



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE MARTIN
Members Mrs R Bailey
Mr N Shanks

BETWEEN: Mr Per Hedlund Claimant
and
London Borough of Lambeth Respondent

ON: 13-16 November 2017 and 17 November 2017 in chambers

APPEARANCES:

For the Claimant: In person

For the Respondent: Mr Dracass - Counsel

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that the Claimant's claims are dismissed

RESERVED REASONS

1. By a claim presented to the Tribunal on 5 October 2016 the Claimant brought a claim of post-employment detriment due to making a protected disclosure. The Respondent defended the claim in its response dated 12 December 2016.

The hearing

2. The Tribunal heard from the Claimant and from the following witnesses for the Respondent: Mr Gary Nichol (Head Teacher); Ms Sam Witchalls (Assistant Head Teacher) together with several other teachers and staff from the Respondent. Their names are not being set out in order to ensure that the identity of children is not inadvertently revealed. The Tribunal also heard from Mr Brendan Ryan (Head of HR Schools, Wandsworth Borough Council) and Ms Cathy Cobbald (Head of HR Schools, London Borough of Lambeth).
3. The Tribunal had before it two full lever arch files numbered to 1,236 (but containing many more pages than this), a cast list and an agreed chronology.
4. At the outset of the hearing the Respondent withdrew its application to strike out the Claimant's claim because he had not disclosed documents or provided a witness statement. By the time of the hearing the Claimant had given limited documents and a short witness statement (see below).
5. The Claimant applied to exclude evidence. The bundle was approximately 1,800 pages and he said most pages were irrelevant. He did not pursue this application when it was explained that the Tribunal would only consider those documents it was taken to. The Claimant also said there were confidential documents in the bundle which should be excluded. He was unable to point to any particular document and the Tribunal gave time in an adjournment for him to consider this. This matter was not pursued.
6. There had been an earlier preliminary hearing to consider whether the Respondent was bound by them agreeing in a COT3 agreement that the disclosure of 29 January 2016 was a protected disclosure. The judgment of Employment Judge Baron was that they were not so bound and that this was a matter to be decided at the full merits hearing.

The issues

7. The issues were agreed by the parties at a preliminary hearing on 6 March 2017 as follows:

Protected disclosure (s43A Employment Rights Act 1996)

- 7.1 Did the Claimant's letter to the Respondent's Corporate Complaints Unit dated 29 January 2016 amount to a protected disclosure? In particular, did the letter:
 - a. disclose information;
 - b. which the Claimant reasonably believed tended to show a relevant failure under s43b(1) (a), (b), (d) and/or (f);
 - c. and which the Claimant reasonably believed was in the public interest?

Detriment (s47B ERA 1996)

- 7.2 Was the Claimant subjected to any of the following alleged detriments by the Respondent?
- a. The Head Teacher at Lark Hall Primary School (Gary Nichol) failed to respond (Claimant's Further and Better Particulars paragraph 3);
 - b. The Assistant Head Teacher at Lark Hall Primary School (Sam Witchalls) failed to respond (Claimant's Further and Better Particulars paragraph 3);
 - c. The Respondent failed to provide a reference until after the Claimant's job offer had been withdrawn (Claimant's Further and Better Particulars paragraph 4);
 - d. The reference provided by the Respondent was 'not fit for purpose' and was not what had been agreed in the earlier COT3 compromise agreement (Claimant's Further and Better Particulars paragraph 5).
- 7.3 In relation to a reference request on October 21016 from 'Prospero' teaching agency;
- a. The Respondent provided the 'same sub-standard reference' (Claimant's Further and Better Particulars paragraph 7)
- 7.4 If so, was the Claimant subjected to the detriment(s) on the ground that he had made the protected disclosure relied on at paragraph 6.1?

