assessment that accompanies the Class Teacher role. In her experience teachers returning after a long absence were very appreciative of the opportunity to ease back into class teaching, assimilate the new initiatives and changes taking place and establish a new work-life balance, particularly when returning from Maternity Leave.
- 6.13 Finally it was considered that to ask Mrs Lee as an inexperienced teacher to float and support colleagues would be a challenge for all concerned and that leaving Mrs Lee in post would facilitate the completion of her NQT year more appropriately.
- 6.14 The Tribunal notes that the Mrs Bolton stated it was “our” decision to retain Mrs Lee in her Year 3 role for the summer term.
- 6.15 The witness also stated that she saw no distinction between the terms ‘Class Teacher’, ‘Teacher’ or ‘Floating Teacher’. In each of these roles the individual has a primary responsibility for their pupil’s learning and progress. All primary teachers appointed to the Guernsey Education Department are issued with the same contract and are subject to Guernsey teaching standards. All teachers are appointed to the Department and can be relocated to a different school or asked to take up any teaching role within the school that the Headteacher deems appropriate.
- 6.16 The witness stated that opportunities had been built into the Applicant’s prospective summer 2016 timetable in order for her to liaise, plan and prepare with her Year 3 colleagues in readiness for September 2016.
- 6.17 The witness stated, in her role as Educational Development Officer, she had an overview of the recruitment and placement of teachers and the typical assignments they are given when returning from Maternity Leave in the summer term. Mrs Bolton stated there were three other teachers being asked to undertake similar Floating teaching roles in three different primary schools across the Island after Maternity Leave at similar times. One of these teachers, for example, also had an NQT to cover her class during her Maternity Leave and had understood that if the need arose she would take on a Floating role or move schools for the remainder of the school year.
- 6.18 The witness also stated that there are other particular demands in the summer term, such as preparing end of year reports and this places an additional strain on a teacher, particularly if they did not have the experience of the first two terms of the academic year working with the pupils. In Mrs Bolton’s opinion completing such reports would have been a very challenging and demanding task for the Applicant.

7.0 Mrs Julia Le Tissier

- 7.1 Mrs Le Tissier is a Human Resource Manager for the States of Guernsey.
- 7.2 In April 2015 she spoke with Mr Gary Hind about the health and wellbeing of the Applicant and advised that a risk assessment should be carried out.
- 7.3 After further advice from her medical advisor the Applicant reconsidered her Maternity Leave commencement date and it was set with the final working day as Friday, 19 June 2016; but with an unchanged 'return to work date', i.e. Monday, 25 April 2016.
- 7.4 The witness stated that there were a number of documents relating to the Applicant's Maternity Leave and these included some original contractual documents dating from her commencement of employment with the States of Guernsey.
- 7.5 In the meeting of 18 March 2016 the Applicant told Mrs Le Tissier that the NQT had been favoured over her and this was unfair.
- 7.6 It seemed to Mrs Le Tissier that the Applicant did not place great weight on the continuity of teaching for the pupils and that her focus was on her own issues. The Applicant had stated to Mrs Le Tissier "it's not about the children it's about me".
- 7.7 Mrs Le Tissier informed the Applicant that Mr Hind had a contractual right to redeploy her anywhere provided that she did not lose any pay status. Mrs Le Tissier informed the Applicant that she did not see any difference in the teaching roles that had been offered to her by Mr Hind versus the original intent to assign her to a Year 3 Class Teacher role for the summer term.
- 7.8 After the Applicant left the meeting Mrs Le Tissier contacted Mr Hind to advise him that she should attend the meeting on Monday with Mr Hind and informed him of the concerns raised by the Applicant.
- 7.9 During the meeting on Monday, 21 March 2016 it was explained to the Applicant, by Mr Hind, that the role that was being offered to her for the summer term 2016, was to ease her back into employment after a period of absence. His primary concern was to give the Applicant the time and opportunity to catch up with any curriculum developments and other changes in teaching and learning which had occurred during her period of absence.
- 7.10 In that meeting the Applicant stated she was anxious about returning to work and that as she was not at all familiar with the different year groups she would need additional support from colleagues. Mr Hind assured her that appropriate adjustments could be made to assist her in the first few weeks back in her role. He also assured the Applicant she would return to a Year 3 Class at the beginning of the new academic year in September 2016.
- 7.11 Mr Hind ended the meeting by informing the Applicant that he would send the final version of the proposed timetable for the Applicant for the summer

term and that the Applicant could approve it before he circulated it to the rest of the staff in school.

