EMPLOYMENT TRIBUNALS

Claimant: **Benjamin Lane**

Respondent: **Weymouth College**

Heard at: **Southampton Employment Tribunal** **On: Monday, 8th January to Thursday, 18th January 2018**

Before: **Employment Judge Mr. M. Salter**

Members: **Mr. J. Evans.**
Mr. D. A. Stewart.

Representation:
Claimant: In person
Respondent: Mr. T. Shepperd of counsel.

JUDGMENT

It is the unanimous judgment of the tribunal that:

a) The Claimant's claim that he was unfairly dismissed within the meaning of s98 of the Employment Rights Act 1996 is well-founded and accordingly succeeds.

b) the claimant was subjected to detriments on grounds of his protected disclosures: namely
   i) Mr Fallows had disclosed the information the Claimant told him and consequently a clique was developing against him with the Senior Leadership team, and he felt isolated and ostracised;
   ii) Not being allowed to appeal the first grievance outcome;
   iii) Being suspended.

   All other detriment claims are unsuccessful and are dismissed.

The parties having agreed terms between themselves did not require the tribunal to make any decision on remedy or s12 Employment Tribunals Act 1996 Financial Penalties.

REASONS

References in square brackets below are unless the context suggests otherwise to the page of the bundle. Those page numbers followed by a with a § refer to a paragraph on that page. References that follow a case reference, or a witness' initials, refer to the paragraph number of that authority or witness statement. References in round brackets are to the paragraph of these reasons or provide definitions.

Introduction

1. These are the reasons of the tribunal given orally at the final hearing on Thursday, 18th January 2018. In accordance with Rule 62(3) of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ("the 2013 Regulations") written reasons will not be provided unless they are asked for by any party at the hearing or by a written request presented within 14 days of the sending of the written record of the decision. If no such request is made then the tribunal will only provide written reasons if requested to do so by the Employment Appeal Tribunal or a court.

2. These reasons have been prepared at the request of the Claimant.

Background

The Claimant's case as formulated in his ET1

3. The Claimant's complaint, as formulated in his Form ET1, presented to the tribunal on 28th March 2017 [2] is, in short, as an employee he was subjected to detriments on the grounds of him having made protected disclosures (commonly known as "whistleblowing") and that his whistleblowing was the reason or principal reason for his dismissal. He claims that his dismissal was therefore automatically unfair, or if not, was unfair within the meaning of s98 of the Employment Rights Act 1996 ("the 1996 Act").

The Respondent's Response

4. In its Form ET3, with Grounds of Resistance dated 27th April 2017, the Respondent denied the Claimant had suffered detriment on grounds of the disclosure or that this was the reason for his dismissal which, it said, was down to breakdown in the relationship between it (and its Senior Leadership Team) and the Claimant. The dismissal was, they say, fair.

Case Management to date

5. The matter came before Employment Judge Mulvaney on 22nd June 2017 for a Preliminary Hearing [44] during which various case management directions were given, including the production of a list of issues.

6. A list of issues was in the bundle, but subsequent to its inclusion in that file it had been refined further. We were provided with a copy of the final (and agreed) list of issues these were inserted into the bundle on [50a and 50b] but for completeness sake we include the list here:

Jurisdiction

1. Has the claim in relation to detrimental treatment in relation to the detriments listed at paragraph 7 (a) to (h) below been submitted out of time?

2. If so, was it reasonably practicable for the Claimant to have submitted the claim in time? If not, what further period was it reasonable for the claim to have been presented?

Protected disclosures

3. Did the Claimant make a protected disclosure(s) within the meaning of sections 43A-C and G of the ERA? In particular did the Claimant make the following disclosures of information upon which he relies, as confirmed in the Summary of Disclosures [page 51] within the meaning of section 43B(1) of the Employment Rights Act 1996 ("the ERA")?

   a. On 22 April 2016, an oral disclosure to David Fallows, Chairperson of the Respondent's governing body raising his concerns:
      (i) that Mr Evans had too laidback an attitude towards safeguarding; and
      (ii) about Mr Evans' stance towards the consumption of alcohol by staff during working hours.

   b. On 27 April 2016, a written disclosure to the Governing Body's solicitor saying,
      (i) Mr Evans was responsible for making Mr Gilbert feel as if he did nothing wrong in 2013; and
      (ii) the Respondent was wrong for trying to re-employ Mr Gilbert on two occasions in 2014.

   c. On 17 May 2016, a written disclosure in the 'Evidence Pack' provided to the Investigation Panel:
      (i) that Mr Evans had too laidback an attitude towards safeguarding;

(ii) about Mr Evans' stance towards the consumption of alcohol by staff during working hours;
(iii) Mr Evans was responsible for making Mr Gilbert feel as if he did nothing wrong in 2013;
(iv) the Respondent was wrong for trying to re-employ Mr Gilbert on two occasions in 2014;
(v) The Claimant's position was being undermined eg he was not invited to key meetings.

4. If so, did the Claimant reasonably believe that the information he disclosed tended to show that a person had failed, was failing, or was likely to fail to comply with a legal obligation to which he was subject within the meaning of section 43B(1)(a) and/or 43B(1)(b) and /or 43B(1)(d) of the ERA?

5. If so, did the Claimant reasonably believe that the disclosure(s) of information was in the public interest within the meaning of section 43B(1) of the ERA?

6. In relation to the disclosure at paragraph 3(b) above, did the Claimant disclose that information to the Governing Body's solicitor in accordance with a procedure authorised by the Respondent within the meaning of section 43C(2) or the ERA? Alternatively, in relation to that disclosure: (i) did the Claimant believe the information disclosed was substantially true; (ii) did he make the disclosure for the purpose of personal gain; (iii) had he already disclosed substantially the same information to his employer; and (iv) was it reasonable for the Claimant to make the disclosure in all the circumstances, within the meaning of 43G?

<u>Detrimental Treatment</u>

7. Was the Claimant subjected to the following detriments?
   a. Mr Fallows had disclosed the information the Claimant told him and consequently a clique was developing against him with the Senior Leadership team, and he felt isolated and ostracised;
   b. Phil Templeton, Director IT was going through his emails;
   c. Jenny Stiling, Vice Chair, was the one that was telling people that he raised these allegations;
   d. His position was being undermined e.g. he was not invited to key meetings;
   e. Not being allowed to appeal the first grievance outcome;
   f. Not being allowed to appeal the whole of the second grievance outcome;
   g. Being suspended;
   h. Having a committee convened to deal with his dismissal

(paragraph 44 of the Particulars of Claim).

8. If so, were those detriments done on the grounds that the Claimant had made a protected disclosure?

What was the reason for the dismissal?

9. Can the Respondent establish a potentially fair reason for dismissal? The Respondent relies upon some other substantial reason/misconduct (as detailed at paragraph 41 of the Grounds of Resistance) within the meaning of section 98(2)(b) of the ERA.

10. If not, was the reason or principal reason for the Claimant's dismissal that he made one or more protected disclosures, rendering the dismissal automatically unfair within the meaning of section 103A of the ERA?

Was the dismissal reasonable in all the circumstances?

11. If the reason for dismissal was misconduct and/or some other substantial reason, was the dismissal reasonable in all the circumstances within the meaning of section 98(4) of the ERA?

Remedy

12. If any of the above claims are made out, to what compensation is the Claimant entitled? In particular:

    a. What loss of earnings can the Claimant show that he has suffered?
    b. What compensation, if any, should the Claimant receive for injury to feelings?

13. Can the Respondent show that the blameworthy action on the part of the Claimant caused or contributed to his dismissal? If yes, would it be just and equitable to reduce the Claimant's compensation and if so by what proportion?

14. In the event that the dismissal is found to be unfair on procedural grounds, should any compensation awarded be reduced to reflect the possibility, if any, that the Claimant would have been dismissed had a fair procedure been followed?

15. Were the protected disclosures made in good faith? If not, would it be just and equitable in all the circumstances to reduce the Claimant's compensation and if so by what proportion (up to 25%)?