Facts and conclusions

8. The Tribunal has found the following facts and come to the following conclusions on the balance of probabilities having heard the evidence and considered the documents it was taken to. Both parties gave written and oral submissions which were also considered. The findings of fact are limited to those matters which are relevant to the issues and necessary to explain the decision reached. The parties agreed a chronology, and this is appended to this judgment to give an overview and these reasons are to be read in conjunction with it.
9. This matter has a complicated history in that it arises out of the ACAS conciliated settlement of the Claimant's earlier claim of unfair dismissal for having made a protected disclosure. The background to that claim is that the Claimant was dismissed for safeguarding issues and began tribunal proceedings including an application for interim relief. The case was settled by way of a COT3 agreement. The Respondent to those proceedings was, as here, the London Borough of Lambeth. The COT3 provided that the Claimant would be reinstated whereupon he would immediately resign, a financial settlement and "*The Respondent agrees to provide its standard reference, in relation to the Claimant's employment with the School, to any prospective employer,*

upon request.”

10. This case arises out of the provision of references by the Respondent (written by Clare Cobbald, Head of Schools HR at the London Borough of Lambeth) to two teacher's agencies (Horizon and Phoenix) which the Claimant had signed up with to find alternative work after the termination of his employment. The Claimant's case is that he was unable to get employment because of the content of the reference, the length of time it took to do the reference and that the reference was a detriment because he had made a protected disclosure on 29 January 2016. The Claimant later conceded that he was able to get supply work but not permanent work.
11. The Claimant's witness statement was very short comprising 15 short paragraphs. It did not address the key issues despite them being set out at the case management hearing, save to say that a disclosure was made but giving no information as to why for example, he had a reasonable belief in the allegations, why it was in the public interest and crucially it did not address any causation between the reference given and him not gaining permanent employment.
12. The Claimant provided very limited documentary evidence. What was notable by its absence was any documentary evidence to substantiate his contention that the reason he did not find employment was because of the references given by the Respondent. In his oral evidence to the Tribunal he conceded that he assumed that the reason for not getting employment was because of the references and he did not have anything to back this up.
13. Similarly, there was no documentary evidence to support the matters in his disclosure. The Claimant said he had written things in a notebook which he shredded after the COT3 agreement was reached. This is discussed further below.
14. It is necessary to give some background to the Claimant's employment to put this claim into context. The Claimant was employed as a Special Educational Needs ("SEN") teacher at the Centre for Autism ("the Centre") at Lark Hill Primary School ("the School") from 1 September 2015. He was employed on the Upper Pay Range. The children attending the unit can be very challenging and display difficult behaviours. In addition to being autistic many have other learning issues such as dyslexia. A class typically has eight pupils with one teacher and two teaching assistants. There are policies on how to deal with the children in certain situations, e.g. where they need to be moved for their safety or for the safety of others. The unit uses Team Teach which gives guidance on de-escalation and physical intervention. The evidence from the Respondent which the Tribunal accepts is that the methods utilised will very much depend on the individual child and the particular circumstances using a dynamic risk assessment.
15. There are various risk assessments done for individual children which will vary according to the child's specific needs and requirements. Many of the

- staff have worked with the children for many years and know them well. This means that they know what strategies work or do not work for a particular child. The Tribunal accepts that what may appear to be concerning in a mainstream school may be appropriate and acceptable in the particular environment of the Centre.
16. There were issues with the Claimant's performance from a very early stage. His line manager was Ms Witchalls the Deputy Head who in turn was managed by the Head Teacher Mr Nichol. As part of normal practice Ms Witchalls observed the Claimant in his classroom and gave feedback afterwards. She was concerned about the Claimant's performance very early on, but initially thought it was because he was a new member of staff getting to know the environment and the children. However, her concerns continued, and she compiled a running log of concerns about the Claimant.
 17. There was a referral about the Claimant made on 26 November 2015 following a complaint from a parent. No formal action was taken but additional guidance was given to the Claimant. The Claimant chose not to attend work while this complaint was being investigated.
 18. There were documents the Tribunal were taken to setting out the monitoring feedback given. Ms Witchalls set out the feedback from an observation in writing on 13 November 2015 and in this put in place an action plan to address the issues and give support to the Claimant. This did not go down well with the Claimant who was dismissive of Ms Witchalls guidance and refused to cooperate.
 19. On 6 January 2016 Ms Witchalls sent a letter to the Claimant following up on her letter of 16 November 2015 saying that his performance, especially in relation to lesson planning, was still causing concern and setting out an action plan. She concluded that: *"I am concerned that the educational needs of the children....are not being met and this needs to be addressed with immediate effect"*. The Claimant replied on 15 January 2016 he found the letter *"to be quite rude to be honest"*. He was very critical in a forthright manner. A couple of days later the Claimant wrote an email to Mr Nichol:

"I spoke to the union after our meeting today (spoke to them last week as well) and under the circumstances they suggested a possible way out, namely a compromise agreement including a leaving date of the end of the easter holidays, agreed reference as well as garden leave. (sic)

I am sure you can see the mutual benefits of this. Let me know what your decision is".
 20. The reason given by the Claimant for this suggestion in his oral evidence was that he did not like working at the school, it was not a nice place to work, so why would he not want to leave? Mr Nichol did not respond to the Claimant's suggestion but did say on 19 January 2016 that he wanted to have a further meeting with the Claimant to set out an Action Plan with a time-scaled programme. The meeting was set for 26 January 2016. The Claimant

responded the same day in robust terms. He referred to “*overbearing and arbitrary monitoring*” that “*your persistence to claim that I am underperforming is ill-conceived at best or malicious at worst*”. He went on to say he had concerns about how the Centre was run and ended the letter: “*I have offered you a fair way out in my email yesterday that will only cost you a few thousand pounds. I would strongly suggest that you reconsider your position as, at the end of the day, you will be liable to pay out tens of thousands more if you persist with your unwarranted course of conduct, in addition to creating a negative working environment for all staff*”.

21. The Claimant said he had spoken to the School about his concerns about how the Centre was run before. The Respondent said no such conversations had taken place. The Claimant produced a document dated 16 December in the bundle. The Respondent’s evidence is that this was not received by it. On balance considering that it was not later referred to by the Claimant in his disclosure (see below) and the Tribunal’s view of his credibility (see below) the Tribunal find that the document in the bundle was either not sent, or was created later for the purposes of this litigation. The Tribunal find that this document was not received by the Respondent.
22. It was put to the Claimant that he was making threats to raise complaints as he was looking for payoff. The Claimant accepted he was engineering this as he was asking to be paid until the half term. Mr Nichol responded on 20 January 2016 telling him of the process if the Claimant wanted to make a complaint and confirming that the meeting on 26 January 2016 would go ahead.
23. That meeting did not take place as the Claimant sent an email to Mr Nichol on the day it was due to be held saying he would not be attending as he was unwell and would be making a complaint. He attached the complaint and asked that it be forwarded to the Chair of Governors. The focus of the complaint was about the way Mr Nichol and Ms Witchalls had dealt with performance issues. On 27 January 2016 he sent a further email the tone of which was abrasive. In this email he said that he refused to go along with the action plan and made criticisms of colleagues.
24. It was put to the Claimant in cross examinations that he was hoping to put some pressure on Mr Nichol to meet his demands and that the complaint was intertwined with his wish for payment. The Claimant’s response was “*I wanted to ensure I could go to another job*”.
25. Two days later on 29 January 2016 the Claimant wrote an email which he says is a protected disclosure (“the disclosure”). This document sets out instances which the Claimant says are safeguarding issues. The document is vague in terms of dates and who was involved. It was put to the Claimant that the rationale for raising the disclosure at the time he did was nothing more than to put pressure on the Respondent to further his position in relation to a financial settlement. The Claimant said he was not feeling well and did not want to stay there which was why he made the disclosure.