- 7.12 Mrs Le Tissier thought the meeting had been generally positive and any queries raised by the Applicant had been dealt with by Mr Hind. However, a few days later Mr Hind rang Mrs Le Tissier to say that the Applicant had not replied to his final version of the timetable and asked for advice. Mrs Le Tissier advised him to email again and ask the Applicant for her input as she was due back in school on 25 April and that this was now a priority.
- 7.13 On 5 April 2016 the Applicant replied and said she was seeking legal advice and she believed that this was a new role. Mrs Le Tissier told the Tribunal that she sought advice from her legal team and drafted an email response which she sent on 7 April 2016.
- 7.14 On 8 April 2016 a letter was received from Advocate Crawford which advised the Education Department that he was acting on behalf of the Applicant.
- 7.15 Mrs Le Tissier informed the Tribunal that the letter dated 8 April 2016 was a real surprise to her as they had never had a teacher refuse a Floating role when returning late in the academic year. She felt the letter from the Applicant's Advocate was very hostile and that rather than attempt to seek a solution the Applicant had simply threatened a legal action valued at approximately £40,000.
- 7.16 In an attempt to help the Applicant and defuse the situation Mrs Le Tissier assisted the States of Guernsey legal advisor in the preparation of a letter which attempted to address the issues and clarify the contractual situation. It was an attempt to sway the Applicant prior to any final decision. Unfortunately, despite this letter, the Applicant's letter of resignation without notice was received on 18 April 2016.
- 7.17 Mrs Le Tissier was very surprised with this resignation and replied directly to the Applicant copying Mr Hind. The letter -
- Invited the Applicant to "carefully reconsider her position".
 - Reiterated the contractual position.
 - Confirmed that the Applicant would return on the "same salary, benefits and status".
 - Offered to discuss "any concerns" that the Applicant may have about her return to work.
 - Confirmed that it was the Department's position that the Applicant was not suffering any detriment in the course of her return to work.
 - Reminded the Applicant that this was only an interim position for the summer term and asked her to reconsider the resignation.

- Confirmed it would be a breach of the employment contract and by failing to give notice the Respondent might seek to recover losses flowing from the Applicant's breach of the contract.

Unfortunately this email did not resolve the situation and Advocate Crawford, responding on behalf of the Applicant via an email dated 19 April 2016, reiterated the Applicant's position.

- 7.18 Mrs Le Tissier stated every attempt had been made to keep the door open and hoped for further discussions with the Applicant but it was evident by this time that this would be to no avail.

8.0 Mrs Elizabeth Van Vliet

- 8.1 Mrs Van Vliet has been a teacher for eight years, with almost six of these being in Guernsey.
- 8.2 In the period April 2015 to April 2016 the witness took Maternity Leave. Prior to the commencement of this leave, she requested a return to her employment on a part-time basis. This was agreed for the summer term but Mrs Van Vliet understood that she would have to revert to full-time in the autumn if no suitable part-time role was available. In February 2016 she was informed by her Headteacher that a permanent part-time vacancy had arisen and he was pleased to offer this to her.
- 8.3 During the period of her leave she kept in regular contact with her school and brought in her baby son to show him to her colleagues and the children as she valued the good bond she had with them and her school.
- 8.4 She stated that, in her opinion, the Respondent's Maternity Leave provisions were relatively generous as they included flexible arrangements for a return.