The Final Hearing

7. The matter came before us for Final Hearing. The hearing had a nine-day time estimate. At this hearing the Claimant represented himself and the Respondent was represented by Mr. T. Sheppard of counsel.

Disclosure

8. At the outset of the hearing on Tuesday, 10th January 2018, the Claimant raised that he had disclosed certain documents to the Respondent, but that they were

not included in the bundle. Mr. Shephard's position was that he had not had the opportunity to consider these documents and that it may be that his witnesses needed time to read them and consider them.

9. We heard submissions on these documents and concluded that some of them should be included in the bundle immediately whilst others would be included if they became relevant as the hearing progressed. This latter category of document did not ultimately become relevant as they were not referred to.

10. On Monday, 15th January 2018 the Claimant indicated he wished further documents to be admitted. After discussing the matter with the parties and the fact that these documents had not been put to any witness for the Respondent and that the claimant was not going to be cross-examined on these documents the application to admit them was not progressed with.

Video Link evidence

11. One of the witnesses for the Claimant, Lynsey Shaw, was at the time of giving her evidence, in Australia. The Claimant provided the technology to ensure that she was able to give video link evidence to us. He also provided her with an electronic copy of the bundle and all witness statements. Ms. Shaw confirmed to us that she was alone when giving her evidence and affirmed that she would tell the truth. We are satisfied that the quality of her evidence was not diminished by virtue of her giving evidence via video link.

Application to amend case

12. On Friday, 12th January 2018, a date the tribunal was not sitting owing to witness availably, the Claimant emailed the tribunal seeking the admission of further documents and the amendment of his case to change the basis of the third protected disclosure as his table and the two versions of the list of issues, he said were incorrect. As it was, when this matter was canvassed with him on Monday, 15th January 2018 the Claimant did not pursue his application.

<u>Documents and Evidence</u>

Witness Evidence

13. The Tribunal was provided with statements from the following witnesses on behalf of the Respondent: Mr. David Fallows, the Chair of the Governing Body of the

Respondent; Mr. Stephen Prewett, a member of the Respondent's Governing Board who formed part of the panel who investigated the Claimant's complaints; Mr. Martin Rosner an HR Specialist who was appointed to investigate the impact the allegations the Claimant had made had had within the Respondent; Mr. Richard Dimbleby, a member of the Respondent's Board of Governors who formed part of the panel which conducted the hearing at which the Claimant was dismissed; Mr. Richard Noah, a member of the Respondent's Board of Governors who formed part of the panel heard the Claimant's appeal against dismissal; Ms. Jenny Stilling a member of the Respondent's Board of Governors who the Claimant made allegations about and Mr. Phil Templeton, at the time the Respondent's Director of Funding and Operation against whom the Claimant made an allegation.

14. As the tribunal waited to start sitting on Tuesday, 9th January 2018 a new witness statement was provide by the Respondent from Ms. Sue Ratcliffe.

15. On Thursday, 11th January 2018 we were told that Ms. Stiling would be unable to attend to give live oral evidence owing to the ill-health of her husband for whom she is sole-carer.

16. The tribunal heard evidence from the following witnesses on behalf of the Claimant: the Claimant himself; Ms. Susan Bartlett a former HR Advisor at the Respondent; Ms. Shelley Poole the Chair of the UCU at the Respondent at the relevant time; Mr. Murray David Shackleford a social worker with Dorset County Council and Ms. Lynsey Shaw the former Executive Personal Assistant to the Principal at the Respondent.

17. All witnesses gave evidence by way of written witness statements that were read by the tribunal in advance of them giving oral evidence. All witnesses who gave live evidence were cross-examined. We gave such weight as we thought appropriate for Ms. Stilling did not attend.

Bundle

18. To assist us in determining the claim we had before us an agreed bundle originally consisting of some 670 pages (albeit there were additional pages numbers XXa

etc) prepared by the Respondent. As a result of our decisions to admit additional documents pages [671-723] were added to the bundle.

19. Our attention was taken to a number of these documents as part of us receiving evidence and hearing submissions and, as discussed with the parties at the outset of the hearing, during the hearing and before commencing their submissions, we have not considered any document or part of a document to which our attention was not drawn. We refer to this bundle by reference to the relevant page number.

20. During our pre-reading it became apparent that a couple of pages [361a and b] were missing. These were added during the hearing.

Other Papers

21. We were also provided with a Chronology and Cast List which we are told are agreed.

Submissions

22. We had written skeleton arguments from both parties. Both parties were permitted to supplement their arguments orally. Understandably Mr. Lane did not wish to do this. Mr. Sheppard made brief submissions which we have considered with care but do not rehearse here.

23. Since the skeletons are in writing it is unnecessary to repeat them here and they are referred to as appropriate in the conclusions.

<u>The Material Facts</u>

24. From the evidence and submissions, we made the following finding of fact. We make our findings after considering all of the evidence before us, taking into account relevant documents where they exist, the accounts given by numerous witnesses in evidence, both in their respective statements and in oral testimony. Where it has been necessary to resolve disputes about what happened we have done so on the balance of probabilities taking into account our assessment of the credibility of the witnesses and the consistency of their accounts with the rest of the evidence including the documentary evidence. In this decision we do not address every episode covered by that evidence, or set out all of the evidence, even where it is disputed. Rather, we have set out our principle findings of fact on

the evidence before us that we consider to be necessary in order to fairly determine the claims and the issues to which the parties have asked us to decide.

The Parties

25. The Respondent is a well-known college in the South of England offering a variety of courses for students from the age of 16. For a period of time the college was receiving poor scores in its OFSTED inspections. When Mr. Nigel Evans became its principal those scores improved.

26. The Claimant was employed by the Respondent as the Director of Finance on 23 September 2013 [77 §1.2]. At the time of his dismissal on 15th March 2017 [5 §5.1] he occupied the role of Vice Principal Finance and Business Planning, a role he had held since 1 March 2016 [77 §1.1], having been the Interim Vice Principal, Finance and Business Planning from 1st August 2015 until his appointment to the full role.

27. The Claimant was a member of the Respondent's Senior Leadership Team ("SLT") that consisted of the Claimant, Sarah Drew, Kelly Bush, Julia Rogerson, Philip Templeton and Mr. Evans.

28. At the time relevant to our considerations the Respondent's Principal was, and still is, Mr. Evans. We have not heard evidence from Mr. Evans.

29. Although occupying a role entitled Vice Principal, the Claimant was not the immediate successor to Mr. Evans. Documents in the bundle [488] record the view of Mr. Evans that that the Claimant was not the Deputy Principal.

Andrew Gilbert

30. In 2013 a teacher, Mr. Andrew Gilbert, was dismissed by the Respondent for having an inappropriate relationship with a student. He signed a settlement agreement which contained a confidentiality clause. Mr. Gilbert was employed by another college and applied for a job with the Respondent despite the circumstances of his dismissal. These circumstances became known and the teacher was called before the Professional Conduct Panel ("PCP") of the National College of Teaching and Leadership, the teachers' disciplinary body, and was ultimately debarred from being a teacher. One of his witnesses was Mr. Evans.

31. The Claimant had assisted Mr. Evans to some extent to prepare a statement for the PCP. He advised on the removal of two paragraphs from the statement Mr. Evans was to speak to.

32. Mr. Evans was, effectively, a character witness for Mr. Gilbert. In his evidence he said, we are told, that he would have no hesitation in re-employing Mr. Gilbert. This was despite, seemingly, not knowing the circumstances of Mr. Gilbert's dismissal from the Respondent.

33. The decision of the PCP was received by the Respondent on the 21st April 2016.

34. The Claimant was concerned of the potential for reputational damage to the college. Indeed, we accept the evidence we have heard that the college itself was concerned over the PCP's decision's potential impact on the college and so organised for Kirsty Ingle, an employee with responsibility for Public Relations, and the Claimant to manage the potential impact of the announcement.

35. We are told by Mr Fallows and believe him that he too shared the Claimant's concern over the potential impact of the NCTL's decision.