26. Both the grievance and the disclosure were investigated, and the Tribunal is satisfied that those investigations were conducted in a reasonable manner. The grievance was not upheld and the allegations about safeguarding were rejected taking into account the context of the type of educational establishment it was. The personnel who conducted the investigations did not know of the disclosure. Mr Nichol whilst knowing a complaint had been made, did not know the detail or source of it. They said they did not know and the Claimant brought no evidence to support his contention that they did. The Tribunal believed them when they said they did not know about the disclosure both because of how the Tribunal viewed their credibility (see below) but also because there were performance and safeguarding concerns which explain all their actions.
27. The Claimant went on sick leave on 24 February 2016 and did not return to work.
28. On 6 March 2016 the Claimant sent a further email to Mr Nichol. In this email he said: *"if you are interested in sorting the issues before us outside of legal action made sure to call me on Monday between 4.30 and 5.00 and I will let you know what you need to do"*. Mr Nichol did not call the Claimant.
29. On 16 March 2016 the Claimant was suspended following a complaint against him involving safeguarding issues from a colleague who was unaware of the disclosure. This was confirmed in a letter the same day which set out the allegations made against him. The Claimant said in evidence that the reason he sent his letter in response was because he was *"getting annoyed"*.
30. The Claimant sent an email on 16 March 2016 which included the following:
- "To resolve the situation, I suggest the following:*
- *That you agree in writing to give a GOOD reference whenever requested.*
 - *In the reference you will exclude all sick days that were caused by the school*
 - *That the school will pay a sum of £5,000 tax free for loss of office to compensate for my resignation*
- In return I will accept to resign with effect from 11th April and take no legal action against the school"*.
31. On 18 April, after the Easter holidays, the Claimant wrote to Mr Nichol again asking if he was willing to settle matters. He wrote to the Chair of Governors copying Mr Nichol on 23 April 2016 again referring to settlement and that he had not heard from Mr Nichol since his last email.
32. The Claimant was summarily dismissed on 18 July 2016 for issues which included safeguarding concerns. The Claimant did not attend the disciplinary hearing and it went ahead in his absence. The disciplinary panel went through the allegations and prepared a detailed letter comprising eleven pages setting out their findings and summarily dismissing the Claimant. He did not appeal.
33. The Claimant began Employment Tribunal proceedings claiming unfair

dismissal for making a protected disclosure on 26 July 2016 as set out above which were concluded with the COT3 agreement referred to.

34. There was no evidence from the Claimant to substantiate his whistleblowing allegations. The Claimant said that after the COT3 agreement 31 August 2016 he shredded the evidence he had. In cross examination he said that the evidence was a notebook in which he had noted matters which were of concern to him. When asked why he shredded it then, he said that this was because the dismissal letter told him to. The dismissal letter said "*You must return any property belonging to the school, including intellectual property/confidential documents. Any confidential or sensitive data or information which you have in your possession should be returned to the School or destroyed immediately*". The Claimant did not give the Tribunal a satisfactory explanation as to why he had not shredded the papers after dismissal if this was the case, and why he waited until he had concluded the COT3 settlement before shredding the notebook especially as the dismissal was nullified by the COT3 agreement. The Tribunal finds that if the allegations in the disclosure were correct and the Claimant's motivation was to protect vulnerable children that he would not have disposed of the notebook or would have given it to the Respondent or other authority at the time of, or after making his disclosure. His explanation that he was waiting for the Respondent to contact him before providing it is unconvincing.
35. There were documents in the bundle relating to the way the negotiations between the Claimant and the Respondent were conducted before the COT3 being agreed. The Claimant initially objected to them being referred to but then said he did not have an issue with them being before the Tribunal. These documents reveal a bullish attitude by the Claimant and reveal that he suggested he would go to the press. In one document he refers to having 'a ton of evidence' to substantiate his allegations about the School. No evidence was in the bundle and in his oral evidence he said that he was referring to his notebook which varied in his evidence from having 42 or 47 items.
36. The issue with the references as put by the Claimant is that they were not given by the School but by the Respondent, that the content of the references was so poor he could not get a permanent job and they were not given in a timely fashion. Mr Nichol's evidence was that he told the Respondent that he would find it difficult to give the Claimant a positive reference or even a neutral one. Therefore, had he given a reference on behalf of the Claimant it would not have been favourable.
37. The COT3 agreement provided for the Respondent to supply the reference and the Respondent therefore instructed the School to send all reference requests to it. The reference it gave said:

"I can confirm that Mr Hedlund was employed as a SEN teacher at Larkhill School from 01-Sept-2015 until 31 August 2016.