9.0 Mrs Aimee Scullion

- 9.1 Mrs Scullion has been a teacher for over eight years and is currently in post at Amherst Primary School.
- 9.2 Mrs Scullion took Maternity Leave in the period May 2015 to May 2016
- 9.3 Originally she had intended to return for the summer term once her paid Maternity Leave had ended and no concerns were raised about this. However, in August 2015 she decided to take the extended period of leave allowed for by the Respondent's Maternity Leave provisions.
- 9.4 Once she had made this decision, in September 2015, she contacted her Headteacher to state that if she was going to return for just the last seven weeks of the summer term she did not consider it suitable to teach her original class as she was aware that it was better for the children's educational wellbeing to remain with their current Class Teacher with whom they would have developed a bond.

9.5 Mrs Scullion stated she was later informed, in March 2016, that funding had been made available and she would be assigned a role as a Floating Teacher for the summer term, undertaking a range of duties. She said that she was happy with this interim arrangement pending becoming a specific Class Teacher in the next academic year, and understood the rationale for such arrangements.

9.6 When questioned as to whether or not this was perceived as a loss of status, Mrs Scullion replied “Yes, in a way I had to earn my stripes again as other staff saw me as a Supply Teacher.”

10.0 Mrs Josephine Wilson

10.1 Mrs Wilson has been a teacher at Vauvert Primary School for nine years.

10.2 Mrs Wilson took Maternity Leave in 2015, such that her return date coincided with the middle of the 2016 summer term.

10.3 Whilst she was on Maternity Leave her teaching role was filled by an NQT who taught the class for the whole 2015/2016 academic year.

10.4 Prior to leaving for the start of her Maternity Leave it was her understanding that she should contact the Headteacher nearer to her return date to discuss the role she would undertake on her return.

10.5 She contacted her Headteacher in January 2016 and informed him she would prefer to return on a part-time basis for the summer term. She was told that there definitely would be a role but was warned she may have to teach a different class or in a different school for the summer term and that he would have to liaise with the Education Department to firm up a definitive position.

10.6 Her return details were eventually confirmed in April whereby she would be returning on a part-time basis in a Floating Teacher role for the summer term at Vauvert Primary School and for the following academic year she would be “a PPA Teacher”.

10.7 Mrs Wilson stated that she had expected to undertake other teaching roles on her return given that it was during the middle of the summer term. She told the Tribunal that she understood that the decision as to what role a returning teacher will be asked to do is determined by the Headteacher, giving regard to the time of the year they return and the educational needs of the children.

10.8 It was her experience that generally the later a teacher returns in an academic year the more unlikely that they will displace the current Class Teacher for the obvious reason of the continuity of the teacher/pupil relationship. In addition it would be very difficult to prepare meaningful end of year school reports if the teacher concerned had not taught the class for most of the academic year.

- 10.9 On questioning, Mrs Wilson stated she had felt a loss of status initially, as originally, when she was Class Teacher, she was also the mathematics subject leader. However, Mrs Wilson explained that there was a big difference as she was only working three out of five days per week and the role had changed a lot, everyone was busy and she was 'Floating' in and out of classrooms she had not taught.

11.0 Mrs Jessica Lee

- 11.1 Mrs Lee was offered permanent employment on 5 April 2015 as a Class Teacher but not given a specific post.
- 11.2 Around April/May 2015 Mrs Bolton explained to her that she would provide maternity cover for the autumn 2015 and spring 2016 terms.
- 11.3 As the end of the spring term drew closer Mrs Lee queried with both Mrs Bolton and Mr Hind as to whether a placement would be found for her after the Easter holidays.
- 11.4 It was then confirmed that she would return to Year 3 for the summer term 2016. She was relieved not only for herself but because this ensured continuity of the teacher pupil relationship. There had been some particular behavioural problems, with five or six of the pupils needing help from 'Outreach' teams; also the resolution of some social issues was required, again requiring external support.
- 11.5 Mrs Lee had understood from previous discussions that she should undertake her NQT qualification in a year and that this was typically a Class Teacher role. This understanding probably came from Mrs Bolton.
- 11.6 Mrs Lee stated that she had, at the end of February 2016, arranged a meeting with Mr Hind to express her preference that she would wish to stay with the Year 3 Class if possible; but beyond that had no input as to her placement. Mrs Lee said her placement with the Year 3 Class was confirmed by Mr Hind the week before the Easter Holidays.