The First Two Disclosures

36. The evidence given by Mr. Evans caused the Claimant some concerns. Indeed, Mr. Fallows tells us that this evidence caused him personally and the Respondent's Board some concerns as well. It is agreed that the Claimant raised his concerns about Mr. Evans in a meeting that was originally between Mr. Fallows and Lynsey Mills (now Lynsey Shaw) on Friday, 22nd April 2016. This forms the claimant's first alleged protected disclosure. This was not a meeting which was planned between Ms. Shaw and Mr. Fallows. During the course of the meeting the Claimant was asked to join it owing to his knowledge of the Andrew Gilbert situation. In this meeting, the Claimant also raised issues about Mr. Evans' attitude to consumption of alcohol during working hours. During this meeting, Mr Fallows told the Claimant that the "logical consequence" of the Claimant's position was that he would be forcing the Board to choose between him and the principal and Mr. Fallows also

said that the Board did not wish to lose either of them [DFWS §4]. Mr. Fallows also told the Claimant that he should "reflect on the possible consequences of his position". The Claimant contends that Mr. Fallows states that a "Ben v Nigel" process would begin if the Claimant continued his complaints. Mr. Fallows denies this, however does accept the language used in his witness statement. We have considered the evidence we have before us and conclude that the Claimant is correct in his recollection on this. We conclude this as Ms. Shaw herself indicates this language was used [LSWS8] and there is a contemporaneous record of the Claimant referring to this language: [132, 134]; further the language ascribed to Mr. Fallows is not too far away from that which he, himself, agrees was used.

37. On the 25th April 2016 Mr. Fallows spoke to the College's solicitor, Ms. Gill Fibbrance, and is told that Mr. Evans' statement was a serious error of judgment [DFWS5]. As a result of this meeting a Board meeting was arranged and an investigation into Mr. Evans was to be commenced.

38. The Claimant tells us that he was unhappy about the meeting he had with Mr. Fallows' and that Mr. Fallows' comments in that meeting had led the Claimant to lack confidence in Mr. Fallows. It is for this reason that on 27th April 2016 the Clamant also raised these issues along with numerous others to Ms. Fibbrance by way of a written note of that date [112]. This, the Claimant contends, is his second disclosure and he made it, he says as part of the reputation management exercise that was being undertaken by the College in case there was adverse publicity from the PCP decision when it was publicised. In evidence, however he candidly described his motives for speaking to Ms. Fibbrance as "purely selfish" and in order to protect himself.

39. At some point Mr. Fallows informed Mr. Evans that a complaint had been made about him by a "Senior Manager". Mr. Fallows told us he had no intention of attributing blame to any member of staff and that it may have been an error to have told Mr. Evans that a senior manager had made the complaint as this could lead to the Clamant being identified. Whilst Mr. Fallows informed Mr. Evans to keep this matter confidential [114] Mr. Evans did no such thing and, Mr. Templeton tells us, he was approached by Mr. Evans and told it was the Claimant

who had made the complaints. Complaints which he (Mr. Templeton) described as "trivial".

40. The PCP's decision was made public on 29th April 2016. There was no adverse publicity for the college and Mr. Fallows is recorded in an email of 30th April 2016 as saying that "based on comments from the reporter we were worried that Nigel would be the story, but so far its ok" [675]. Thus confirming to us that he was concerned about the impact on the College of Mr. Evans's involvement. In this email Mr. Fallows records that "thanks are due to Kirsty and Ben who have been facing the music."

41. A telephone conversation took place between Mr. Fallows and the Claimant. On the 10th May, after this conversation, Mr. Fallows sent the Claimant an email entitled "Investigation" [116] in that email Mr. Fallows informs the Claimant that "the board has set up an investigation into facts surrounding the Mr. Gilbert situation" and asks the Claimant "to refrain from discussing any matter related to the investigation with any other party".

42. On the 10th May 2016, an investigation was commenced into the Claimant's concerns. ultimately this was divided into two separate elements: those relating to the Andrew Gilbert matter ("The AG Investigation"), and those other complaints the Claimant had made ("the Second Investigation"). The Respondent accepts that the AG Investigation was not covered by any policy it operated.

43. On the 11th May 2016 the Claimant emailed Mr. Fallows concerning what he saw as Mr. Templeton's "rather childish attempt to put me in an uncomfortable position" [118]. The Claimant was encouraged to use the Respondent's complaints procedure if he wished to have this addressed.

44. On the 17th May 2016 the Claimant prepared his written statement in relation to the AG Investigation [128] and, as he had indicated on 10th May [117], this statement contained new allegations and runs to 22 pages and consists of a list of potential witnesses the Claimant says would have information regarding the lack

of seriousness that Mr. Evans viewed the situation [130]. It contained other lists of witnesses on [139 and 141].

45. The Claimant was interviewed as part of this investigation on the 19th May. The Claimant met with the investigation panel which consisted of Mr. Ian Hollows as chair, Mr. Stephen Prewitt and Ms. Rosie Dakin-Miller (although she was not present at the meeting and sent her apologise) [151].

46. On the 20th May Mr. Fallows sent the SLT an email entitled "professionalism" [127] which refers to the SLT "cleaving into two 'gangs'". The email is sent directly to the Claimant, Sarah Drew Kelly Bush, Julia Rogerson and Phil Templeton. Nigel Evans and Lynsey Mills are cc'd into the email. Mr. Templeton tells us, and we accept, that this email was, at least by him, seen by as insulting as he had he says always acted professionally. The Claimant himself also sought clarification of this email as he too was unclear as to what it was that he could have done differently [178]. As far as we are aware no further communications were made or received about this email. Mr. Fallows told us, that it was the Claimant who asked him to send an email. The Claimant denies this and we have seen no material where the Claimant does, in fact, request such an email be sent.

47. The Claimant was called to a meeting with Mr. Hollows on the 26th May 2016 along with Mr. Evans in which they were notified in each other's company of the outcome of the investigation into the AG Investigation [172 and 177 refer]. Ms. Stilling was also present. This meeting was conducted before the report into the allegation was finished [160]. The tribunal note that the AG Investigation report records that mediation was discussed with Mr. Evans at this meeting but that this was not discussed with the Claimant who had been asked to leave by then [172].

48. Somewhat pre-empting the release of the Report into the AG investigation on 27th May 2016 Mr. Evans sends the SLT an email entitled "Moving On" [178] the email that:

> *"After something like 6 extremely difficult weeks for all of us, we now desperately need to move on. As a direct consequence (and in full*

> *agreement with the corporation) I have asked Joanna Gaukroger to come in to support the SLT in moving forward"*

The impression the Claimant took from this email is that Mr. Evans was of the view that the metaphorical line had been drawn under the situation and he was moving on from the investigation [177], this is despite the Claimant's concerns that various matters had not been addressed in his meeting the day before. On the 27th May 2016 the Claimant set out these concerns in an email to Ian Hollows, but did not receive a reply to them [177].

49. Ms. Gaukroger did attend the Respondent on the 8th June 2016 and met with Mr. Evans and Julia Rogerson [465]. She did not meet with the Claimant. After meeting with these two people she met with Mr. Prewitt. Mr. Evans records that after her discussion with Mr. Prewitt Ms. Gaukroger drew the conclusion that "there was no point in further attempts at mediation and in her words the Claimant 'should be gone' and you need to employ William Garnett to do this" [466]. Until this point, the only reference to mediation we have seen is the discussion between Mr. Hollows and Mr. Evans in the meeting of the 26th May 2016 in which Mr. Evans is told he has primary responsibility to make efforts to mend the relationship.

50. Mr. Prewett met with the Claimant on 8th June 2016 [157 refers]. It is Mr. Prewett's record that was sent the next day:

> *I asked if he was prepared to meet Nigel part way to improve matters. He said no. he stated during the investigation Nigel should have been suspended. Now he told me that he should have been dismissed. He said that is still his view. He appears not to have accepted the outcome of the investigation, he needs to do so. The governors have made their position clear.*
>
> *...*
>
> *I made the point to him that, as the college heads towards Area Review, there needs to be fruitful, professional and effective relationships at senior management level. He agreed, but when asked what role he would play in achieving this, he was adamant that he would not apologise for anything he had done or said, and that he would continue to raise matters he was unhappy with.*
>
> *...*
>
> *I think he believes that doing his job professionally as he sees it will be his contribution to stabilising matters.*

> *I regret that I have come to the view that the situation is irretrievable, as Joanna Gaukroger states in her email o 8/6/2016, "Governors nee to ensure that the senior leadership team works positively and flexibly together and with a high level of trust and respect in order to meet objectives and targets which they have set." Sadly, as mattes stand, I see no prospect of this happening The Board needs to deal with this urgently."*

51. In this email he comments that the boards view is that primary responsibility to repair the damage in their relationship lies with Mr. Evans.