There are no safeguarding issues".

- The Tribunal is surprised, given the reasons for dismissal, that the reference said there were no safeguarding issues especially where this was not part of the COT3 agreement.
38. The Claimant complains that the wording of the reference given by the Respondent was less favourable than the wording of a reference provided by Mr Nichol on 24 February 2016 (which the Tribunal notes was after the disclosure was made). The Respondent's position is that the references are very similar, and the main omission was the detail of the Claimant's job which any future employer would have known in any event, as the role is generic within the teaching profession. It pointed out that the addition in the reference from Lambeth that there were no safeguarding issues, was a positive for the Claimant given the reason for his dismissal.
39. The Tribunal finds that the COT3 agreement is clear and that the Claimant voluntarily signed it. There is a distinction in the agreement between the Respondent and the School. The reference says that the Respondent will provide the reference on standard terms which is what it did. The Claimant knew he was able to agree wording for the reference as he had done this in previous litigation against a previous school but chose not to negotiate this. It is worth noting as well, that the final terms of the COT3 agreement were negotiated by the Respondent without any reference to Mr Nichol during the School summer holidays. Mr Nichol was not involved in writing any reference and if he had it was likely to have been less favourable than the reference given. The Tribunal accepts the Respondent's evidence that the beginning of the academic year is a very busy time and that reference requests received at that time would not have priority.
40. Although the Tribunal accepts the Claimant's view that it does not take long to either write a reference or forward a request to the Respondent, the Tribunal also accepts that it can take time when very busy to get around to doing it. In any event, the Tribunal does not find the time taken to be unreasonable and notes there was no time provision in the COT3 agreement. The appended chronology at items 38 – 49 set out the timeline in relation to the giving of the references.
41. The uncontested evidence was that in the space of four years the Claimant either threatened legal proceedings, or took legal proceedings against four separate schools including the Respondent. The London Borough of Wandsworth was the Claimant's previous employer and subject to Tribunal proceedings on the termination of his employment.
42. The Tribunal heard from Mr Ryan the Head of HR Schools for the London Borough of Wandsworth. During his evidence he referred to having been threatened by the Claimant in earlier litigation for defamation and libel and that the Claimant asked for his and his colleagues personal address. He also mentioned that the Sunday before this hearing began, the Claimant sent an email to his line manager threatening libel proceedings. The Tribunal asked for a copy of this email to be given and it was provided on the last day of

- evidence. The Tribunal offered the Claimant the opportunity to give evidence about this email, but he declined the offer. The Tribunal repeated the offer after an adjournment when the submissions were read but again the Claimant declined. This email was headed "*Subject: Brendan Ryan*" and went on to say that the witness statement provided to Lambeth by Mr Ryan was factually incorrect, a breach of data protection, the sharing of information of a confidential complaint and made references to allegations that are covered under section 13 of the Education Act 2011 as "*as such I will be notifying the police as soon as I have the opportunity*".
43. S13 Education Act 2011 inserts new sections after s141e into the Act. s141f relates to "*Restrictions on reporting alleged offences by teachers*". S141g sets out the sanctions which include "*A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale*". This email was therefore threatening Mr Ryan (albeit not directly) with a criminal offence in relation to the evidence Mr Ryan was to give this Tribunal.
 44. Having found the factual matrix set out above the Tribunal has come to the following conclusions on the balance of probabilities. Initially the Tribunal considered matters on the basis that the Claimant's disclosure was a protected disclosure thereby taking his case at its highest. The Tribunal's initial focus was on whether the Claimant's claim that the references given (or not given as the case may be) were the reason for him not being found permanent work, and whether the references were given in accordance with the terms of the COT3 agreement and whether the disclosure of 29 January 2016 materially influenced the Respondent's handling of the reference. If the Tribunal finds that there was a link between the disclosure and the reference then it would consider in detail whether the disclosure was in law a protected disclosure.
 45. As set out above, the Claimant did not give any documentary evidence to support his assertion that the reason he could not obtain permanent employment was because of the reference provided by the Respondent. As already said, at the least there could have been something from the agencies to corroborate the Claimant's assertions. Given his evidence that he assumed it was the reference which was the problem, the Tribunal infer that he was not told by the agencies that this is the reason they could not find him permanent employment. As submitted by the Respondent, the Claimant was able to find temporary supply work which would be surprising if the reference was as deficient as he alleges.
 46. The Claimant has the burden of proof and has failed to show that the reason he was not appointed to a permanent position was the reference, on this basis alone his claim fails.
 47. Had the Claimant been able to show that the references were the reason for him not obtaining permanent work, the Tribunal considered whether the references were materially influenced by the disclosure and whether they were given in accordance with the COT3 agreement.