12.0 The Law

- 12.1 The first complaint was an alleged constructive unfair dismissal. It is now firmly established in previous judgments, given under the Employment Protection (Guernsey) Law, 1998 as amended, that in order for an employee to be able to establish constructive unfair dismissal, four conditions must be met:
- (i) The employer must be in breach of a term of the contract of employment.
 - (ii) The breach must be fundamental, amounting to a repudiatory breach of contract.
 - (iii) The employee must have resigned in response to that breach.

- (iv) The employee must not have delayed too long in terminating the contract following the breach of contract, otherwise the breach can be found to have been waived and the contract affirmed.

- 12.2 The second complaint was one of direct or indirect discrimination against women as defined in the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

Section 1 of this Ordinance states the following:

“In any circumstances relevant for the provision of Part II of this Ordinance a person discriminates against a women if: - (a) on the ground of her sex he treats her less favourably than he treats a man, or (b) he applies to her a provision, criterion or practice which he applies, or would apply equally to a man but- (i) which is such that it would be to the detriment of a considerably larger proportion of women than of men.”

13.0 Conclusion

- 13.1 From the evidence it became clear to the Tribunal that the Respondent has a challenging task to maintain appropriate levels of staffing at all the schools, at all times. In seeking to achieve this the Respondent may reasonably require the flexibility of assigning suitably qualified teaching staff between various year groups, various teaching roles and across the various schools.
- 13.2 The Tribunal was of the view that such a policy alone is not sufficient, the Respondent must achieve this flexibility by ensuring that each individual contract of employment has clarity as to these expectations and sufficient steps are taken to confirm that each employee has understood and agreed to these requirements in their individual contracts.
- 13.3 In addition there is a duty on the Respondent to manage the return of an employee after Maternity Leave in an appropriate manner.
- 13.4 In consideration of this complaint the Tribunal takes account of a Royal Court decision by the Deputy Bailiff in 2016; ‘Lange V Waters’. Whilst the issue in that appeal was in relation to the working hours of a residential ‘Care Assistant’ it is significant that the Tribunal was critiqued for not paying sufficient attention to what was termed the “unambiguous wording” of an employment contract.
- 13.5 In this complaint the Applicant claimed that a combination of contractual communications over a period of six years, both written and oral, were in effect unambiguous and entitled her to claim that her contract was breached when her Headteacher decided to assign her to a to a non Class Teacher role.
- 13.6 The Applicant argued that in the spring of 2016 her understanding of both the written elements of her contract of employment, together with orally agreed terms of her contract entitled her to return to Vale Primary as a Year 3 Class Teacher for the summer term.

- 13.7 At the root of this issue is first and foremost the term Class Teacher. The Applicant was referred to as a Class Teacher in the following documents:
- A Letter of appointment dated 25 June 2009 confirmed her permanent appointment as a “Year 4 Class Teacher”. (ER1, Page 68 refers).
 - A letter entitled Variation of Contract of Employment issued to the Applicant on 25 June 2012, confirmed her appointment as “Year 4 Class Teacher”. (ER1, Page 84 refers).
 - A letter dated 16 August 2013 addressed the Applicant as “Class Teacher: Vale Primary School, Education Department” and confirmed her permanent appointment as a Class Teacher in the service of the Education Department.
- 13.8 The Tribunal notes that the document entitled ‘Conditions of Service for School Teachers in Guernsey’ (ER1, Pages 26 to 64 refer) provides in section 9, sub section 3 that “each teacher will be entitled to a job description mutually agreed between him and the Headteacher, based upon these professional, managerial and administrative duties agreed by teachers’ representatives and the Education Department”; no such description was provided by the Respondent for the Applicant in the evidence bundle. It is also noted that when the Applicant requested a job description for her new role in the summer term 2016 it was not provided.
- 13.9 Given the absence of a job description the Tribunal has compared the timetable with the Applicant’s description of a Class Teacher’s duties and responsibilities listed in paragraph 3.2 of this judgment. It is apparent that there is a significant difference in the activities being described. It is understandable that a teacher having experienced the relative stability of the Class Teacher role for a number of years, rather than that of the Floating role, might be concerned if they are given no option other than a Floating role.
- 13.10 Mr Hind gave in evidence that he was somewhat taken aback by the Applicant’s strong determination prior to her Maternity Leave to return to her Class Teacher role. Despite this concern Mr Hind chose not to initiate consultation with Mrs Renouf prior to 7 March 2016; the Maternity Leave Policy clearly stated he had prime responsibility to maintain contact with the Applicant during her Maternity Leave.
- 13.11 Given the email exchanges between Mr Hind, Mrs Le Tissier and Mrs Bolton in December 2015/January 2016 it was already understood the Applicant was due to return in April 2016 and that there was a potential issue over role assignments, yet no attempt was made to consult with Mrs Renouf prior to the decision to assign Mrs Lee for the summer term. Perhaps events would have turned out differently if Mr Hind had sought to consult the Applicant earlier in 2016; this was an opportunity missed.
- 13.12 It is significant that the Applicant’s application for Maternity Leave on 19 June 2015 listed her post title as “Year 5 Class Teacher at Vale Primary School” and