52. This email was sent to Mr. Hollows the head of the investigation committee and Mr. Fallows. It is also sent to Ms. Guakroger, who is not involved in either the investigation nor was she on the Respondent's board but who had explained a way to remove the Claimant from his employment.

53. The Report into the AG Investigation is dated the 9th June 2016 [172]. We do not know if Mr. Hollows had seen Mr. Prewett's email of that day when he finished the investigation report.

54. On the 10th June 2016 the Claimant emails Mr. Hollows seeking "further clarification on aspects of the investigation…to enable me to accept the outcomes and in doing so ensure I am able to fulfil my obligations as contained in my job description and contract" [174] this includes a list of names of people the claimant says should have been interviewed as part of the investigation into the AG situation; this is the same list of names the Claimant provided to Mr. Hollows at the outset of the investigation [130], and substantially the same list of names as given on [139 and 141].

55. On the 13th June 2016 the Claimant was signed off work on grounds of work related stress [183, 196, 212]. Ultimately, he was not to return to work as, when he was fit to return he was suspended and then dismissed.

56. During the course of this absence the Claimant met with Susan Bartlett in her role as the Respondent's HR representative. Various notes were taken of these meetings, although they were stored we are told on a computer that was not accessible by the Respondent and so, the Respondent claims, they did not have

access to them. We make no findings on this. However, the notes do record that the Claimant believed his disclosure to David Fallows amounted to whistleblowing disclosures [317, 320].

57. By way of letter dated the 28 June 2016 the Claimant was formally provided with the outcome of the investigation into the Andrew Gilbert situation [186]. It notes that there are dysfunctional relationships between the Claimant and Mr. Evans, and it refers to the advice it had obtained from Ms. Gaukroger who, it says, has made it clear that it is the Board's responsibility to ensure there is an effective senior leadership team. We do not know what this advice was which Ms Gaukroger provided beyond that set out above. The emphasis is then placed on the Claimant to repair the working relationship between himself and Mr. Evans as he is told:

> "therefore, moving forward, we would expect you to work with Nigel and actively repair your working relationship. Failure to do so would be seen as insubordination and failure to comply with a reasonable management request"

58. This letter contains no option for the Claimant to appeal.

59. In an email dated 29th June 2016, whilst still off work unwell, the Claimant sets out 11 situations which he could face in the future in respect of staff behaviours and actions which, he says are disciplinary matters [190 and 193]. These are all clearly allegations he has made against Mr. Evans.

60. Whilst absent from work there is a wealth of correspondence between the Claimant and the Respondent concerning the second investigation into actions of Mr. Evans and the SLT which the Claimant complains about. This includes a detailed report and appendices [225-300]. We were taken to various extracts from this document and its appendices.

61. At a meeting on 8th September 2016 the Claimant is recorded as having said that he accepts the outcomes made so far, but is concerned how his judgment could have been so wrong and that there are a few issues that he would like to resolve

via an informal grievance. Some of these comments are manuscript amendments to the note of this meeting [307].

62. On the 29th September 2016 the Claimant meets Mr. Hollows, Ms. Darkin-Miller and Mr. Prewett as part of the second investigation [323].

63. We note that Mr. Prewett was part of this investigation even though he had formed the view and communicated it to Mr. Hollows that the situation with the Claimant was "irretrievable" owing to the criticisms he had made of Mr. Evans in the circumstances of the AG investigation and his stance at that time and that urgent steps needed to be taken to resolve it.

64. In this meeting, the Claimant talks about his return to work and that he was looking to draw the line [325]. From these minutes, the relationship with the SLT members is not raised nor discussed with the Claimant.

65. After this meeting the Claimant received confirmation, at his request, that another issue he had raised concerning the investigation of procurement card transactions by Mr Evans, and which did not form part of the second investigation, was underway [331].

66. The Claimant was signed off as fit for work, but on 13th October 2016 was asked by the Respondent to delay his return "to give you the opportunity to receive the outcome from the investigations and have the opportunity to respond before any dialogue about your return to work" [336].

67. At some point the investigation report into these allegations was prepared. It is dated October 2016 [340]. It recommends [360]:

> *"The nature and extent of Ben Lane's allegations and attempts to discredit the Principal and other SLT members have given rise to an irretrievable breakdown in trust with them. The Panel recommends that his employment with the College should be terminated and that the corporation should obtain legal advice in this regard."*

68. On the 24th October 2016 the Claimant received written confirmation of the Second Investigation's outcome [362]. He is told that:

> *"You have the right of appeal in relation to the following grievances:*
> - *Your personal position; and*
> - *Undermining your position*
>
> *In accordance with the College's practice, this was the final stage in the procedure and you have no right of appeal in relation to the following complaints:*
> - *Nigel Evans' alleged undisclosed relationship with Julia Rogerson;*
> - *Nigel Evans' work pattern;*
> - *Unwarranted interference in the application and review of the College's Drugs, Alcohol and Smoking Policy, and*
> - *Use of inappropriate language in an all staff meeting*
>
> *If you wish to exercise your right of appeal in relation to the two grievances identified above, please write to the Clerk of the Corporation within five working days of receipt of this letter setting out the grounds of your appeal"*

69. On the 28th October 2016 the Claimant is written to by Mr. Hollows and informed that the investigation into Mr. Evans' use of the College Procurement Card had been completed and that that the college had taken appropriate action to implement Mr. Hollows' recommendations [370]. The Claimant sought clarity into what the findings were in relation to this investigation [371].

70. By way of telephone conversation on 2nd November 2016 the Claimant was suspended from work. This was confirmed in writing to the claimant on 3rd November 2016 [372-375]. The letter of suspension states that:

> *It has been agreed to review the extent of any impact that the allegations made by you may have had on working relationships with the principal and other Senior Leadership Team members and, following from that, whether the Board might no longer have trust and confidence in your ability to carry out your role effectively as a senior post holder and a member of the Senior Leadership Team.*
>
> *The purpose of the review is to determine whether a Special Committee should be convened to consider the question of your continued employment with the College.*

71. Mr. Martin Rosner, the interim Director of HR for the Respondent, was to conduct this review.

72. After receipt of this letter and an email from Mr. Rosner [377] the Claimant was signed off work from 7th November until the 27th November. He indicated he would start work on his statement for Mr. Rosner in the week of the 14th November. Mr. Rosner informs the Clamant that whilst he will extend the time to conduct the review he will be making a decision by the 25th November 2016 [376]. No reason was provided as to why this review was so pressing in light of the Claimant's ill-health and suspension from work.