48. The Tribunal find that the COT3 is a valid agreement which is binding on both parties. The parties are the London Borough of Lambeth, and the Tribunal is satisfied that there is a separation of the school from the London Borough of Lambeth in the agreement. The Tribunal finds that the obligation was on the Respondent (Lambeth) to give the reference and there was no wording agreed. What was agreed was a standard reference. No time scales were provided for in the COT3. As set out above the Tribunal finds that the references were dealt with in a reasonable time and accept the Respondent's evidence that it was not a priority especially at beginning of academic year which is very busy.
49. Even if the reference was outside the terms of the COT3, the tribunal does not consider that the Respondent was materially influenced by the disclosure. What was upper most in their minds was the complaint made against the Claimant and the subsequent disciplinary proceedings. They were concerned about the safeguarding issues raised and also the performance issues which were ongoing before the disclosure as demonstrated by the incident logs, feedback notes and emails set out above and in the chronology. The Claimant refused to cooperate.
50. Even if the Claimant had shown the references were the reason for him not obtaining permanent employment, the Tribunal finds that the reason for the giving of the reference in the form that they took was because of the constraints of the COT3 agreement. The Tribunal accepts the evidence that the disclosure did not materially influence the reference process.
51. If the Tribunal had found otherwise and found that the disclosure did materially influence the reference process, the Tribunal went on to briefly consider whether the disclosure was a protected disclosure in law.
52. The Claimant must prove as a first step that there has been a disclosure of information. The Tribunal will have to find that the Claimant actually believed¹ that that information tended to show one or more of the matters set out in paragraphs (a) (b) (d) and/or (f), and also that it was reasonable for that belief to be held. This is what the Tribunal focussed on.
53. Mr Dracass referred us to the following passage from Babula v. Waltham Forest College [2007] ICR 1026:

81 An employment tribunal hearing a claim for automatic unfair dismissal has to make three key findings. The first is whether or not the employee believes that the information he is disclosing meets the criteria set out in one or more of the subsections in ERA 1996, s.43B(1)(a)-(f). The second is to decide, objectively, whether or not that belief is reasonable. The third is to decide whether or not the disclosure is made in good faith.

82 In this context, in my judgment, the word 'belief' in s.43B(1) is plainly subjective. It is the particular belief held by the particular worker. Equally, however, the 'belief' must be Accept on the face of it raising safeguarding issues and giving some limited

¹ The Tribunal's emphasis

information.