was signed by Mr Hind. Further, the Tribunal notes that the Policy document which sets out the rules and entitlements for those applying for either Maternity Leave or a Career Break has some very specific wording. This document explicitly states that those who apply for Maternity Leave have the right to return to their post on the same terms and conditions whereas if the option for a Career Break is taken then there is no absolute right for the teacher to return to the same post or the same school. (ER1 Pages 73 to 82 refer). The Tribunal finds this wording to be persuasive and that it appears to go to the root of allowable variation of contract in these two differing cases. It is supportive of the Applicant's claim.

- 13.13 In addition the evidence is persuasive from both parties that sometime in mid-June 2015, before she left on Maternity Leave, the Applicant agreed with Mr Hind that she would return for the summer term 2016 to teach a class in Year 3. Both parties agree that they shook hands on this agreement. From the evidence given by both parties there was no discussion as to her not being able to return to her class teaching post for the summer term for reasons of teacher continuity or the changing needs of the class. There is also corroborative documentation that this oral agreement had been made, such as Mrs Lee's two term fixed contract (ER1, Page 114 refers), the 2015-2016 Year 3 Class list showing a class shared between Mrs Lee and Mrs Renouf (ER1, Page 110 refers); the staff list (ER1, Page 176 refers), and Mr Hind's email of 18 January 2016 (ER1, Page 153 refers).
- 13.14 The Respondent forcefully argued that it was understood by all teaching staff that flexibility of assignment between Floating roles, PPA roles and Class Teacher roles was the norm; and that it was custom and practice. Both Mr Hind and Mrs Bolton testified that this had been their understanding of the Policy from the time of their original appointments with the Respondent. However, they were unable to show where this express contractual clause exists. The evidence presented by both parties and particularly by Mr Hind, supports the view that parties can mutually agree to a change of assignment and this was normally the case.
- 13.15 To illustrate custom and practice as to changes of assignment the Respondent produced Mrs Wilson, Mrs Scullion and Mrs Van Vliet. All three of these witnesses agreed that teachers must understand that changing circumstances in a particular class, the late return to a post in the academic year and the challenges of reintegration were all issues that a Headteacher might take into account. However, none of these potential issues were raised with the Applicant prior to her commencement of Maternity Leave and the evidence from Mrs Sarre confirms that it was not uncommon for teachers at Vale Primary to return to Class Teacher roles after Maternity Leave, during the academic year.
- 13.16 The Tribunal also noted that none of the three witnesses chose to return to their same posts with exactly the same terms they had prior to their respective Maternity Leave. All three requested different arrangements from the Respondent in respect of their return and appeared to have been willing parties to the contractual changes in their teaching assignments.