73. The Claimant produced a statement for this review dated the 23rd November 2016 [389] and Mr. Rosner and the Claimant met the next day [381]. The Claimant's statement says:

> "From a personal perspective, I am more than prepared to return to the College and re-build relationships that have been affected by the allegations I have raised. I am willing to learn from the experience and take on board any advice and feedback that can help my performance in the future…
> …
> *The impact of the unfounded allegations should never have been allowed to effect other members of the SLT (excluding the Principal) in the way it has been described and in doing place a doubt in the Governors eyes whether "the SLT can be effective as a team with you remaining a member of it". In terms of my relationship with Nigel I believe that he appreciates that my role may require me to do what I have done and as such I hope that like me he is able to put all of this behind him with a view of looking to the future.*
> …
> *I have sought feedback on ways in which I could have handled things differently but received no response. The Board of Governors chose to investigate the allegation and I believe in doing must have felt that the evidence provided was sufficient to do so, the Board of Governors have satisfied themselves that they have investigated the allegations thoroughly and believe that the allegations are unfounded. I respect those findings. I have paid a heavy price already for doing what I have done. There has been significant adverse impact on my health and considerable pressure placed upon my family. I have actively sought support through my GP and through subsequent attendance on a Mindfulness programme I have pro-actively communicated with the College to prepare for my return and have expressed willingness to put the events of the past few months behind me with a view to returning to the College and rebuilding any relationships that need to be rebuilt in an open minded and professional manner.*
>
> [391, 392 and 393]

74. On the 25th November 2016 Mr. Rosner complete a confidential report into the review which runs to some 152 pages in our bundle inclusive of the appendices [394-546]. The Review draws various conclusions [396]. It also finds that in relation to the AG investigation Mr. Hollows felt there was "no real basis for Ben Lane raising the issue". Clearly this account is at odds with what Mr. Fallows told us in evidence (i.e. that he too was concerned over Mr. Evans's behaviour and the risk to the College, that the college's solicitor suggested the matters were serious and needed an investigation and that this was a concern of the Board).

75. We note that Mr. Rosner states:

> *1.2 Following consideration of these allegations, the Panel investigating the additional matters raised by him making the following comment and recommendation:*
>
> > *"The Panel is concerned about the nature and extent of Ben Lane's allegations. In particular, the Panel is concerned about the extent of any impact that they may have had on working relationships with the Principal and other Senior Leadership Team members and the Board's trust and confidence in Ben Lane's ability to carry out his role effectively as a senior post holder and a member of the Senior Leadership Team The Panel, therefore, recommend that a review of such concerns arising from these allegations raised by Ben Lane since April 2016 is undertaken, with appropriate independent advice, with a view to determining whether a Special Panel of Members should be convened to consider the question of Ben Lane's continued employment with the College".*

This is different from the recommendation the second investigation report made [360].

76. Mr. Rosner records that

> *"for the first time (as far as I am aware) Ben Lane now stated that he respects the findings of the investigations and that he is willing to put the past behind him. This should be taken into account. It is however, at odds with his previous position when he emphatically rejected Stephen Prewett's suggestion that he participate in a mediation process and made it clear that he still felt that Nigel Evans should have been dismissed. He then went on to make further unfounded allegations. In my view, it is very doubtful that statements from Ben Lane at this stage that he respects the findings of the investigations and that he is willing to put the past behind him will be enough to form the basis of the restoration of trust, confidence and good working relationships in the SLT"*

77. Some of these conclusions are in contradiction to the records produced by the Respondent as part of the Claimant's ill-health absence in the middle of 2016.

78. Mr. Rosner concludes his report by saying that from reading the statements and reports of meetings:

> *"it would seem clear that Ben Lane returning would have a devastating impact on the effectiveness of the SLT….this would stifle positive and challenging discussions which have been one of the cornerstones of the success of the SLT in leading the College from the difficulties it faced a very short while ago"*

79. As a result of this review the Claimant is written to and informed that a Special Committee to be convened to consider the Claimant's dismissal on grounds of the nature and range of the allegation raised by him [547].

80. On the 9th December 2016 DAS Law, instructed on behalf of the Claimant, present a "Letter of Appeal to Grievance" [559] which is expressly referring to the letter of 24th October 2016 [362]. It alleges that there has been detrimental treatment of the claimant. the letter refers to whistleblowing protection it says is afforded to the Claimant.

81. The Respondent replies to this grievance appeal on 12 December 2016 [564] and rejects the admissibility of the appeal on the grounds that it falls outside of the stated time period for an appeal under the Respondent's Grievance Policy.

The Special Committee Meeting

82. 15th December 2016 the matters came before the Special Committee to consider the Claimant's employment [566-568]. In this meeting, the Claimant is recorded as saying that he would be prepared to return to work, to go back to the SLT, it would be difficult for him to go back in, and he understood how it would be difficult for SLT member, given today. The Claimant, in cross-examination said he accepted that dismissal was very much a potential outcome of this meeting.

83. Mr. Dimbleby did not say to us that he disbelieved the Claimant's desire to return to work or to repair the relationships.

84. The Claimant was dismissed on notice [580]. The Claimant received three-months notice of termination in accordance with his contract of employment [85 §30.2]. The reason for the Claimant's dismissal was the breakdown in the relationships with the SLT and that the college "would be put in great jeopardy if you returned. Despite full consideration, the Committee could find no other viable options under which your employment could continue." [580].

85. The Claimant was afforded the opportunity to appeal the decision to dismiss him. He took advantage of this opportunity [593]. On the 10th February 2017 the appeal was heard by a panel of two members of the Respondent's corporation, one of whom was Mr. Richard Noah. We heard evidence from Mr. Noah, albeit much of it went unchallenged before us. The Claimant was informed on that day that his appeal was dismissed. He received written confirmation of this on 15th February 2017 [656]

The Law

86. So far as is relevant the Employment Rights Act 1996 ("the 1996 Act") states:

> **43A Meaning of "protected disclosure"**
> In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.
>
> **43B Disclosures qualifying for protection**
> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
> (e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

...

(2) . . . This section does not apply where—

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal (within the meaning of Part X).

48 Complaints to employment tribunals

...

(1A) A worker may present a compliant to an employment tribunal that he has been subjected to a detriment in contravention of section 47B

...

(2) On a complaint under subsection…(1A)…it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

103A Protected disclosure

An employee who is dismissed shall be regarded for the purposes of this Part [of the1996 Act] as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

Authorities and Texts

87. The Tribunal reminded itself over the guidance on the correct application of the burden of proof in whistleblowing dismissal claims as set out in Kuzel v Roche Products Limited [2008] IRLR 530.

88. in Leach v Office of Communications [2012] ICR 1269, CA the EAT emphasised the importance of identifying why the employer considered it impossible to continue to employ the employee. The Court of Appeal concurred. Lord Justice Mummery noted that 'breakdown in trust and confidence' is not a convenient label to stick on any situation in which the employer feels let down by an employee or which the employer can use as a valid reason for dismissal whenever a conduct reason is unavailable or inappropriate.

89. In Perkin v St George's Healthcare NHS Trust [2006] ICR 617, CA the Court of Appeal agreed that personality, of itself, cannot be a ground for dismissal. For there to be a potentially fair reason for dismissal, an employee's personality must manifest itself in such a way as to bring the actions of the employer within S.98. In this case, the tribunal had concluded that P's unacceptable behaviour and the breakdown in confidence between him and the Trust, for which he was responsible and which had the potential of damaging the Trust's operations, amounted to the potentially fair reasons of conduct and Some other Substantial Reason.

90. The tribunal reminded itself of the guidance for employers faced with problems with employees who refuse to work together; that they should take reasonable steps to try and improve the relationship and to satisfy themselves that the situation is irredeemable so that dismissal is the only option: Turner v Vestric Ltd [1980] ICR 528.

91. Greaves v London Borough of Newham EAT 673/82 the Claimant 's dismissal for sending her employer a list of serious but unsubstantiated allegations about her boss was fair, even though she was not totally to blame for the differences.

Conclusions on the Issues

92. We took time assessing and looking through our notes of the cross-examination as well as the written statements and documents, we considered with care the submissions, the legal provisions and guidance in case law. Having made the findings of fact set out above, we returned to the agreed issues in this case in order to make these conclusions.

Protected disclosures

Did the Claimant make a protected disclosure(s) within the meaning of sections 43A-C and G of the ERA? In particular did the Claimant make the following disclosures of information upon which he relies, as confirmed in the Summary of Disclosures [page 51] within the meaning of section 43B(1) of the Employment Rights Act 1996 ("the ERA")? [

On 22 April 2016, an oral disclosure to David Fallows, Chairperson of the Respondent's governing body raising his concerns:

(i) that Mr Evans had too laidback an attitude towards safeguarding; and

(ii) about Mr Evans' stance towards the consumption of alcohol by staff during working hours.