54. When considering the reasonableness of the Claimant's belief the Tribunal has considered that the Claimant was an experienced teacher on a senior grade. Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4 held that what is objectively reasonable needs to be assessed by reference to the personal circumstances of the particular worker, so that those with special skills or professional knowledge of the matters being disclosed are not to be judged by the same standards as lay observers, meaning that the bar of what is reasonable in such circumstances can be raised. The Tribunal considered that the Claimant as an experienced teacher had special skills and should have understood the context of his colleagues actions and at the very least made enquiries to see if for example a risk assessment had been carried out. The Claimant did not discuss these issues with his line manager or the Head Teacher – the Tribunal does not accept his evidence that he did. If he had really believed what he put in his disclosure, the Claimant would first have talked to his line manager, second would have volunteered the information he said he had and third, would not have shredded the notebook which he said he had which contained the evidence as soon as he had agreed the COT3. If his genuine concern had been the safeguarding of the children, he would not have done this. The Tribunal heard from several of his colleagues and had witness statements from other. All other colleagues consistently explained the context and emphasised the needs of the individual child. The Tribunal find that if other staff had concerns, they would have raised it in the same way as the concern about the Claimant was raised which led to the disciplinary proceedings.
55. The Tribunal has concerns about the timing of the disclosure coming after the performance issues, a parental complaint, his grievance dated 26 January, and communications demanding payment. Given the context of the Claimant's actions especially in repeatedly, from an early stage, asking for money and making threats as set out above, the Tribunal finds that the disclosure was made to further his personal gain. The Tribunal of course considers a genuine disclosure of safeguarding issues to be in the public interest if that is the reason for them being made. The Tribunal does not find this to be the reason in this case.
56. In submissions, the Claimant referred to an employment tribunal decision where the London Borough of Lambeth was the Respondent and set out selective quotes. He did not bring to the Tribunal a full copy of this judgment and the Tribunal was unable to check the veracity of the quotes or to consider them in any context. In any event, the Tribunal is not bound by this decision.

Credibility

57. The Tribunal has found the Respondent witnesses without exception to be credible and thoughtful in their responses. They gave reasoned answers and were generally consistent. Any inconsistencies were minor and to be expected when the events are nearly two years old.

58. This is in contrast to the Claimant who the Tribunal did not find to be credible. The Claimant brought his case on 'assumptions' without bringing any evidence to substantiate them. He exaggerated and inflated the remedy sought - he agreed in cross examination that it was wholly unrealistic. His answers to questions were disingenuous for example, about his earnings since the termination of his employment, first saying that he had to live off his savings as he did not have a job, but later having to admit that he had earned over £30,000 from supply teaching, his explanation that this was because he was self-employed and not employed on a permanent contract is not accepted by the Tribunal. During his evidence he denied lying but admitted not being "*transparent*".
59. The evidence that the Tribunal heard about litigation with other schools, the demands for monetary settlement and the inappropriate email the Tribunal were shown which was sent about Mr Ryan's witness statement shows a pattern of behaviour.
60. In all the circumstances the Claimant's claim is dismissed.

Employment Judge Martin
Date: 20 November 2017

APPENDIX 1

1	1/9/15	Claimant's employment as a teacher at Lark Hall School's Autism Unit commences.
2	October 2015	Sam Witchalls (Claimant's line manager) begins to keep a log of her concerns about the Claimant (page 166-5-9).
3	13/11/15	Sam Witchalls raises concerns about the Claimant's work in a meeting with him. She follows this up with a note (179).
4	27/11/15	Safeguarding concern regarding Claimant submitted by Lark Hall School to Lambeth Council. Claimant chooses not to attend work during investigation of this.
5	Early December 2015	Safeguarding investigation concluded and Claimant returns to work.
6	6/1/16	Letter from Sam Witchalls to Claimant outlining her concerns about his work.
7	18/1/16	Meeting with Sam Witchalls, Gary Nichol ('GN') (Head Teacher) and Claimant to discuss concerns about Claimant's work.
8	19/1/16	Claimant sends an email to GN with complaints and stating he was suffering from work related stress (page 218).
9	20/1/16	Letter from GN to Claimant confirming that they would proceed with an 'action plan' (page 228). On same date Claimant requested copies of Complaints, Whistleblowing and Grievance Policies (page 231).
10	22/1/16	Claimant meets Sam Witchalls including a discussion of amended duties.
11	26/1/16	Claimant told GN that he would not attend a meeting that had been scheduled for that date (237).
12	26/1/16	Commencement of a 'Quality of Teaching Action Plan' for the Claimant.
13	26/1/16	Claimant submits complaint to the Chair of Governors. This complaint investigated by the Chair of Governors Cathy Hawkins under the Grievance Procedure.
14	27/1/16	Claimant meets GN and Sam Witchalls to discuss action plan and Claimant's stress levels. Claimant later emails to say that he refuses to go along with the action plan.