- 13.17 It would seem that the usual routine each year was for the Headteacher to assign teachers to classes assuming they were suitable for the role. Apparently the accepted practice was that teachers were assigned to a Class Teacher role year after year but the year group might vary. The evidence also supports that when part-time roles were requested by teachers it would require budgetary approval from the Education Department; the outcome would then be a Floating role, possibly a 'job share', an alternative school placement or whatever else could be arranged.
- 13.18 It was the Respondent's contention that the Headteacher has a very wide authority in assigning his staff to various year groups and into roles such as PPA cover; thus in this particular case it was his personal decision to reassign the Applicant into a Floating role. However as the evidence unfolded this assertion became less credible.
- 13.19 In her evidence Ms Bolton stated that she held 'delegated authority' for the Headteacher's performance management. She informed the Tribunal she had the authority to set the Headteacher's goals/objectives, to agree his performance standards in achieving these goals/objectives and then had the responsibility to monitor his progress. These responsibilities seem to be totally commensurate with the role of a manager in charge of a subordinate. In all but in name Mrs Bolton was the immediate superior of Mr Hinds.
- 13.20 Mrs Bolton also gave evidence that she was directly responsible each year for a number of NQT placements, it was her role to oversee that these placements went well and to report her progress to her superiors. She had a strong vested interest to have Mrs Lee remain at Vale Primary for the summer term. The decision to retain Mrs Lee as Year 3 Class Teacher was taken with Mr Hind prior to any discussions with the Applicant.
- 13.21 Given this formality of reporting lines, coupled with the indecisive manner in which Mr Hinds responded to questioning from the Tribunal, it is difficult not to form the view that Mrs Bolton was either the decision maker, or had significant influence over the decision. In summary it would seem very likely that Mr Hind felt obligated to fall in line with the decision to maintain Mrs Lee in charge of Year 3 for the summer term. It thus follows that the Applicant had seemingly little scope or opportunity to sway Mr Hind and persuade him to think of other solutions.
- 13.22 The Tribunal notes that the tenor of the meeting on 18 March 2016 between the Applicant and Julia Le Tissier was far from positive. There was persuasive evidence from the Applicant that Julia Le Tissier dealt with her concerns in a brusque and condescending manner. Further weight can be given to this by the demeanour of Mrs Le Tissier in giving her evidence; the Tribunal found many of her answers were evasive or non-committal and this reduced her credibility as a witness. It is not surprising that the Applicant rapidly lost confidence that she would receive any meaningful support from the HR Department.
- 13.23 The Tribunal notes that there are no written records of any of the meetings held with the Applicant in March 2016. It is very surprising that such a large

and well-resourced organisation failed to make any record of these meetings. Mrs Le Tissier and Mr Hind knew that the Applicant had very serious concerns as to the nature of her return to work, however no notes were kept. Further, it would have been appropriate for the Respondent to communicate any policy document relating to role flexibility, in writing, to the Applicant but it failed to do so after the critical meeting of 21 March 2016. Finally, the issues of teacher continuity and changing pupil needs were raised with the Applicant very late in the day and the Tribunal gives support to the Applicant's contention that this was an afterthought to retrospectively justify the Department's decision.

- 13.24 The Respondent urged the Tribunal to review in its totality the UK Employment Appeal Tribunal (EAT) decision of 'Assid V The Governing Body of St. Andrew's Catholic Primary'. Both parties were reminded that in referring to such cases, decided in other jurisdictions, they must bear in mind that they are not binding on the Guernsey Employment and Discrimination Tribunal; also that each complaint turns on its own facts.
- 13.25 In summary the EAT concluded that the Headteacher had the right to assign the complainant on her return from Maternity Leave to any of the teaching posts notwithstanding the complainant's preferences. She wished to stay with a reception class but for reasons of teaching continuity the complainant was assigned to another role on her return.
- 13.26 This judgment contained compelling arguments as to right of the Headteacher to assign teachers within a normal range of variability and as they think fit. However, on inspection it would appear that Mrs Assid's contract of employment stated she was employed as a "teacher", whereas this current complaint is distinguished by documents such as that issued on 16 August 2013 which states that Mrs Renouf was appointed to the permanent role as a "Class Teacher". Also the situation in 'Assid V St. Andrew's Catholic Primary' did not result from an 'over recruitment' decision made at the start of the academic year.
- 13.27 In summary the Respondent stated repeatedly in its contractual communications that the Applicant was a Class Teacher. The agreement between Mr Hind and the Applicant in June 2015 was an oral contract between the parties and the Maternity Leave documentation is explicit as to a commitment for the Applicant to retain her specific post on return. The Tribunal understands the need for the Respondent to have a broad remit to assign teachers to achieve best outcomes for the pupils, however, this must be expressed through clear and unambiguous contractual terms.
- 13.28 In these particular circumstances, whereby at the Respondent's own admission it had 'over recruited' in 2015, the burden on the Respondent was to enter into a timely and open consultation with the Applicant; this did not happen. Nor was the consultation that did occur carried out in any formal manner, with recorded notes of meetings. If the Respondent had issued to the Applicant a policy that unambiguously stated that it could assign teaching roles as it thought fit and in the best interests of the pupils, then it is most unlikely that this matter would be before the Tribunal.