93. Both parties agree this conversation took place when the Claimant was called into a meeting between Ms. Shaw and Mr. Fallows. The Claimant disclosed facts, for instance he explained to Mr. Fallows that Mr. Evans viewed the Andrew Gilbert "almost alright" and that he did not take the situation seriously. He also made reference to facts underlying his allegations over the use of alcohol on the premises.

94. The Claimant's disclosure of information clearly indicated that the colleges obligations for safeguarding of students had been broken or was likely to be broken, further the allegations concerning alcohol use by teachers raises clear issues of health and safety and breaches of those legal obligations.

95. We find also that these were reasonable beliefs held by the Claimant, indeed Mr. Fallows tells us he too had concerns and that it was the suggestion of the solicitor that there be an investigation [DFWS5] into Mr. Evans a recommendation which the Board approved. Further, we consider that objectively, when considering the context of a sexual relationship between a student and a teacher the Claimant was reasonably holding this belief of a breach of safeguarding.

96. Equally, in relation to the allegations of alcohol use we are satisfied that the beliefs held by the Claimant were reasonable in the context of the educational system.

97. We find that the Claimant did believe his disclosure to Mr. Fallows to be in the public interest and that that belief was reasonable. Whilst the facts giving rise to the Mr. Gilbert situation were historic this is not only what the Claimant was complaining about: his concern was the contemporaneous attitude of Mr. Evans demonstrated at the NCLT to safeguarding and his indication that he would re-employ Mr. Gilbert despite the conduct of Mr. Gilbert that led to him receiving a life-time ban from teaching. Clearly this would be of interest to a large number of people: staff at the college, the student body at the college, the parents of the student body at the college and is likely to be a concern to the general public at large, indeed the College itself was alert to these risks and were grateful when the risk did not materialize.

98. For the reasons given above, therefore we find that this is a qualifying disclosure.

99. Having been made to his employer this is a Protected Disclosure.

On 27 April 2016, a written disclosure to the Governing Body's solicitor saying,
(i) Mr Evans was responsible for making Mr Gilbert feel as if he did nothing wrong in 2013; and
(ii) the Respondent was wrong for trying to re-employ Mr Gilbert on two occasions in 2014.

100. The Claimant clearly had a communication with the Respondent's solicitor [112]. For identical reasons as set out above we find this is a qualifying disclosure.

101. We do not find that the disclosure to the Respondent's solicitor falls within s43D of the 1996 Act (namely, disclosure to a legal advisor) as, candidly, the Claimant accepted he approached the Respondent's solicitor in order to protect his position as he had little faith in Mr. Fallows. On the evidence before us, therefore, we find he was not acting "in the course of obtaining legal advice". Further, we do not consider that this was a disclosure was in accordance with the Whistleblowing Policy [88] as that requires disclosures to be made internally of the Respondent to the Reporting Director or the Principal before referring the matter to "Outside organisations".

102. We do, however, find that the Claimant did act in accordance with s43G of the 1996 Act in that he believed these allegations to be substantively true.

103. We reject the contention that the Claimant acted for personal gain in making these allegations. It was suggested that if Mr. Evans was removed from role then the Claimant, as Vice Principal, would step up into the vacancy created by Mr. Evans absence and he would occupy this role during any suspension of Mr. Evans. The Claimant rejected such an assertion in his evidence and his objection to it is supported by the evidence we have seen where Mr. Evan's himself states that the Claimant is not his Deputy [448]. Further, in the document prepared for the solicitor the Claimant notes that by making this disclosure he is putting his job at risk [115].

104. We also consider that in the circumstances it was reasonable for him to make the disclosure to the Respondent's Board solicitor in light of the serious nature of the allegations and the status of the recipient as a solicitor and advisor to the Board. Further, we find that the comments of Mr. Fallows at the meeting of the 22nd April concerning it being "Ben v Nigel" and that he (the Claimant) would be forcing the Board to choose between him and the principal" and that he should reflect on the possible consequences of his position, were all statements from which the Claimant, we find, did conclude that Mr. Fallows had failed to respond appropriately to the disclosure on the 22nd April.

105. As a result of the above we consider that the disclosure to the solicitor was a protected disclosure

On 17 May 2016, a written disclosure in the 'Evidence Pack' provided to the Investigation Panel:

(i) that Mr Evans had too laidback an attitude towards safeguarding;
(ii) about Mr Evans' stance towards the consumption of alcohol by staff during working hours;
(iii) Mr Evans was responsible for making Mr Gilbert feel as if he did nothing wrong in 2013;
(iv) the Respondent was wrong for trying to re-employ Mr Gilbert on two occasions in 2014;
(v) The Claimant's position was being undermined eg he was not invited to key meetings.

106. As far as (i), (ii), (iii) and (iv) are concerned these are, we find qualifying disclosures for the reasons given above. (v) is however not. We do not see that there is any legal obligation here that the claimant is alleging a person is falling, has failed or is likely to fail to comply with.

107. To the extent that we have found this is a qualifying disclosure, it being made to his employer the disclosure is also protected.

If so, did the Claimant reasonably believe that the information he disclosed tended to show that a person had failed, was failing, or was likely to fail to comply with a legal obligation to which he was subject within the meaning of section 43B(1)(a) and/or 43B(1)(b) and /or 43B(1)(d) of the ERA?

108. We have addressed this issue as we have considered the disclosures above

If so, did the Claimant reasonably believe that the disclosure(s) of information was in the public interest within the meaning of section 43B(1) of the ERA?

109. Again, we have addressed this issue as we went

In relation to the disclosure at paragraph 3(b) above, did the Claimant disclose that information to the Governing Body's solicitor in accordance with a procedure authorised by the Respondent within the meaning of section 43C(2) or the ERA? Alternatively, in relation to that disclosure: (i) did the Claimant believe the information disclosed was substantially true; (ii) did he make the disclosure for the purpose of personal gain; (iii) had he already disclosed substantially the same information to his employer; and (iv) was it reasonable for the Claimant to make the disclosure in all the circumstances, within the meaning of 43G?

110. This has been dealt with above.

Detrimental Treatment

Was the Claimant subjected to the following detriments?

Mr Fallows had disclosed the information the Claimant told him and consequently a clique was developing against him with the Senior Leadership team, and he felt isolated and ostracised;

111. We find as a fact that this occurred. Indeed, Mr. Fallows himself indicated that he had informed Mr. Evans that a member of the senior management team had made a complaint about him (Mr. Evans). We find that there was no reason to do this as, Mr. Fallows told us, he too shared the concerns of the Claimant; the Respondent's Board's solicitor had advised him that these concerns should be made the subject of an investigation and the Board itself agreed.

112. As this occurred was it a detriment. We find that it was, the Claimant accepted that at some point his identity as the complainant would become known however he told us he was not happy with it becoming known so early. This, we find is a reasonable stance to take when faced with a divided SLT in circumstances where Mr. Fallows had requested the Claimant consider his position and that he would be forcing the Board to choose between himself and the principal.

113. As this was detrimental to the Claimant what was the reason for it? We find the Respondent has not satisfied us as to the grounds for its conduct. We find the Claimant has established the reason for his treatment was the protected disclosure: there simply was no reason at all for Mr. Fallows to tell anyone that the complaint had come from a senior manager, indeed there were various other reasons that could be given, including legal advice; or that he as Chair of the Board considered an investigation was appropriate or that the Board itself had considered an investigation was warranted. The inference we draw from this

action and his comments at the meeting on the 22nd April 2016 was that Mr. Fallows was prepared to side with the principal on this and wanted the complaint by the Claimant to go away.

114. This claim succeeds.

Phil Templeton, Director IT was going through his emails;

115. The Claimant's evidence to us was that he had no evidence this occurred. Mr. Templeton's evidence was that he did not go through the Claimant's emails account. The Employment Judge therefore found that the Claimant has not satisfied him that this allegation did occur as the Claimant alleges.

116. The non-legal members, however, as is entirely appropriate, disagreed with this conclusion and found the allegation did occur, they were satisfied on the balance of probabilities that the Mr. Templeton did search the Claimant's emails as the Claimant alleges.