15	28/1/16	An offer of an additional half day per week preparation time confirmed, in light of his email of 19/1/16 (page 261).
16	29/1/16	Letter GN to Claimant confirming Action Plan will commence on 1 February (280-281).
17	31/1/16	Claimant submits a complaint with date 29 January 2016 to Lambeth Council (342 and 277-278). This complaint was investigated by the vice chair of governors Yvonne Steel with support from a consultant Judith Wilson. Outcome of Yvonne Steel's investigation was that complaint was unsubstantiated (15 March 2016 page 466-468). Lambeth Council School Improvement Adviser noted that Lambeth were able to 'fully reassure' Ofsted in relation to the Complaint (29 June 2016 – page 709).
18	9/2/16	Claimant emails his objections to the Action Plan (page 355 to 366).
19	17/2/16	Cathy Hawkins emails the Claimant with the outcome of the grievance investigation – the outcome was grievance not upheld (374-376).
20	18/2/16	Claimant sent subject access request and Freedom of Information request to the School. Beginning of extensive correspondence regarding provision of information by the school.
21	21/2/16	Claimant notifies Chair of Governors that he has 'used the Council's whistleblowing policy to report serious failings'.
22	22/2/16	Teacher sends a letter to GN outlining concerns about the Claimant.
23	22/2/16	GN sends a reference regarding Claimant to agency (413).
24	24/2/16	Meeting between Claimant, Sam Witchalls and GN to discuss concerns raised. Later that day Claimant submits sick note and doesn't return to school again.
25	25/2/16	GN submits a safeguarding referral to Lambeth Council concerning the Claimant (427-1-8). Referral considered in meeting of 8/3/16 (page 452-454) and on 22/6/17 (page 697-702). Lambeth decided not to refer matter to police (page 701).
26	Approx late February 2016	GN receives written information from other schools relating to the Claimant (428-340, 431-2, 433), following his requests for information.
27	16/3/16	Letter to claimant informing him that he is suspended pending disciplinary investigation (470-472).
28	19/3/16	Claimant emails GN with various complaint and alleges that suspension was malicious.

29	24/3/16	Letter to Claimant advising him that scope of disciplinary proceedings was being widened.
30	2/4/16	Claimant wrote to GN alleging harassment and stating that he was copying the letter to the police (page 523).
31	18/7/16	Disciplinary hearing. Claimant did not attend.
32	25/7/16	Letter to claimant notifying him that outcome of disciplinary hearing was dismissal (772-782).
33	26/7/16	Claimant issues an Employment Tribunal Application including an application for interim relief.
34	August 2016	Settlement negotiations between Claimant and Solicitor for Respondent.
35	31/8/16	COT3 agreement finalised (135-137). Respondent acknowledges in the COT3 that the Claimant made a protected disclosure (later brought into issue in these proceedings).
36	2/9/16	Letter to claimant reinstating him in accordance with COT3 terms (page 905).
37	2/9/16	Claimant resigns in accordance with COT3 terms (page 906).
38	9/9/16	Email from Horizon Teaching Agency to GN requesting reference (908).
39	14/9/16	Claimant contacts solicitor for Lambeth regarding his reference request (013).
40	15/9/16	Claire Cobbold of Lambeth HR emails school asking for reference request to be forwarded to Lambeth (page 915).
41	18/9/16	Claimant emails solicitor for Respondent alleging breach of COT3 agreement (page 918).
42	19/9/16	Claire Cobbold emails reminder to school asking for reference request to be forwarded (page 916).
43	20/9/16	Claire Cobbold further email to the school asking for reference request to be forwarded (page 919).
44	21/9/16	School forwards request for reference to Claire Cobbold (page 920).
45	22/9/16	Claire Cobbold sends reference to incorrect email address (930).
46	23/9/16	Claire Cobbold re-sends reference (931).
47	29/9/16	Prosper Teaching agency send reference request to Lambeth HR (933).
48	3/10/16	Prosper Teaching agency send reference request to Claire Cobbold (932).
49	4/10/16	Claire Cobbold sends reference to Prosper Teaching Agency (940 and 943).