- 13.29 It is the decision of the Tribunal that an explicit term of the Applicant's contract of employment was breached in such a manner that she was entitled to claim that she had been constructively dismissed. In addition the wholly inadequate consultation process supports the view that any trust and confidence that the Applicant had formerly placed in her employer had been breached. The Tribunal concludes that there was also a breach of an implicit term of the Applicant's contract of employment entitling her to claim constructive dismissal.
- 13.30 When an individual resigns on the grounds of constructive dismissal there is a responsibility on the complainant to act promptly in communicating their decision. Given the evidence presented during the hearing the Tribunal rejects the Respondent's view that the Applicant acted prematurely and considers that the Applicant acted within a reasonable time frame.
- 13.31 The Applicant claimed a breach of The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. It was alleged that by constructively dismissing her, during her Maternity Leave, the Respondent directly discriminated against her. The rationale being that but for the fact that the Applicant became pregnant and then took Maternity Leave, there would have been no reason for another teacher to be appointed for two terms to provide tuition for the Year 3 Class. The position would not have been available to Mrs Lee.
- 13.32 The Tribunal considered whether it must make a comparison of this situation by postulating a 'Hypothetical Male' and considering how he would have been treated. The Tribunal considers that Section 2(2) of the Ordinance is of assistance as it refers to the "special treatment afforded women in connection with pregnancy and childbirth"; the implication of this terminology is that a hypothetical male might not need to be postulated.
- 13.33 Further guidance comes from the ruling of the UK Employment Appeal Tribunal (EAT) in 1996 'Rees V Apollo Watch Repairs'. The EAT ruled that when considering the dismissal of a pregnant woman the Court should not apply the test of whether the employer would have treated a man differently were he in the same position as the pregnant woman, as only females can become unavailable for work through pregnancy. The EAT ruled that the underlying cause of the treatment was the sex-specific pregnancy and Maternity Leave, without which no maternity cover would have been required.
- 13.34 Whilst this ruling is not binding in the Guernsey jurisdiction it seems to the Tribunal that it should apply the same logic to this complaint and find this as unlawful discrimination. The Tribunal agrees with the Applicant that in being unfairly constructively dismissed she had suffered a detriment that had arisen on the grounds of her sex and this should be construed as direct discrimination within the meaning of the Ordinance.

14.0 Decision

- 14.1 Having reviewed and duly considered all the evidence submitted and the representations of all parties to the hearing, whether specifically recorded in this judgment or not, the Tribunal finds that the Applicant was unfairly constructively dismissed under the provisions of Section 5(2)c of the Employment Protection (Guernsey) Law, 1998, as amended. The unfair dismissal claim is upheld and an award of £21,635.52 is made. This amount being in accordance with Section 22(2)(b) of the Law and is considered by the Tribunal to be just and equitable in the circumstances of the case.

The Tribunal determined there should be no reduction of this award.

- 14.2 The claim of sex discrimination is also upheld, and an award of £10,817.76 is made. This is in accordance with Section 46(3) of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 and is considered by the Tribunal to be just and equitable in the circumstances of the case. This award is separate from any other remedy in accordance with Section 53 of the same Ordinance.

Mr Peter Woodward

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Signature of the Chairman

25 January 2017

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Date