117. This would be detrimental. The Non-Legal tribunal members did not, however, find the search was conducted on grounds of the protected disclosures. Mr. Templeton did so at the request of Mr. Evans who was seeking material in relation to the NCTL Report. Mr. Templeton, therefore, did not conduct the search "on grounds of" the Claimant's protected disclosure rather than the instruction from his manager.

118. It is, therefore the decision of the tribunal (albeit for differing reasons) that the Claimant has failed to establish this part of his claim.

Jenny Stiling, Vice Chair, was the one that was telling people that he raised these allegations;

119. Did this act occur: the Claimant tells us that he thinks it did. He has no evidence of this however and, even though we have not heard from Ms. Stilling, we are satisfied that the Claimant's supposition is not sufficient to satisfy us on the balance of probabilities that it did, in fact, occur. We note that the Claimant was unable to produce any supporting evidence for his allegation in this regard before the Investigation into Andrew Gilbert [187].

His position was being undermined e.g. he was not invited to key meetings;

120. Did this act occur? No, we find it did not. We have been provided with no details of when these meetings were or what the Claimant considers he should have been in attendance beyond the one meeting we have evidence of which concerns three of the SLT leaving site at lunchtime. The reason for this was, we are told, that the three members were taking lunch together. Further, allegations made by the Claimant in his complaint was dealt with by the Respondent [365] and reasons given.

121. In these circumstances, having heard why the three members of the SLT left site together and having read the explanation given by the Respondent in the outcome to the second investigation, we are satisfied that the Respondent would have satisfied us of the reason for their actions.

Not being allowed to appeal the first grievance outcome;

122. Did this act occur: yes, the Claimant was not provided with an appeal from the outcome of the Andrew Gilbert investigation outcome, that is uncontroversial fact.

123. The Respondent in cross-examination of Mr. Fallows, accepted that this investigation was conducted not in accordance with any policy. They were therefore able to offer an appeal as they were not hide-bound by policy. The Claimant clearly had raised issues and concerns over what he saw as the adequacy of the investigation [174-177] and effectively is an appeal against the decision [302(c)] and it was for this reason that they felt it neither "necessary or appropriate to re-open the investigation".

124. We looked to see if there were any inferences which we may draw and, if so, were they sufficient to displace this primary finding. We find that there are. We consider that the actions of the Respondent, almost immediately from the first complaint being made, was to seek to alienate and isolate the Claimant: the comments made, the disclosure of his identity as the complainant, the early expressions of desire to have him removed from the SLT by Mr. Prewett and latterly the investigation panel all indicate to us that the Respondent was keen to end this complaint as soon as possible. We find that the serious and numerous concerns the Claimant had raised about the appeal added to this view. The

Respondent had failed to satisfy us of the reason for the decision and the Claimant has established that the reason for the closure of his appeal are his disclosures.

125. Accordingly, this allegation succeeds.

Not being allowed to appeal the whole of the second grievance outcome;

126. Did this act occur: yes, the Claimant was not permitted to appeal the entire of the second investigation. The letter from DAS Law is expressly related to the two parts of the investigation which the Respondent quite appropriately classified as a grievance. The appeal is not forthcoming until six-weeks after the outcome. As far as the other grounds of the investigation are concerned the Claimant is not permitted an appeal.

127. Was this a detriment and, if so was it on grounds of the protected disclosures: we find that it was not. The Complaints Procedure adopted for the second investigation is clear: there is no appeal [102 §6.16], whilst the Claimant may feel disadvantaged because of his inability to appeal the decision we do not find that it was on grounds of his disclosures that this occurred: the Respondent has satisfied us that the reason for the refusal is the stated policy applicable to this complaint.

128. The complaint here therefore fails.

Being suspended;

129. Clearly the Claimant was suspended [374]. Generally, the tribunal accept, that suspension is a neutral act. However, looking at the circumstances of this suspension, we find it is not a neutral act at all. We arrive at this conclusion by looking at the history of the Respondent's responses and those of people whom the Respondent had engaged, from Mr. Fallows initial comments, the comments of Mr. Prewett, those of Ms. Gaukroger, Mr. Hollows's report recommending termination these lead us to the conclusion that the suspension of the claimant is the continuance of the actions of side-lining him. It is therefore detrimental to him.

130. Has the Respondent therefore satisfied us as to what the reason for this treatment was. We accept this was a small SLT, which was required to work together closely.

We find that the Respondent's conduct is illustrative of an intention to remove the claimant and he is suspended under circumstances where his employment is at risk.

131. We consider that the suspension is on grounds of the Claimant's protected disclosures.

Having a committee convened to deal with his dismissal

132. Yes, the Committee was convened to deal with his dismissal [547]

133. A committee called to consider his dismissal was a detriment to the Claimant who faced losing his job.

134. If so was it on grounds of the protected disclosure, we find it was not. Tribunals need to distinguish the disclosure from the results of that disclosure, it is only for the former that the Claimant would be protected. We have evidence before us that satisfies us that it is the breakdown in the relationship with the SLT that leads to the appointment of the panel. Indeed, the Claimant himself accepted that there was just such a breakdown.

Jurisdiction

Has the claim in relation to detrimental treatment in relation to the detriments listed at paragraph 7 (a) to (h) below been submitted out of time?

135. We find that the last of the acts we have found proven was presented within time: the claimant was suspended on the 3rd November 2016. His ET1 was presented on 28th March 2017. His ACAS certificate has a Date A of the 28th January 2017 and a Date B of the 28th February 2017. It was, therefore commenced within a month of the end of the primary limitation period under the 1996 Act. As such the Claimant is entitled to one month being added to Date B. this would make the expiry of limitation being on the 28th March, the date he presented his ET1.

136. We are satisfied that the detriments we have found proven are a series of acts, they are a result of the Claimant's disclosures and all involve common actors with an aim, we find, of marginalising and side-lining the Claimant and his complaints. Not only are they a series of acts, therefore, but they are of a similar character.

If so, was it reasonably practicable for the Claimant to have submitted the claim in time? If not, what further period was it reasonable for the claim to have been presented?

137. In light of our findings above, this question does not arise.

What was the reason for the dismissal?

Can the Respondent establish a potentially fair reason for dismissal? The Respondent relies upon some other substantial reason/misconduct (as detailed at paragraph 41 of the Grounds of Resistance) within the meaning of section 98(2)(b) of the ERA.

138. We will deal with this question along with that below as to whether the Claimant's protected disclosures were the reason, or principal reason, for his dismissal

If not, was the reason or principal reason for the Claimant's dismissal that he made one or more protected disclosures, rendering the dismissal automatically unfair within the meaning of section 103A of the ERA?

139. We are satisfied that the Claimant has provided enough evidence to make whether his protected disclosures were the reason for his dismissal a live issue before us: the history of his treatment by the Respondent, the comments by those involved in the process are enough to satisfy this evidential burden on him. For an employee with continuity of service such as the Claimant, the burden rests in a protected interest disclosure dismissal case onto the Respondent to establish what the reason for his dismissal was.

140. A "reason for dismissal" is a set of facts known to the employer, or it maybe of beliefs held by him, which cause him to dismiss the employee. Both Mr. Dimbleby and Mr. Noah were clear in their evidence to us that the dismissal was for the breakdown in the relationship between the Claimant and the SLT. They were equally clear that whistleblowing was not mentioned at any time by the Claimant in the meetings before them. We find no reason to doubt their evidence in this regard.

141. We looked at whether any of the inferences we have drawn above were applicable here and if they were whether they were strong enough to displace this primary finding of fact. We find that they were not. Although members of the Board and although they had access to various correspondence in that role we do not find that this is sufficient to displace the findings we make above; further to

the Respondent's credit it appears that both Mr. Dimbleby and Mr. Noah were kept separate from the ongoing issues concerning the investigations.

142. We also note that neither Mr. Dimbleby nor Mr. Noah were challenged in evidence on this point.

143. We are satisfied therefore that the Respondent has established that the principal reason for the Claimant's dismissal was the breakdown in the relationship between the Claimant and SLT.

Was the dismissal reasonable in all the circumstances?
If the reason for dismissal was misconduct and/or some other substantial reason, was the dismissal reasonable in all the circumstances within the meaning of section 98(4) of the ERA?

144. We are satisfied that the dismissing officer Mr. Dimbleby and the appeal officer Mr. Noah did genuinely believe that the relationship between the Claimant and SLT had broken down.

145. We then asked ourselves whether this genuine belief was based on reasonable grounds. Both men clearly had material before them which would entitle a reasonable employer to come to the genuine belief that they did: the report prepared by Mr. Rosner could clearly be accepted by a reasonable employer as providing evidence of a breakdown in the SLT relationship.

146. It is this investigation, however, which we find falls outside the band of reasonable responses. Whilst it sets out the interviews Mr. Rosner conducts and does, on its face, appear to arrive at views that were open to it the conclusions set out at [396] are, we find outside the band. There are five conclusions on this page. The first one is not open to a reasonable employer: the fact that allegations are subsequently determined as being unfounded does not necessarily mean that the raising of these concerns is unreasonable behavior in itself. In fact, we find that it is not, these were serious allegations at the beginning which we found amount to protected disclosures.

147. The second conclusion is a possible conclusion that may seem to be open to a reasonable employer, but is based on an inadequate investigation into what

caused the initial breakdown in the relationship. As the first conclusion is an unreasonable to arrive at the second is equally flawed. We have seen and heard evidence that shows us that the second conclusion is questionable at best, evidence which Mr. Rosner did not look into and which a reasonable employer would have.

148. The third conclusion does, however fall within the band of reasonable responses open to Mr. Rosner based on what he was told as part of his investigation. However, at [401], as quoted above Mr. Rosner, inaccurately records the situation in that there is clear evidence Mr. Lane had previously said he was willing to put the past behind him. A reasonable investigation into this point would, we find, not arrive at this conclusion; based as it is on incorrect material.

149. Conclusion (iv) is found by Mr. Rosner not to be substantiated on the facts. On the basis of the limited investigation he conducted we understand why this was. However, clearly there was a breach of confidentiality: Mr. Fallows was apologetic for his role in this and Mr. Templeton said that Mr. Evans told him the Claimant had raised the complaints which Mr. Templeton described to us as trivial. Clearly on the objective facts there was a breach of confidentiality. A reasonable investigation would have discovered this by asking very simple questions of Mr. Templeton and Evans

150. Conclusion (v) is a summary of the preceding four along with a criticism of the Claimant for not accepting the AG Investigation outcome. The claimant reasonably, we find challenged this investigation. It is hard to see how his challenging to this investigation can effect the SLT relationship, we repeat out findings in relation to the context of the offer by Mr. Prewett of mediation in June 0f 2016 and the indication to Mr. Evans that it was for him on behalf of the employer to take the lead in resolving the disputes.

151. We should note in passing that we too share Mr. Prewett's apparent surprise that Mr. Hollows, as chair of both investigations, as author of the investigations reports, the first of which was challenged to a large degree by the claimant, and as

recipient of Mr. Prewett's email in June, was not put forward as a witness on behalf of the Respondent.

152. We also note that Mr. Rosner arrives at the conclusion that Ian Hollows concludes there was little or no risk to the college from the publication of the PCP report. However, this flatly contradicts the views of the Board chair Mr. Fallows. By depriving the Claimant and Mr. Dimbleby of the opportunity to look into the basis of these conclusions or whether they are correct the investigation by the Respondent falls out with the band of reasonable responses.

153. We then asked ourselves whether the act of dismissal was within the band of reasonable responses open to a reasonable employer at the time it dismissed. We find that it was not. The Claimant had indicated that whilst he accepted there was a break down in relationship this was not irremediable and had, throughout the process indicated a willingness to consider resolving issues. The emphasis on trying to resolve and remedy the breakdown must be on the Respondent.

154. Mr. Prewett's indication of a lack of willingness of the Claimant to mediate should, we think, be looked at in context by a reasonable employer: it was made at a time when only one of the two investigations had been completed and indeed it had not formally been notified to him, yet he received the "moving on" email from Mr. Evans. The second allegation investigation had yet to be commenced let alone reported on.

155. Whilst off work the Claimant had indicated a willingness to move on and to repair the damaged relationships, and this was after the outcome of the Second Investigation. It is demonstrably wrong therefore to say, as Mr. Rosner did, that the Claimant had not demonstrated a willingness to "put the past behind him" prior to Mr. Rosner's investigation.

156. The dismissing officer or appeal officer made no enquiries into the possibility of this. We find that a reasonable employer would have made enquiries as to whether this was possible and the relationship remediable after the outcome of the reports was known and the Claimant's stance clear.

Remedies

157. Although we have not heard evidence of remedy at this point we did indicate to the parties at the outset of the hearing that we would make findings necessary for contributory fault, Polkey, bad faith for whistleblowing and for the s12A Employment Tribunals Act 1996 power to make a financial penalty.

Can the Respondent show that the blameworthy action on the part of the Claimant caused or contributed to his dismissal? If yes, would it be just and equitable to reduce the Claimant's compensation and if so by what proportion?

158. We asked ourselves did the Claimant do anything culpable or blameworthy? We find that he did, the fact of making allegations or disclosures is one thing, however the number of allegations he made is another when taken with the level of triviality in some of the allegations and serious allegations being based on nothing more than supposition and, effectively, guesses. This is conduct which is worthy of criticism and blame.

159. Did these acts cause or contribute to his dismissal: yes, they led to the breakdown in trust between him and the subjects of his complaints.

160. In such circumstances, we find that it would be just and equitable to reduce both the Claimant's Basic Awards and Compensatory Awards to reflect his culpability in his dismissal.

161. Whilst we do not find the Claimant wholly responsible for his own dismissal, his actions of widening the complaints to members of the SLT and making personal allegations against these individuals, played a significant part in his dismissal. That is not to say, however the Respondent is blameless. That said the Claimant's role in bringing about his dismissal was significant, we consider that it would be just and equitable to reduce both awards by 70%.

In the event that the dismissal is found to be unfair on procedural grounds, should any compensation awarded be reduced to reflect the possibility, if any, that the Claimant would have been dismissed had a fair procedure been followed?

162. Absent the failings we have identified above we consider that the Respondent could have fairly dismissed the Claimant on grounds of a break down in trust and

confidence between it and the Claimant. This is a potentially fair reason fair dismissal.

163. Having made this finding we asked ourselves: would the Respondent in these circumstances have fairly dismissed the Claimant. Again, we find that that it would have. We find that a reasonable employer, the impetus being on it to take the lead in such enquiries, would have returned to the SLT and asked in light of the findings it had made and the Claimant's indications would they consider mediation.

164. This enquiry would have taken a short period of time and subsequent mediation would have taken a few weeks to arrange and conduct. However, on the basis of the evidence we have seen, in the reports of interviews of the SLT members, we are satisfied that the mediation would have not improved relationships significantly owing to the depth of feelings about the Claimant and his continued employment. Accordingly, after the mediation we consider it inevitable the Claimant would have been dismissed.

165. That dismissal would occur within six-weeks.

Were the protected disclosures made in good faith? If not, would it be just and equitable in all the circumstances to reduce the Claimant's compensation and if so by what proportion (up to 25%)?

166. For the reasons given above we do not find that the Claimant's disclosures were made in anything other than good faith, he was not aiming for Mr. Evans' job when he made the disclosures or at anytime thereafter.

Financial Penalties

167. In accordance with s12A we find that the Respondent has breached the Claimant's employment rights and that there are aggravating circumstances in the facts of this matter in the manner in which the Respondent conducted itself from the very first moment the Claimant made his disclosures, the efforts we find that the Respondent went to to side-line the Claimant's concerns and ultimately the Claimant himself whilst he was an employee.

168. We will therefore, need to hear submissions over whether we should exercise our discretion to award a financial penalty.

Remedy

169. Having made the above findings the parties left the room to consider the judgment and its implications.

170. After some discussion the parties agreed a figure in compensation between themselves. The Tribunal therefore, do not need to consider the question of compensation or financial penalty.

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Employment Judge Salter

_____

Date 5 February 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE