RESERVED **Case Numbers: 2601462/2015; 2600545/2016 & 2601438/2016**

EMPLOYMENT TRIBUNALS

Claimant: **Mrs. Brenda Walton (Nee Cartwright)**

Respondents: **Whittington Green School (R1)**
Derbyshire County Council (R2)
Tracey Burnside (R3)
Julie Bloor (R4)

Heard at: **Nottingham**

On: **10th April 2018 (Reading day)**
11th, 12th, 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th & 26th April 2018

Before: **Employment Judge Heap**
Members: Mr. J Akhtar
Mr. A Kabal

Representation
Claimant: **Mr. Kevin Walton - Lay Representative**
Respondents: **Ms. Rachel Wedderspoon - Counsel**

RESERVED JUDGMENT

1. The claim against the Fourth Respondent is dismissed on withdrawal by the Claimant.

2. The complaint of automatically unfair dismissal contrary to Section 103A Employment Rights Act 1996 is dismissal on withdrawal by the Claimant.

3. The complaints of detriment contrary to Section 47B Employment Rights Act 1996 are dismissed on withdrawal by the Claimant.

4. The complaint of victimisation contrary to Section 27 Equality Act 2010 is dismissed on withdrawal by the Claimant.

5. The complaint of unfair dismissal contrary to Section 94 Employment Rights Act 1996 fails and is dismissed.

6. The complaints of a failure to make reasonable adjustments contrary to Sections 20 and 21 Equality Act 2010 fail and are dismissed.

REASONS

BACKGROUND AND ISSUES

1. This is a claim brought by Mrs. Brenda Walton (hereinafter referred to as "The Claimant") against her now former employer, Whittington Green School (hereinafter referred to as "The First Respondent"; "The First Respondent School" or "The School"); Derbyshire County Council (hereinafter referred to as "The Second Respondent") and Tracey Burnside. Mrs. Burnside is the Third Respondent in these proceedings. The Second Respondent is the Local Authority responsible for the First Respondent and Mrs. Burnside was, at the material time with which we are concerned, the Associate Head Teacher of the First Respondent.

2. Originally the claim was also pursued against a Fourth Respondent, Julie Bloor. She was the Executive Head Teacher of the First Respondent at the material time of the Claimant's employment. However, the claim against the Fourth Respondent was withdrawn by Mr. Walton on behalf of the Claimant during the course of the hearing before us when it became apparent that there were in fact no complaints of discrimination or detriment levelled against that particular individual. The claims against the Fourth Respondent were therefore dismissed on withdrawal and we say no more about them.

3. The claim had originally comprised complaints of:

    - Automatically unfair dismissal contrary to Section 103A Employment Rights Act 1996;
    - "Ordinary" unfair dismissal contrary to Section 94 Employment Rights Act 1996;
    - Detriment contrary to Section 47B Employment Rights Act 1996;
    - Victimisation contrary to Section 27 Equality Act 2010; and
    - A failure to make reasonable adjustments contrary to Sections 20 and 21 Equality Act 2010;

4. During the course of the evidence as it unfolded at the hearing before us, Mr. Walton on behalf of the Claimant withdrew the claim of automatically unfair dismissal contrary to Section 103A Employment Rights Act 1996. Furthermore, at the commencement of oral submissions on the final day of the hearing, he also withdrew the complaints of detriment contrary to Section 47 Employment Rights Act 1996 and also the victimisation complaints. On those occasions, it had ben explained to Mr. Walton and the Claimant that any withdrawn complaints would be dismissed on withdrawal and could not thereafter be resurrected. Opportunity was provided, if required, for Mr. Walton to seek further instructions from the Claimant. It was confirmed by Mr. Walton following that interaction that the complaints to which we have referred above were indeed withdrawn and therefore we have dismissed them accordingly under Rule 52 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. Given the withdrawal and dismissal of those complaints, we have not determined them nor have we made the other relevant findings of fact which we would have made had we been asked to

determine the matters.

5. This left the only remaining live complaints before us as those of ordinary unfair dismissal and a failure to make reasonable adjustments and it is in respect of those complaints which we have made the relevant findings of fact upon below.

6. We should stress that we have made no adverse finding or taken any negative view of the Claimant as a result of the withdrawal of the other complaints that are no longer before us and we have dealt with each of the remaining complaints on their merits. Indeed, we might observe that it was sensible for the Claimant to have made the concessions that she did in respect of the withdrawal of certain complaints given the way in which the evidence unfolded before us.

7. The issues in the remaining complaints are set out comprehensively in a Order made by Employment Judge Dyal following an earlier Preliminary hearing for the purposes of case management. That Order appears at page 198 of the hearing bundle and we are satisfied that those issues were agreed between the respective representatives as being the issues that the Tribunal would have to determine. Needless to say, those issues are now limited to the ones dealing with unfair dismissal and a failure to make reasonable adjustments.

THE HEARING, WITNESSES AND CREDIBILITY

8. The Claimant was represented at the hearing before us, as indeed she has been throughout the proceedings, by her husband Mr. Kevin Walton. Although Mr. Walton has more experience of legal proceedings than most lay representatives given that he is a former police officer, there were obvious complexities to the issues originally involved in the claim and we have sought to assist him where possible so as to deal with the proceedings in accordance with the overriding objective.

9. That was particularly so given that the Respondents were all represented by experienced Counsel, Ms. Rachel Wedderspoon. We are grateful to her for the sensitive way in which she has approached these clearly very emotional proceedings. We are similarly grateful to Mr. Walton for his sensible approach in evaluating matters as the evidence unfolded and to advising the Claimant in respect of the withdrawal of certain elements of the claim in light of that evidence.

10. The hearing before us was originally listed for a period of 15 days, although it was able to be concluded in 13 days on the dates set out above. We spent the first day and a half of hearing time reading into the considerable volume of documents and the witness statements of the witnesses who at that time were to be called to give evidence. The majority of the final day was spent by the Tribunal in Chambers in order for us to deliberate and reach our decision.

11. On Thursday 19th April 2018, the Tribunal sat only briefly for the purposes of dealing with an adjournment application on the basis that the Claimant was too unwell to attend on that day. The proceedings were adjourned

accordingly and fortunately the Claimant was sufficiently recovered by the following day to attend and continue giving evidence. The Tribunal did not sit on Wednesday 25th April 2018, as agreed at the outset with the parties, in order to allow both representatives time to prepare and finalise written submissions.

12. We were originally due to hear from Mr. Les Biggs, the investigating officer, who was to be called on behalf of the Respondents. The Respondents had secured a signed witness statement from Mr. Biggs but he had thereafter signified prior to the commencement of the hearing his reluctance to appear as a witness voluntarily.

13. The Respondents had accordingly applied for a Witness Order to compel the attendance of Mr. Biggs and that was granted prior to the commencement of the hearing before us by Employment Judge Legard. However, as a result of correspondence sent to the Respondents relating to Mr. Biggs's health by his treating practitioners it was confirmed by Ms. Wedderspoon that they no longer sought to call him as a witness. Accordingly, that being the case the Tribunal discharged the Witness Order and we invited the parties to make submissions as to the weight to be attached to Mr. Biggs's evidence. Ultimately, we were satisfied that we should not attach any weight to his witness statement as it was somewhat controversial and Mr. Walton had not had the opportunity to cross-examine Mr. Biggs as a result of his non-attendance.

14. However, given the scope of the remaining claims and the contemporaneous documents before us, it would not, in all events, have been necessary to consider Mr Biggs's evidence in detail even had we elected to place any reliance upon it. We deal further below with the individuals from whom we did hear evidence during the course of the hearing.

15. Firstly, however, we should observe that during the course of the hearing, and on the advice of the Claimant's treating practitioner, the Tribunal made a number of adjustments to enable the Claimant to participate fully in the proceedings. It is common ground in this regard that the Claimant suffers from depression and that adjustments were going to be necessary during the hearing, particularly at times when she was giving evidence. These adjustments included during the time that the Claimant was giving evidence, that her evidence be given by way of a video link from another location. During the course of her evidence regular breaks were also provided. Those took place initially after every 20 minutes of evidence which she gave in order to allow the Claimant time to digest and recover. With the consent of both the Claimant and Mr. Walton, the time over which she was able to give evidence increased to a period of 30 minutes at each sitting with a 15-minute break between each of those periods. We were satisfied from what the Claimant and Mr. Walton told us in this regard that this increase did not cause the Claimant any difficulty.

16. At times when the Claimant was not giving evidence, she was seated behind a screen in the Tribunal hearing room so that she did not come into contact with any of the Respondents' witnesses but so that she was still able to follow the evidence and provide instructions to Mr. Walton when necessary. Special arrangements for exit and entry from the Hearing centre were also

made, again so that the Claimant did not see or come into contact with any of the Respondents witnesses.

17. The Tribunal also implemented breaks in the proceedings when the Claimant was not giving evidence with those taking place both mid-morning and mid-afternoon, in addition to lunch breaks and breaks at any other time when there was a requirement for one.

18. One further matter which occurred during the hearing and which we should make mention of here is that on 19th April 2018 Ms. Wedderspoon raised with us the fact that the Third Respondent, Tracey Burnside, had received a text message from an unknown number advising her that there had been a meeting about her and that she should telephone in sick until things were all over (or words to that effect). Having made enquiries, it had been established that there had been no meetings about Mrs. Burnside at the First or Second Respondent and as such it was assumed that the reference in the text message had been to the Tribunal proceedings. There was a concern on the part of the Respondents, therefore, that the text message may have come from the Claimant or someone on her behalf given that Mrs. Burnside was scheduled to give evidence shortly after it had been received.

19. That was raised with Mr. Walton when the hearing resumed after the adjournment on 19th April on the grounds of the Claimant's ill health. He confirmed that neither he nor the Claimant had any knowledge of the message nor had either of them had access to Mrs. Burnside's mobile telephone number for some considerable period of time. As a Tribunal we determined that given that the Respondents had reported the matter of the text message to the police, it was appropriate for them to deal with the issue and unless and until something linking the Claimant to the text message came to light we could not deal with the issue further. We should stress that we make no suggestion that the Claimant or anyone known to her had sent that text message and we have certainly not taken its existence into account in our decision relating to this claim.

20. During the course of the hearing, we heard evidence from the Claimant on her own behalf.

21. On behalf of the Respondents, we heard from the following individuals:

- Jaime Barrett – a member of the Second Respondent's HR Advisory and Support Service;
- Tracey Burnside – the Third Respondent and the Associate Head Teacher of the First Respondent School at the time with which we are concerned;
- Julie Bloor – the Executive Head Teacher of the First Respondent School at the material time of the Claimant's employment with which we are concerned;
- Julie Soboljew – Chair of Governors of Glossopdale School who Chaired the panel at the Claimant's disciplinary hearing.

22. We also had before us the witness statement of Les Biggs to which we have already referred and also a witness statement of Judith Sharkey. Ms. Sharkey had originally been scheduled to hear the Claimant's appeal against

dismissal and who was also for a period of time her contact officer. We deal with the role of contact officer further below.

23. However, Mr. Walton confirmed that he did not wish to cross-examine and thus did not wish to challenge the evidence of Judith Sharkey and that the Claimant was prepared to accept her statement as it stood. We have therefore not heard from Ms. Sharkey and have taken her evidence as read.

24. One matter which has invariably informed our findings of fact is the credibility of the witnesses from whom we have heard. We begin that assessment with the Claimant. Whilst we are satisfied that the Claimant sought to give to us a genuine recollection and account, we formed the view that that account had been influenced and tainted by repeated assertions, including in detailed correspondence, of the events relied upon and it is those assertions rather than actual recollection which lay at the heart of much of her evidence before us.

25. Whilst we have no doubt that the account that the Claimant sought to give to us during the course of the hearing was in her view a genuine one, we did not consider it to be historically accurate and considered it more likely that it was the result of conditioning over the repeating of allegations over the course of the last two years, with the result that things took on a new slant and a new significance. Whilst we are therefore satisfied that the Claimant gave to us what she genuinely believed to be an accurate version of events, this was in fact factually inaccurate in many areas and accordingly it was necessary for us to treat her evidence with some degree of caution.

26. There are a number of examples of the types of historical inaccuracies to which we have referred above but we highlight two in particular here. Firstly, there was the continued assertion by the Claimant that she had reported behaviour of another member of staff, a Mr. Roger Kench, to various of the Respondent's senior members of staff. That was despite a clear letter from the Claimant that she had not made any such report. That apparent direct conflict could not be reasonably explained by the Claimant in her evidence. Similarly, there had been an assertion by the Claimant that she had made a report to the Chair of Governors, Elaine Frost, regarding the appointment of Tracey Burnside and the way in which she said that that appointment had taken place. She contended repeatedly that she had made that report on the day following Tracey Burnside's interview. As it transpired, the interview took place on a Friday and it would not therefore have been physically possible for the Claimant to have made the report to Miss. Frost as she contended in her evidence given that neither would have been in School on a weekend.

27. Those examples are just two of the factual inaccuracies or inconsistencies in the Claimant's account and for those reasons, we treated her evidence where there was a clash on the facts with some degree of caution. We have therefore considered carefully in such instances, the contemporaneous documentation in order to assist us in making our findings of fact.

28. We turn then to the Respondents witnesses who, on the whole, we considered gave clear, cogent and credible evidence. Julie Soboljew for example was extremely clear on her recollection of matters and was able to take us to documentation within the bundle to support the points that she was

making. We also considered Julie Bloor to be an exceptionally good witness. She gave clear and cogent evidence which was consistent, not only with her witness statement but also the contemporaneous documentation before us. We had no hesitation in accepting the account that she or Ms. Soboljew gave to us.

29. We considered Tracey Burnside to be somewhat defensive and guarded during her evidence, although that is perhaps to be expected given the quite serious allegations that were, at that time at least, levelled at her, both personally and as an individual Respondent. We did not view her somewhat guarded manner to be indicative therefore of her being untruthful, but more as a result of the severity of the matters being put to her of which she was, at the time of giving her evidence, accused by the Claimant and Mr. Walton.

30. We did not have any particular concerns about the evidence provided to us by Jaime Barrett, particularly given the existence of contemporaneous documents to assist us in regard to the account that she provided.

31. We should observe here that there was a regrettable delay in this Reserved Judgment being promulgated following the hearing. The Judge wishes to apologise to the parties in that regard and to thank all of them for their patience. The parties will be aware from correspondence sent after the hearing so as to keep them informed, that whilst the Judgment was dictated within a short time after we took our decision, there was a delay in the typing of the same and thereafter there was also delay in fairing up the Judgment as a result of judicial and other commitments and periods of pre-booked leave being taken by the Judge. Again, the patience of the parties in respect of the delay has been much appreciated and they can be assured that the Judge has paid careful regard when fairing up the Judgment to her notes of evidence, notes of deliberations with the Tribunal members; the witness statements of those from whom we heard and the documents which were before us. Whilst the delay is both unfortunate and regrettable, the Judge is satisfied that this has not affected the findings or conclusions reached by the Tribunal and which are recorded within this Reserved Judgment.

THE LAW

Unfair dismissal

32. Section 94 of the Employment Rights Act 1996 ("ERA 1996") creates the right not to be unfairly dismissed.

33. Section 98 deals with the general provisions with regard to fairness and provides that one of the potentially fair reasons for dismissing an employee is on the grounds of that employee's conduct. The burden is upon the employer to satisfy the Tribunal on that question and they must be satisfied that the reason advanced by the employer for dismissal is the reason asserted and which is a potentially fair reason for dismissal falling under either Section 98(1) or 98(2) ERA 1996 and, further, that it was capable of justifying the dismissal of the employee. A reason for dismissal should be viewed in the context of the set of facts known to the employer or the beliefs held by him, which cause him to dismiss the employee (**Abernethy v Mott, Hay & Anderson 1974 ICR 323, CA**).

34. It is therefore for the employer to satisfy the Tribunal as to the reason for dismissal. If they are not able to do so, then a finding of unfair dismissal will follow.

35. However, that is not the end of the matter. If an Employment Tribunal is satisfied that there was a potentially fair reason for dismissal and that that is the reason advanced by the employer, then it will go on to consider whether the employer acted fairly and reasonably in treating that reason as a sufficient reason to dismiss.

36. The all-important question of fairness is contained with Section 98(4) ERA 1996 which provides as follows:-

> *"(4) Where the employer has fulfilled the requirements of subsection (1),* (in this case that they have shown that the reason for dismissal was redundancy) *the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b) shall be determined in accordance with equity and the substantial merits of the case."*

37. The burden is no longer upon the employer alone to establish that the requirements of Section 98(4) are fulfilled in respect of the dismissal. This is now a neutral burden.

38. In conduct cases, a Tribunal is required to look at whether the employer carried out a reasonable investigation from which they were able to form a reasonable belief, on reasonable grounds and after reasonable investigation as to the employee's guilt in the misconduct complained of (**British Home Stores v Burchell [1980] ICR, 303 EAT**).

39. An Employment Tribunal hearing a case of this nature is not permitted to substitute its judgment for that of the employer. It judges the employer's processes and decision making by the yardstick of the reasonable employer and can only say that a dismissal was unfair if either falls outside the range of reasonable responses open to the reasonable employer.

40. Many employees will be able to point to something the employer could have done differently, or indeed better, but that is not the test. The question for the Tribunal is whether the employer acted within the range of reasonable responses open to it or, turning that question around, could it be said that no reasonable employer would have done as this employer did?

Failure to make reasonable adjustments

41. Section 20 EqA 2010 provides that:

"Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2)The duty comprises the following three requirements.

(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4)The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5)The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6)Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7)A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8)A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9)In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a)removing the physical feature in question,

(b)altering it, or

(c)providing a reasonable means of avoiding it.

(10)A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a)a feature arising from the design or construction of a building,

(b)a feature of an approach to, exit from or access to a building,

(c)a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d)any other physical element or quality.

(11)A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12)A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13)The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

42. Section 21 provides that:

"A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3)A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise."

43. It will therefore amount to discrimination for an employer to fail to comply with a duty to make reasonable adjustments imposed upon them in relation to that disabled person (paragraph 6.4 of The Code).

44. However, the duty to make reasonable adjustments will only arise where a disabled person is placed at a substantial disadvantage by:

- An employer's provision, criterion or practice ("PCP").

- A physical feature of the employer's premises.
- An employer's failure to provide an auxiliary aid.

45. Where the claim relates to a PCP, this "should be construed widely so as to include, for example, any formal or informal policies, rules, practices, arrangements or qualifications including one-off decisions and actions" imposed by the employer (paragraph 6.10 of The Code).

46. Matters resulting from ineptitude or oversight on the part of the employer will not, however, amount to a PCP (see ***Newcastle Upon Tyne Hospitals NHS Foundation Trust v Bagley UK EAT 0417/11***).

47. The duty to make reasonable adjustments only arises insofar as an employer is required to take such steps as it is reasonable to take in order to avoid the substantial disadvantage to the disabled person. A Tribunal is required to take into account matters such as whether the adjustment would have ameliorated the disabled person's disadvantage, the cost of the adjustment in the light of the employer's financial resources, and the disruption that the adjustment would have had on the employer's activities.

FINDINGS OF FACT

48. We would ask the parties to note that we have only made findings of fact where those are necessary for the proper determination of the remaining complaints before us. We have not therefore made findings in respect of each and every area where the parties are at odds with each other where that is not necessary for the proper determination of the remaining issues before us. Particularly, we have not made findings of fact in relation to any of the complaints which have been withdrawn, except where there is some cross-over with remaining complaints in the proceedings.

The First Respondent and the Claimant's career

49. The First Respondent is an educational establishment situated in Chesterfield. It originally went by the name of Meadows Community School, but following a change of name it became Whittington Green School.

50. Prior to the Claimant's engagement at the First Respondent School, she had already had a long career history with the Second Respondent. It is necessary for us to set that out in a little detail as a result of an issue which we are required to determine with regard to the location of a subsequent disciplinary hearing which resulted in the termination of the Claimant's employment.

51. The Claimant first commenced employment with the Second Respondent in this regard in January 1979 at the age of 18 years old. At that time, the Claimant worked as a typist at the headquarters at County Hall in Matlock in Derbyshire. County Hall remains the headquarters of the Second Respondent.

52. On 11th September 1991, the Claimant commenced employment at what was then the Meadows Community School in Chesterfield. As set out above,

the Meadows Community School was later to become Whittington Green School, i.e. the First Respondent. The Claimant did not return to work at County Hall after she was appointed to work at the School.

53. The Claimant commenced employment at the School initially as a clerical assistant for a period of approximately one year before she was appointed to the role of Bursar, becoming responsible in that role for the management of the First Respondent School budget.

54. A further promotion followed on 1st July 2003 with an offer of appointment to the position of Business and Administration Manager. That was the role that the Claimant continued to hold until the later termination of her employment, to which we shall come in due course. That was save as for a slight, as the Claimant terms it, evolution in relation to her particular job title, which was to become Business Manager. In essence, however, the duties remained largely the same with an emphasis on finance responsibilities and taking a lead on basic Human Resource ("HR") issues. We set out more detail in relation to the Claimant's responsibilities below.

55. We have absolutely no doubt whatsoever that the Claimant was devoted to her job and that she enjoyed it very much. It is of course perhaps something of a rarity otherwise to find such a significant length of continuous service with the same employer. The Claimant's employment with the Second Respondent in this regard spans effectively almost the entire length of her working life to date.

56. In her role as Business Manager, the Claimant had a significant degree of both responsibility and autonomy. Those were matters accepted by the Claimant in cross-examination. Originally during the course of her employment, the Head Teacher at the School had been an individual by the name of Lynn Asquith. She was supported not only by the Claimant in her role as Business Manager but also by two Deputy Head Teachers, Stella Ward and Roger Kench. Both Ms. Asquith and Ms. Ward retired at the end of the academic year in 2013. Tracey Burnside applied for a secondment to the position of Associate Head Teacher in May 2014 and, following a successful interview, was appointed to that post on 24th May 2013.

57. Earlier that month, Julie Bloor had been appointed on a secondment for a period of two days per week as Executive Head Teacher in order to support the incoming Associate Head Teacher. That was a secondment from her substantive post which she continued to undertake with the consent of the school in which she worked in her substantive post. Both Ms. Bloor and Mrs. Burnside visited the First Respondent School on a number of occasions during the period after their appointment and up to the end of that particular academic year in order to familiarise themselves with the establishment before commencing their posts in September 2013 at the start of the new academic term.

58. It is perhaps fair to say from what we have heard during the course of these proceedings that the outgoing Head Teacher did not run a particularly tight ship and that there was a significant reliance and responsibility placed upon the Claimant in her role as Business Manager and as part of the senior leadership team.

59. That view is supported by evidence of Tracey Burnside during the course of the hearing that she had heard comment during the aforementioned visits to the First Respondent School that staff were not clear whether the School was in fact run by Lynn Asquith or by the Claimant.

The role of Business Manager

60. The Claimant's duties, of which there were a significant number, were set out in her job description which appears in the hearing bundle before us at pages 239 to 243. The job description included not only financial management but also premises management, health and safety management and personnel or HR responsibilities.

61. In terms of financial responsibilities, the overall responsibility in relation to such matters lay with the School Governors to whom the Claimant was required to report. She was, however, required to comply with Financial Regulations and the terms set out in the First Respondent's Financial Handbook.

62. The Financial Handbook set out the processes for financial authorisations and, in particular, it set certain limits with regard to the procurement of goods and services. Contrary to what was set out in her witness statement, the Claimant accepted in cross examination that the Financial Handbook provided that she could authorise the purchase of goods and materials up to £4,000.00 and in relation to services or repairs to the building of up to £3,000.00.

63. Anything over and above that level had to be passed to the Head Teacher whose authorisation in relation to goods and materials was up to the sum of £5,000.00 and was set at the same level as the Claimant for the provision of repairs and services to buildings.

64. Anything over that level of authority had to be taken to the Governors to seek approval. That would usually take place at a Governors' meeting, although we accept the evidence of Ms. Soboljew (as indeed confirmed at page 245w of the hearing bundle) that where there was an emergency situation, then appropriate authority could be obtained directly from the Chair of Governors. That did not have to be a face to face authorisation and a telephone call to explain the situation and seek appropriate authorisation would suffice in urgent cases. There was, therefore, no need to await the next Governor's meeting before seeking authorisation for purchases exceeding the limit of the Claimant and the Head Teacher where there was an urgent need for goods or services to be procured.

65. The Claimant was also required, as set out above, to comply with Financial Regulations as part of her duties as Business Manager. Those Financial Regulations ("The Regulations") had been approved by the Governors and, amongst other things, they also required invoices to be signed by two separate people. In reality, that was the Claimant as Business Manager and the Head Teacher (or in their absence a Deputy Head Teacher) to countersign.

66. The Regulations also required the following:

    (i) that all changes to working hours, salary grades or conditions of service of members of staff were to be approved by the Governors;
    (ii) that where it was necessary for authorisation to be sought from Governors (i.e where the purchase exceeded the Claimant or Head Teacher's authorisation levels) then competitive tendering should take place with written quotes obtained; and
    (iii) that there was a requirement for a register of suitable contractors to be maintained with new additions to that register being approved by the Governors. Responsibility for maintenance of that register lay with the Claimant.

67. We accept that there are very good reasons for the imposition of those Financial Regulations in order to provide transparency and to safeguard the finances of the First Respondent School and those within it. We also take into account of course that the First Respondent was spending public money and again hence the requirement for transparency and to obtain goods and services at best cost.

68. The Claimant was supported in her role as Business Manager by the School's Finance Officer, Carol Hayes. Ms. Hayes was a subordinate to the Claimant and was line managed by her. As set out in her job description, the Claimant reported only to the Head Teacher of the First Respondent School and, of course, ultimately to the Governors.

Audits

69. The First Respondent School was audited, as we understand it, on an annual basis by an Audit Team from the Second Respondent. We have not heard from anyone within the Audit Team as to precisely the nature of checks that they carry out and how those are dealt with but we are aware that they produce an audit report with recommendations made to the Governors.

70. In addition to that audit report, there is a requirement for the First Respondent to meet certain financial standards. Those are a list of requirements which are signed off as being completed at each school within the local authority by the relevant Business Manager and in the case of the First Respondent School, that was of course the Claimant.

71. Once completed by the Business Manager, the financial standards documentation is then sent to the Second Respondent. It is not entirely clear what happens to it after that and if there are any checks performed by the Second Respondent as to whether the information inputted and submitted by the relevant Business Manager is in fact accurate.

The anonymous letter

72. On 6th December 2013, Tracey Burnside, who had by that stage taken up her post as Associate Head Teacher at the First Respondent School, received in her pigeon hole what has been referred to as an "anonymous letter". It contained a number of allegations against the Claimant and was simply signed "a very concerned parent". Despite the signing off in those terms, both

the Claimant and Mrs. Burnside ultimately consider that it was more than likely written by an individual from within the First Respondent School given the level of knowledge contained within the letter. It is not necessary for us to make any findings, however, as to the likely identity of the author of the anonymous letter for the purposes of these proceedings.

73. In addition to sending the letter to Mrs. Burnside, a copy was said to have also been sent to the Education Authority and to the Board of Governors.

74. The anonymous letter said this:

> "…
>
> *The 2013 school Ofsted inspection identified important issues within the school's management and leadership which was considered weak and ineffective.*
>
> *You have been appointed with the responsibility of turning Meadows Community School[1] from potential special measures to a successful school attaining Ofsted's expectations and beyond[2].*
>
> *The Meadows School management will only achieve these expectations if the management is open, honest and transparent.*
>
> *This concept raises serious issues which you will need to address. You can only achieve your remit with the trust of those around you.*
>
> *You need to be aware of the following facts that need your urgent attention.*
>
> *Mrs. Brenda Cartwright is a dishonest and corrupt member of your senior management team who is involved in the key decision making process within the school environment.*
>
> *These facts are common knowledge amongst employees at The Meadows School.*
>
> *Conflicts of interests include:*
>
> *Insider dealing Eric Treece work was channelled in his favour for some number of years. This resulted in no other contracts being issued to other contractors despite the closed tender scheme being in operation.*
> *He had access to the school at all times with his own keys to the premises were* [sic] *he completed work for himself at weekends and evenings.*
>
> *Several contractors have employed both her sons, this is still*

[1] A reference to the former name of the First Respondent but it is common ground that the anonymous letter was referring to the First Respondent School.
[2] The reference to "you" in this context is, as we understand it, a reference to Mrs. Burnside to whom the letter was primarily addressed.

happening at the present time.

Several contractors have undertaken jobs at both her homes in Chesterfield and the East Coast. This includes building works, carpet fitting, plumbing jobs including fitting of a full bathroom suite. Regular gas boiler servicing has taken place at no cost to her.

Most worrying is the fact that she has cohabitated with the electrical contractor over a long of period of months which included his family spending Christmas at her home last year and her participating in a foreign holiday with him.
During this time extensive electrical work was put his way. This is still ongoing.

Brenda Cartwright has also been paid to undertake her normal school responsibilities however for the last two years she has been paid in addition to her wages for summer school activities, resulting in being paid twice for the same hours which amounts to fraud.

These facts need and deserve your immediate attention, investigation and resolution which results in the appropriate measures taking place.

The Meadows School has the potential to be one of the best educational providers within the area, which aspires to meet the challenges that ensures all pupils attain their full potential.

Your honest, open and transparent leadership will enable the staff, the school, and the pupils to move forward with the opportunity of a positive and honest future.

…"

75. Upon receipt of that letter, Mrs. Burnside recognised that she needed to seek advice. We accept her evidence that Julie Bloor was not in the First Respondent School that day – and we remind ourselves that she was only working there two days per week - but that she was contacted by telephone to advise her about the situation. We accept the evidence of both Mrs. Burnside and Ms. Bloor that the advice that the latter gave was to the effect that Mrs. Burnside needed to seek guidance from Human Resources.

76. Mrs. Burnside telephoned Human Resources at the Second Respondent and spoke to Jaime Barrett for advice. The Audit Team at the Second Respondent were also informed because of the financial nature of the allegations which had been set out against the Claimant in the anonymous letter. Two members of the Audit Team, Chrystal Wallage and Carl Hardiman, attended the First Respondent School along with Jaime Barrett to meet with Mrs. Burnside on the same day.

77. Mrs. Burnside also conducted a brief fact find before meeting with the Claimant about the allegations in the anonymous letter. Mr. Walton places great emphasis on the fact that the details of the fact find were not recorded by Mrs. Burnside. However, in fact all that she did was to look at the financial

systems to seek to determine if there might be anything in the allegations set out in the anonymous letter. There was, in reality, little if anything to record in a file note or similar and a proper investigation into the matter was of course to be undertaken in due course.

78. Mr. Walton also points out that the individual to whom Mrs. Burnside had gone to ask to be shown things on the finance system was Carol Hayes. He suggests that she might have been able to have made alterations to the system but there is quite simply no evidence of anything of that nature having taken place at all. Whilst the Claimant and Mrs. Walton ultimately believe that Ms. Hayes might have been the author of the anonymous letter (although as we have said above we make no finding to that effect) if she had wanted to manipulate the finance systems no doubt she could have done so before the letter was sent. Being asked to access them by Mrs. Burnside so that she could look at the records for herself is not suggestive in our view of any unfairness or ability of anyone to prejudice the later investigation.

The Claimant's suspension

79. The auditors and Jaime Barrett attended the School on 6th December 2013, that being the same day as the anonymous letter had been received. At that time, the Claimant was out of the First Respondent School at a meeting. The position in relation to the allegations set out in the anonymous letter was discussed and Mrs. Burnside took the decision that the Claimant should be suspended from employment pending an investigation. We accept that the rationale for that decision was as a result of the serious nature of the allegations against the Claimant and the fact that those related to financial matters and the Claimant had access to all of the financial and HR systems. With that in mind, Mrs. Burnside determined that it was necessary to suspend the Claimant so as to ensure that there could be no tampering, or allegations of tampering, with any evidence or with staff members who might have to be interviewed in the forthcoming investigation. Both of those are valid reasons for suspension set out at paragraph 4.2 of the Second Respondent's Disciplinary Policy ("The Disciplinary Policy") (see page 356 of the hearing bundle) and we accept that given the serious nature of the matters alleged in the anonymous letter, it was not unreasonable for Mrs. Burnside to have decided to suspend the Claimant. Indeed, the Claimant herself accepted in cross-examination that suspension in relation to allegations of this nature would not be unreasonable.

80. The Disciplinary Policy also sets out that suspension should only occur where all other alternatives have been considered. We are satisfied in this case that that consideration did take place but there were no alternative roles that the Claimant could have been deployed to, certainly within the First Respondent School, that did not require access to financial and other systems. Whilst there does not appear to have been consideration of deployment to alternative positions within the Second Respondent authority generally, we do not consider that to be unreasonable given the nature of the allegations made against the Claimant and the fact that she was placed in all events within the First Respondent School. It is not, in our view, something that falls outside the band of reasonable responses open to a reasonable employer.

81. The Disciplinary Policy sets out the procedure which must be followed in respect of suspension. The following paragraphs within the policy are relevant to the issues before us:

> "…
>
> - *The suspension must be carried out face to face with the member of staff concerned at a specifically convened meeting. The member of staff should be offered the opportunity to be accompanied, usually by their trade union representative, at the meeting and the Head Teacher or Chair of Governors may be accompanied by a representative from the LA[3]. In rare circumstances, for instance where a member of staff is absent, it may be necessary to write to notify of a suspension. However, it would normally be preferable to wait until the member of staff returns.*
>
> …
>
> - *The member of staff should be offered a Contact Officer, normally from outside their line management and usually from the LA, who can offer help, support and guidance during their suspension and subsequently, if necessary and appropriate. Guidance on the role of the Contact Officer is included as Appendix 5. Where there is a need to suspend a member of staff on a Friday or immediately before a holiday period, special consideration should be given to the support arrangements.*
>
> …
>
> - *The Head Teacher should agree with the member of staff what their colleagues and the wider school community will be told about and the reason for their absence. This is particularly important in sensitive situations and will allay continued suspicions or doubts about the absence if the member of staff returns to work when the investigation or associated action has been concluded.*
>
> …"

82. We understand that the Disciplinary Policy had previously been adopted by the First Respondent School and it was that policy which Mrs. Burnside was considering during the course of her dealings with the Claimant's suspension.

<u>The suspension meeting</u>

83. Given that she was absent from the First Respondent School at an external meeting, the Claimant was telephoned and was told that she needed

[3] That is a reference to the Local Authority - in this case the Second Respondent.

to attend a meeting and so she should return to the School for that purpose. The Claimant duly did so. She did not at that point know what the meeting was about. We accept that she was met on arrival at the School by Mrs. Burnside who said to her words to the effect of *'It's one of those meetings where you will need a trade union representative'.*

84. That explanation, in our view, could and should have been clearer. Whilst we accept that Mrs. Burnside genuinely believed that that was sufficient to communicate to the Claimant that it was she that needed to arrange trade union representation, we equally accept that that was not what the Claimant understood from what had been said. We accept in this regard that the Claimant had regularly taken minutes of disciplinary meetings as part of her HR duties for the previous Head Teacher, Lynn Asquith. She had therefore understood that she would be attending a disciplinary or similar meeting in order to take notes and not that she was to be the subject of the meeting. Indeed, we accept her account that when Mrs. Burnside later returned to collect her for the meeting she picked up her note pad and pen thinking that she would need them to take minutes of the meeting.

85. Whilst Mrs. Burnside was not aware of the Claimant having been the note taker in disciplinary meetings, and the Claimant had not attended any such meetings for her in a note taking capacity, she should in our view have nevertheless made it clearer to the Claimant that the nature of the meeting was such that she herself would be entitled to and may therefore wish to arrange trade union accompaniment. Indeed, it would have been more sensible to have spelt that out so that there could have been no room for confusion and, further, it would in our view have been better to have told the Claimant clearly over the telephone rather than await her arrival at the School so that it gave her time to contact her trade union and arrange for someone to attend with her. We understand in this regard that there is no on-site trade union presence which might render it difficult to comply with the requirement of the Disciplinary Policy for accompaniment at suspension meetings given that, by their very nature, the subject matter of such meetings is not something that an employee is previously put on notice of. In this regard, if an individual had committed acts of gross misconduct, it is likely that he or she would not be under much doubt as to the reasons that they were going to be suspended and might then during that intervening period have the opportunity to tamper with evidence to try to cover their tracks.

86. We should observe here that we make no suggestion that that is what the Claimant would have done in such circumstances, but of course a time of suspension of any employee, the employer cannot conceivably know that.

87. Whilst things therefore could and should have been made clearer, we do not accept, as is suggested on behalf of the Claimant, that Mrs. Burnside had deliberately misled her so that the Claimant would be blindsided or ambushed in the meeting when she did discover what it was about. We accept that there was simply a miscommunication and that Mrs. Burnside was under the impression that what she had said to the Claimant was sufficient to allow her to understand that she herself needed representation. That miscommunication was borne, no doubt, from Mrs. Burnside's inexperience in dealing with suspension and disciplinary matters. Indeed, we understand this to be the first that she had ever dealt with.

88. Whilst Mrs. Burnside did have HR presence at the School at the time, again Ms. Barrett was not an experienced HR adviser and she had only been in post with the Second Respondent for two weeks at the time that she attended the School for the meeting. She was therefore not as familiar with the Second Respondent's policies and procedures as she is now.

89. Whilst therefore there should have been more clarity, we are satisfied that ultimately this did not cause any unfairness to the Claimant given that we accept that the offer of a companion was repeated by Mrs. Burnside as they walked down the corridor towards the meeting - and by that stage the Claimant was aware that the meeting was not one where she was simply taking notes - and at that juncture she declined to have anyone present with her. Indeed, the offer of a companion was also again reiterated in the meeting itself as confirmed by the evidence of both Mrs. Burnside and Ms. Barrett and the Claimant again indicated that did not want anyone to be present. In all events, nothing particularly turned on that meeting given that the Claimant was simply notified of her suspension and the reasons for that suspension. She was not required to make any admissions, or representations or to provide any detail about the allegations made in the anonymous letter. That was to come at a later stage. Moreover, the First Respondent also held a five-day review meeting in accordance with the Disciplinary policy at which the Claimant's trade union representative was present and had the opportunity for input and representations.

90. Turning back then to the suspension meeting, as we have already observed above, members of the Audit Team had also attended at the First Respondent School along with Ms. Barrett in her HR capacity. The members of the audit team who attended in this regard were Chrystal Wallage, a Deputy Director in the audit team, and Carl Hardiman. Mr. Hardiman did not stay for the suspension meeting but Ms. Wallage did.

91. It is perhaps fair to say that in our view Chrystal Wallage ran roughshod over the inexperienced Mrs. Burnside and Ms. Barrett in a meeting between them prior to the suspension meeting. She was in this regard extremely vocal about her views that the Claimant should be suspended and, further, that she should be present at the suspension meeting. Furthermore, she was also extremely vocal in her views that the matter of the Claimant's suspension and the reasons for it should be communicated to all staff at the School. That was despite the clear provisions of the Disciplinary Policy that the reasons for absence were to be agreed with the suspended employee. However, Ms. Wallage had clearly jumped the gun by making her views stridently known before the suspension meeting had even taken place.

92. We have to say that we are at something of a loss to understand what possible benefit might be derived from telling all staff at the First Respondent School that the Claimant had been suspended and the nature of the allegations that she had been suspended for. Whilst the Respondents seek to suggest that that course of action would avoid the potential for gossip, in our view it would do anything but.

93. Such was the conviction of Chrystal Wallage that details of the allegations should be conveyed to the School staff, however, that this understandably led

to a conflict between herself and Ms. Barrett of HR. Ms. Barrett, with some good reason given our observations above, did not consider that the reasons for suspension should be conveyed to the wider School staff.

94. As demonstrated in her evidence before us and as also confirmed at page 1737 of the hearing bundle, as a result of that conflict, Ms. Barrett contacted a senior HR colleague for advice. She in turn contacted the Legal Department who confirmed that it was not standard practice, as Chrystal Wallage had appeared to be suggesting, to notify staff of a suspension and the reasons for it but if that was to be the course of action taken then that must be with the agreement of the employee concerned.

95. There is a conflict between the Claimant one the one hand and Ms. Barrett and Mrs. Burnside on the other as to whether or not that agreement was given at the suspension meeting and we shall come to that further in due course.

96. The attendees at the suspension meeting, as we have already observed, included Chrystal Wallage. We have no doubt at all that that was as a result of her insistence to be present. We cannot see that there was any particular reason which necessitated her being there. Whilst Mrs. Burnside suggested that her presence might be required so that Audit could accompany the Claimant home to collect her work laptop, which was later interrogated as part of the later audit investigation into the allegations against her, that did not in our view necessitate the presence of Chrystal Wallage in the meeting. She could simply have waited outside until the meeting was over.

97. However, there is no evidence before us that Chrystal Wallage was vocal in the meeting as she had been prior to it. The lead in that regard was taken by Mrs. Burnside. Whilst in our view not entirely appropriate nor necessary, we are satisfied that the attendance of Ms. Wallage did not cause any unfairness to the Claimant.

98. Notes of the suspension meeting were, we accept, taken by Ms. Barrett and we accept her evidence that those are the notes which appear at pages 524 and 525 of the hearing bundle and that they are a reasonably accurate record of what occurred. The Claimant disputes that those notes are accurate. She also contended as part of her claim in the first instance that they had been falsified and had only been created at a much later date. Her evidence to the Tribunal, however, was that she did not in fact believe the notes to have been falsified but she simply did not agree with certain aspects of them.

99. We fully accept insofar as that point is still pursued by Mr. Walton as an issue in the unfair dismissal claim, that the notes were created shortly after the meeting. That is clear from page 526 of the hearing bundle, which is a screenshot of the properties section of the Word document where that suspension meeting note was created. Mr. Walton contended in cross-examination of Ms. Barrett that she had also fabricated the properties document. He was not able to suggest how she had done so and it was frankly an outlandish allegation to have made given that there was not one shred of evidence to suggest that that was the case.

100. We are satisfied from the evidence that Ms. Barrett gave and from the properties document to which we have just referred that the file note recording the events of the meeting was created shortly after the same took place. That file note records that the Claimant had agreed to have the fact of her suspension and the reasons for it explained to the staff of the First Respondent. The Claimant disputes that that was the case and her evidence was that there was never any agreement to that effect. The evidence of Mrs. Burnside and Ms. Barrett is that the Claimant did agree as recorded in the file note.

101. Ultimately, we prefer the evidence of Ms. Barrett and Mrs. Burnside on that issue for the reasons that we have given above in respect of our assessment of credibility and the fact that this is confirmed by the relatively contemporaneous file note.

102. We find it likely, however, that the Claimant was in a significant state of shock about her suspension and may well have agreed whilst being somewhat on autopilot. Again, it would in our view have been more appropriate for the dissemination of information about the suspension to be put on hold and the Claimant asked again about the matter after the suspension meeting, either in writing or at the later five-day review meeting.

103. There is no reason why that matter had to be decided at the suspension meeting, other than perhaps at the insistence of a somewhat overbearing Ms. Wallage and staff could have simply been advised that the Claimant was absent and that they should not contact her. Indeed, an email from Ms. Barrett to her line manager at page 531 of the hearing bundle certainly envisages the possibility of staff simply being told not to contact the Claimant.

104. Whilst Mrs. Burnside told us in her evidence that she believed that that would create gossip, we consider it much more likely that there would be gossip from staff if told that the Claimant had been suspended due to financial allegations, which was what they were later informed. However, there is nothing to suggest that this state of affairs had any bearing on the subsequent investigation into the allegations against the Claimant or otherwise affected the fairness of the later dismissal.

105. There is no evidence for example that the disclosure of that particular information, whilst in our view unnecessary, caused any problems to occur during the subsequent thorough forensic investigation by the Second Respondent's Audit Team.

106. However, it is a matter that could and should have been more sensitively and delicately handled.

107. As we have already observed above, at the start of the meeting the Claimant was again offered the opportunity to be accompanied. The Claimant contends that she was told that she could be accompanied by one of three specifically named individuals. Her evidence was that those individuals were Nigel Kinman, Julie Bloor or Roger Kench. In relation to the latter, it is Mr. Walton's position that this was done deliberately to, as he put it, derail the Claimant in the meeting for reasons which we do not need to go into for the purposes of the issues remaining before us.

108. We prefer the evidence of Ms. Barrett and Mrs. Burnside, as again supported by the contemporaneous file note referred to above, that no named companion was identified. Particularly, no complaint about that issue was made at the later five-day review meeting by either the Claimant or her Trade Union representative and we consider that that would have been a matter raised had Mr. Kench been offered as a companion and the Claimant had found that objectionable.

109. Moreover, we accept the evidence of Tracey Burnside that she would not have offered Julie Bloor as a companion in all events given that she was out of the School that day and it would not therefore have been possible for her to have come to attend with the Claimant at the meeting.

Contact officer

110. However, Julie Bloor was offered to the Claimant by name as a contact officer. The purpose of a contact officer was to support the Claimant during the period of her suspension.

111. The Disciplinary Policy to which we have referred above provides that the contact officer should usually be from outside the line management of the suspended employee. The Claimant was of course line managed by Mrs. Burnside and in turn she was line managed by Ms. Bloor. However, we accept Mrs. Burnside's evidence that in her view it was appropriate for someone within the School to be appointed as the contact officer rather than someone within the Second Respondent, given that they would not have any information about the workings of the School or what went on there. Part of the role of the contact officer was to provide any necessary updates and had the Claimant any queries, for example about what was happening in School, Ms. Bloor would have been able to provide those in much better detail than someone from the Second Respondent.

112. In all events, we accept the evidence of Mrs. Burnside that the Claimant agreed to the appointment of Ms. Bloor as contact officer and it is apparent that she had no issues at all with that until a later stage. At the point that the Claimant requested a change of contact officer from Ms. Bloor, the contact officer was duly changed to Judith Sharkey of HR within the Second Respondent. We shall come further to that position in due course.

113. The Claimant contends before us that Ms. Bloor did not fulfil her role as contact officer in that there was little or no contact for the purpose of providing updates. However, we accept the evidence of Ms. Bloor, which was not challenged in cross examination by Mr. Walton, that upon learning from a telephone call with Tracey Burnside that she had been appointed to the role of contact officer she sent a text message to the Claimant saying words to the effect that she was there if she needed her or wanted to talk about anything and that she would make herself available at any time, including over the weekend, to talk to the Claimant if that was what she wanted. The Claimant did not make any contact with Ms. Bloor in response.

114. We also accepted the evidence of Ms. Bloor that she was keen to strike an appropriate balance for contact and that she did not want to seem too pushy

by telephoning the Claimant given that she might not have welcomed such intrusion at a clearly difficult time. She therefore felt that her text message was the right lighter touch which then left the ball in the Claimant's court as to whether she wanted contact, whilst making it clear that she would make herself available. In our view, that was an appropriate and proportionate response. Indeed, had she continued to press the Claimant for contact after the initial text, it is entirely possible that that might have been seen as intimidating or harassing. We consider that Ms. Bloor struck an appropriate balance. She made it abundantly clear that she was there to be contacted if the Claimant wished to do so and that position was left in the Claimant's court if she wanted to talk. However, it appears to be common ground that there was no attempt by the Claimant to make contact with Julie Bloor at that stage.

Review meetings

115. Following the suspension meeting, the Chair of Governors, Elaine Frost, was informed of the matter of the Claimant's suspension and she wrote to the Claimant on the same date to confirm that position. The allegation as set out in the suspension letter was that the Claimant had misused her authority in a position of trust as Business Manager for the financial benefit of herself and others. Whilst that was a somewhat generic description of the allegations against the Claimant, we nevertheless remind ourselves that the letter was to confirm the position on suspension only and not an invitation to an investigatory or disciplinary hearing.

116. The letter also set out details of a review meeting which was to take place on 13th December 2013, in accordance with the requirements of the Disciplinary Policy, and advised the Claimant of her right to be accompanied at the same by her trade union representative. She was also reminded that she was able to contact Julie Bloor in the event of any questions about the process (see page 530 of the hearing bundle). Again, this gave the Claimant the opportunity to initiate contact with Ms. Bloor had she wished to do so and we understand in this regard that at some point thereafter the Claimant contacted her accordingly.

117. The Claimant requested a delay to the date for the review meeting which was granted by the First Respondent and accordingly the meeting took place on 17th December 2013. The Claimant and her trade union representative, Shay Boyle, of the GMB were in attendance.

118. During the course of the meeting, the Claimant was updated that there was to be an investigation by members of the Audit team from the Second Respondent into the allegations against her. It was also explained that the Second Respondent had an independent counselling service and that the Claimant could access up to six sessions free of charge and she was informed that the contact details would be provided. It is common ground that the Claimant did not access that counselling service. However, she did comment that she had been in contact with Julie Bloor as her contact officer and that this was working well. That is perhaps contrary to the assertion now made in the proceedings before us that there was no contact from the appointed Contact Officer.

119. The meeting concluded by confirming the Claimant's ongoing suspension

and that Audit would contact her directly in due course.

120. We have also seen the notes of that meeting. That is not only as prepared by the First Respondent but also from the Claimant's own trade union representative. His notes are at page 539 of the hearing bundle. That note makes specific reference to there being a good support officer in place. This of course is a reference to Julie Bloor and again, we are satisfied that, at that time at least, the Claimant had no issues in respect of Ms. Bloor being the contact officer and that there was an acceptable level of contact.

121. The following day Ms. Barrett provided details to the Claimant of the counselling service that had been referred to at the review meeting and reminded her of the fact that six free sessions could be provided. She also provided a further update to the Claimant on 20th December 2013 in relation the Audit investigation and asked for the Claimant's input as to when the next review meeting should take place.

122. That second review meeting took place on 17th January 2014 (see pages 551 and 552 of the hearing bundle). At that meeting, Ms. Barrett confirmed to the Claimant that Audit were collating further information and were not yet at the point of conducting interviews but that she would be kept updated. The Claimant again confirmed during this meeting that she was happy with Julie Bloor as the contact officer. She was advised that she was able to change the contact officer if she wanted to do so in due course.

123. The meeting concluded in relation to further reviews as follows:

> "*… it was agreed by all that JB* (i.e. Ms. Barrett) *would e-mail any updates that came in and that when Audit are at an investigatory interview stage they would agree to meet again. JB informed BC* (i.e. Brenda Cartwright) *to contact her at any point should she wish to meet sooner.*
>
> *…*"

124. We are satisfied that that was an accurate representation of what occurred at the meeting and that the Claimant had therefore agreed that there was no point in meeting again unless there were any updates to be provided, but that the opportunity was there for the Claimant to say so if she wanted to otherwise meet. We do not therefore accept the criticism that there was a lack of support in respect of such meetings as the Claimant herself had accepted that there was no need to meet unless there had been any developments.

125. The following day, the Claimant wrote to Ms. Barrett requesting a change of contact officer (see page 555 of the hearing bundle). That was said to be so as to be in accordance with policy (i.e. the Disciplinary Policy) and no reference was made to any problems in relation to contact, or a lack thereof, from Julie Bloor. We have little doubt that if there had been any complaint about Ms. Bloor in her role as contact officer at that time, the Claimant's email would have said so. That is not least in view of the fact that later communications from the Claimant, albeit we understand penned by Mr. Walton, were not backwards in coming forwards in respect of raising issues of

apparent concern.

126. The Claimant's request for a change of contact officer was actioned swiftly by Ms. Barrett and Judith Sharkey, a senior HR consultant at the Second Respondent, was appointed as contact officer in place of Ms. Bloor. She wrote to the Claimant on 13th January 2014 introducing herself and offering support (see page 556 of the hearing bundle). As set out above, we have not heard from Mrs. Sharkey on the basis that the content of her statement is agreed. Given that and the fact that Mr. Walton has elected not to cross-examine her, we take that to mean that there are no criticisms in relation to contact which she offered to the Claimant after her appointment on 13th January 2014.

The Audit Investigation

127. Following the collation of documentation referred to by Jaime Barrett in the second suspension review meeting, the Audit Team commenced interviews with relevant members of staff. In this respect, they spoke with the following:

- Tracey Burnside on 4th February 2014;
- Carol Hayes, the Finance Officer who was line managed by the Claimant on 4th February 2014;
- Hayley Lynch, Curriculum Access and Progress Monitoring Coach at the First Respondent School, on 4th February 2014;
- Lynn Asquith, the former Head Teacher at the First Respondent School, on 6th February;
- Elaine Frost, the Chair of Governors on 6th February 2014; and
- Stella Ward, the former Deputy Head on 7th February 2014.

128. The Audit Team also met with the Claimant on 24th February 2014 for a lengthy interview. Although the Claimant complains now as to the length of the interview and some other aspects to it, we are satisfied that she had confirmed at the conclusion of the interview that she was content with the way in which it had been conducted (see page 1162 of the hearing bundle). If the interview had been unduly onerous or otherwise conducted inappropriately, it is very difficult to see why the Claimant would have said that she was satisfied with how it had been dealt with. Again, we find her position as set out at that stage to be more reliable than the position as she now describes it some considerable time later.

129. Following conclusion of the interviews, the Audit Department concluded their report in relation to the allegations against the Claimant and that was sent to the Second Respondent's Chief Executive; the Strategic Director of Children and Young Adults services; the Director of Finance and the Director of Legal Services.

130. The audit report in an extremely lengthy document and for obvious reasons we do not therefore set it out here in full. However, it did highlight the following key issues relevant to matters which were later taken forward to a disciplinary hearing:

(i) That the Claimant would work additional hours to cover classes during periods of absence and that she would record and sign her own timesheet as confirmation that the hours had been worked and the claim was valid. The Derbyshire Scheme for Finance in Schools required that where additional payments were submitted, they should be properly authorised by an appropriate person who could evidence the satisfactory completion of the work. There was no evidence that any of the claim forms submitted by the Claimant had been reviewed and approved to certify that she had worked the hours and that the claim was legitimate. The same scheme required that someone authorising changes to the payroll must not authorise changes relating to themselves. It appeared that the Claimant was approving payroll for payments for herself to authorise the additional cover work referred to above. It was recorded that during the audit interview, the Claimant had acknowledged that she should not authorise her own hours;

(ii) The Claimant had been paid an additional payment of £700.00 in respect of summer school activities, despite being employed on a 52-week contract. The final approval of that payment was again made by the Claimant who had authorised an additional payroll payment to herself. The Claimant had decided on the sum of £700.00 herself and there was no other person involved in the process other than Carol Hayes, the Finance Officer, who was subordinate to the Claimant. The Claimant had also been paid in advance of the summer school taking place;

(iii) The Claimant had authorised and implemented payment of an additional £200.00 to another member of staff, Hayley Lynch, over a two year period without completing any of the necessary paperwork to do so and she had some time later ceased the payments despite not knowing whether she had authority to do so or not. The Claimant had not complied with a requirement of the School Financial Handbook that all payroll documents were to be authorised by the Head Teacher or the Deputy Head Teacher in her absence and the responsibility for that lay with the Claimant as Business Manager. Documents had only been authorised by the Claimant in relation to those matters;

(iv) The Claimant had not complied with the requirements relating to use of the School credit card under the Derbyshire Schools Procurement Card Scheme. That Scheme required that only the Claimant could use the credit card and only after pre-authorisation had been confirmed on a transcription log document, which required the Head Teacher to pre-authorise each transaction by signing the relevant entry on the log. That procedure was not completed by the Claimant prior to transactions being entered into;

(v) There had been a number of instances where the Claimant had exceeded her authority limits in relation to the ordering of goods and services. That had included invoices which were "split" to take them singularly, but not cumulatively, below the Claimant's authority limit. That was said to be a breach of Financial Regulations and the requirement to demonstrate best value by failing to undertake a competitive process;

(vi) There was further evidence of splitting invoices such as in relation to the ordering of paper where approval of the Head Teacher due to an increase in price would have been required, but this had not been done. Audit set out that in their opinion, the only reason for the invoices to be split in that way would be to ensure that the spending limits which the Governors had delegated to the Claimant were not exceeded and thus that removed the need to seek the additional approvals required in the School's procedures;

(vii) Orders were not being processed in accordance with the requirements of the Financial Regulations for an order to be processed in advance and instead verbal orders were regularly placed with suppliers and only upon receipt of the invoice was an order made out to be entered onto the system to facilitate payment. The Claimant had agreed at the interview with audit that she knew that the process was incorrect with the order being raised after the supplier invoice was received and that this defeated the principle of pre-authorisation. Audit opined that those actions also breached Financial Regulations and the requirement to demonstrate best value by undertaking competitive process;

(viii) That on the balance of probabilities, the Claimant had been in a relationship with a Tim Atkinson of Atkinsons Electrical Services ("AES") and had regularly used AES to undertake approximately £23,800.00 worth of work in the School without having declared a personal relationship with him. Audit set out that the Claimant should have made such a declaration on a register of business interests form. The Claimant had also approved invoices submitted by AES and had failed to enter the order onto the system prior to the arrival of an invoice. AES was not on the First Respondent's standing list of approved contractors as contained in the School's Financial Handbook at the outset of the business undertaking work at the School but had been included in August 2012 as an approved contractor. That addition was done by the Claimant and it was said that there was no evidence of her having sought Governor approval as she should have done in relation to that particular list. Moreover, she had not completed vetting checks on AES or Mr. Atkinson, who Audit reported it had transpired had been a former Director of a dissolved company following a Compulsory Liquidation Order;

(ix) The Claimant had provided work at the School to BSSB Contract Services Ltd ("BSSB") and had placed invoices, again split into three in the total sum of £12,346.00 shortly before taking a holiday with her then partner, Mark Wardle, who audit contended was the Sales Manager at BSSB and which therefore also constituted an undisclosed conflict of interest;

(x) A note in the Claimant's handwriting had been found in files in the School stating that Lynn Asquith had directed her to produce a "mickey mouse" budget and incorporate two fictitious full-time teachers into the staffing costs to manipulate the figures. The Claimant had accepted at the interview with audit that she had complied with that direction, although she kept the note because she was unhappy doing it. This had happened on more than one occasion but she had not raised the matter with anyone;

(xi) The Claimant's work laptop had been found to hold pornographic images which had been downloaded and accessed by her son following his use of the equipment. The laptop was not password protected and had an email facility which her son may have been able to access to unsecure but confidential data; and

(xii) Previous audit service recommendations had not been implemented whereby minute numbers were not entered onto the School finance system in respect of orders which had received the Governors' approval and therefore there was no audit trail. There had also been continued non-compliance in relation to the School credit card and a practice of raising purchase orders after the receipt of goods and services still continued despite the Claimant having indicated that she would immediately action those previous audit recommendations.

131. Following those findings, the Audit report set out the following conclusions (see pages 1185 and 1186 of the hearing bundle):

"- *On the balance of probabilities, BC[4] has maintained a personal relationship with the School's electrical contractor, TA[5]. BC has failed to declare any conflict of interests arising from this relationship and has been inappropriately involved in the ordering and invoice approval processes relating to TA's business;*

- *BC's actions and omissions could lead to the assertion that she has acted fraudulently by abuse of position;*

[4] An abbreviation for Brenda Cartwright.
[5] A reference to Tim Atkinson.

- *BC has previously maintained a personal relationship with another School contractor which she has failed to declare and has been inappropriately involved in the ordering process relating to this contractor;*

- *BC has breached the requirements of the School's Financial Regulations and knew that the internal controls required by Governors were not being followed by her subordinates but failed to take effective, corrective action;*

- *BC has failed to:-*

  - *fully comply with the requirements of the Business Manager's job description,*
  - *observe the limits of delegation made to her by the Governing Body and made financial decisions which exceed her authority,*
  - *adequately implement, follow and enforce several control frameworks which are required by the Authority, the Derbyshire Scheme for Financing Schools and the School's Governing Body,*
  - *adequately implement the recommendations made by Audit Services to ensure compliance with the required control frameworks,*
  - *maintain clear audit trails to demonstrate that the spending at the School is objectively fair, free of bias and appropriately authorised,*
  - *adequately protect personal and sensitive information which she held by virtue of her employment,*

- *BC has permitted School-owned computer equipment to be used in a wholly inappropriate manner;*

- *BC has benefitted personally from payroll payments which she has authorised herself;*

- *BC has been paid twice for the hours she claims to have worked for the Meadows 2013 summer school arrangements;*

- *The Governing Body failed to provide adequate scrutiny of the actions taken by the former Head Teacher and School staff, although this is now being addressed following the recent appointment of a new Head Teacher;*

- *The School's former management team failed to provide adequate monitoring and challenge the Business Manager's activities. An environment of absolute trust has contributed to BC's ability to introduce weak procedures and take personal advantage of them;*

- *HL has been overpaid in error by £200;*

- *On the balance of probabilities, the allegations made in the anonymous letter are based in fact and should be given serious consideration."*

132. The recommendations of Audit were that the Governing Body of the First Respondent should instigate disciplinary action against the Claimant and that the issues identified within the report should be referred to the police for the consideration of potential criminal charges. That was subsequently done and, as we understand matters, that was an action again taken by Audit. A copy of the report was sent to Mrs. Burnside and also to Brian Midgley, who had by that stage replaced Elaine Frost following her resignation in January 2014 as Chair of Governors. The report was sent to those individuals on 14th April 2014 with a recommendation for a disciplinary investigation to take place.

133. On the same date, Ian Thomas, the Strategic Director for Children and Younger Adults at the Second Respondent wrote to Mrs. Burnside directing her to conduct a disciplinary investigation (see page 1188 of the hearing bundle).

The First Respondent's disciplinary investigation

134. On 11th June 2014, Tracey Burnside wrote to the Claimant. She notified her that the recommendation of the audit report was that there should be consideration of whether disciplinary action was appropriate and that she intended to carry out a disciplinary investigation into the issues raised in the report.

135. The letter set out the following allegations:

- That she had significant personal gains as a consequence of some of her actions;
- That on a number of occasions, she did not declare a personal interest when contract works at the School were awarded; and
- That she had enabled others to gain personally as a consequence of her actions;

136. It was noted that an investigatory meeting would be held in due course at which the Claimant would have the right to be represented by a trade union representative or other appropriate representative.

137. The matter thereafter stalled on the basis that the police were asked to confirm the arrangements in relation to their investigation of the allegations against the Claimant following the reporting of those matters to them by Audit. There was the obvious concern in that regard that any internal investigation would potentially compromise that ongoing police investigation. The police did not provide confirmation in that regard until February 2015 that they did not intend to take the matter further, although we accept that the First Respondent did seek to chase up a response before that so as to seek to advance the disciplinary investigation.

138. Mrs. Burnside had also sought at an earlier stage to arrange an

investigatory meeting with the Claimant on 23rd October 2014 but that was subsequently cancelled at the Claimant's request due to her ill health. That request was later supported by a letter from her General Practitioner dated 1st November 2014, which said this:

> "…
>
> *This is to confirm that Mrs. Cartwright is currently being seen and treated for anxiety and depression and is experiencing frequent panic attacks. Her medication is currently in the process of being altered and she is under regular GP review. Mrs Cartwright informs me that she was unable to attend a recent meeting with work on the 23rd October due to the severity of her symptoms.*
>
> …"

139. By that stage, the Claimant had also written a formal letter of complaint setting out her concerns in respect of various issues. We need not deal in detail with those complaints given the withdrawal of the whistleblowing claims. The Claimant's letter was acknowledged and it was confirmed that the matters would be dealt with under the Second Respondent's Confidential Reporting Code. The Claimant was also invited to attend a meeting to discuss those matters but she did not attend.

140. Some of the concerns raised by the Claimant in her letter also related to issues surrounding the allegations against her and the investigatory process and in respect of those matters it was confirmed by Ms. Barrett that they would be addressed by Tracey Burnside as part of the ongoing investigation process.

141. The Claimant continued to raise concerns thereafter. Of particular relevance to the remaining issues before us were complaints in relation to Tracey Burnside undertaking the investigation, which were raised during the course of November and December 2014.

142. In addition, on 12th December 2014, the Claimant's General Practitioner wrote to Tracey Burnside concerning the investigation (see page 1247 of the hearing bundle). The letter said this:

> "…
>
> *I am writing to make you aware that Brenda has been seen in surgery regularly over the past few months with symptoms of severe anxiety, depression and acute panic attacks. I understand that she has been suspended from work over the past 12 months pending investigation. During this time Brenda has regularly commented that she has had no contact or welfare support during her period of absence. I feel that this has significantly contributed to her levels of anxiety and worsened her symptoms of depression. Her medications have required increasing recently as a consequence. I feel it would be very helpful to Brenda if this information could be considered and arrangements could be made for her to receive increased welfare support and progress updates*

regarding her investigation.

…"

143. In the meantime, and following receipt of the aforementioned letter of 1st November 2014 from the Claimant's General Practitioner, Mrs. Burnside had arranged for the Claimant to be referred to occupational health. The relevant parts of an occupational health report sent to Mrs. Burnside on 18th December 2014 by Dr. Rachel Sharp said as follows (see pages 1248 and 1249 of the hearing bundle):

> "*… We discussed that her symptoms are unlikely to improve without resolution of the issues involved and the current uncertainty that she is describing regarding the process is likely to be contributing to the level of her anxiety symptoms. I do, therefore feel that it would be beneficial for Ms. Cartwright to meet with management. I understand from Ms. Cartwright and her partner that they have concerns regarding the lead investigator. Ms. Cartwright explained that she has raised a complaint against the individual and they have concerns regarding the investigatory process. It would be helpful if management address these concerns.*
>
> *In terms of adjustments for the meeting, the following would be helpful:*
>
> - *Scheduling the meeting at a neutral venue away from the school as Ms Cartwright does continue to describe anxiety regarding her workplace.*
> - *Before attending the meeting, I would advise that the likely structure of the investigation and the meeting is explained to her as this will help reduce her levels of anxiety.*
> - *I would advise that it would be helpful for her to bring someone along with her for support.*
> - *She may well become anxious or emotional during the meeting and as such, breaks in the meeting or scheduling several meetings would be beneficial.*
> - *She describes uncertainty and not being well informed and any further delay in the process is likely to exacerbate her symptoms further.*
> - *I do feel that Ms Cartwright's symptoms are resolvable and after the current issues are addressed*.
>
> *…*"

144. On 6th January 2015, the Claimant wrote a further formal letter of complaint for the attention of Mr. Midgley in his capacity as Chair of Governors. This related to a complaint that confidential information about her and the allegations against her had been disclosed at a Governors' meeting and that Tracey Burnside and the Governing Body were not impartial and should have no further involvement in the process or investigation.

145. On 9th January 2015, Mr. Midgley replied to the Claimant regarding the

matters that she had reported under the Confidential Reporting Code. The Claimant thereafter raised a number of further complaints against Tracey Burnside.

146. On 27th January 2015, Mr. Midgley wrote to the Claimant and confirmed that the School were happy to comply with the recommendations made by Dr. Sharp in the occupational health report with regard to adjustments. In respect of Tracey Burnside being the investigating officer, Mr. Midgley confirmed that whilst he did not believe that Tracey Burnside's position and role within the process had been compromised, in order to move matters forward he had asked Julie Bloor to be the investigating officer. He therefore invited the Claimant to an investigatory meeting at Shirebrook Academy on 3rd February 2015.

147. He also confirmed that should a disciplinary hearing be required, an external and independent panel would be formed and none of the Governors within the First Respondent School would deal with the matter. We consider that to have been a sensible arrangement given that it is clear to us that the circumstances of the Claimant's suspension and the progress of the investigation had been discussed at Governor's meetings and it appears to us from the evidence before us that the relatively inexperienced Mrs. Burnside had disclosed more to the Governors as a result of questions put to her than would in reality have been sensible given that they should have been provided with minimal details so as to ensure that they were able to remain independent for any later disciplinary proceedings. However, we are satisfied that that did not cause any unfairness to the process given the concession from Mr. Midgley that an external panel from outside the School's Governing Body would be convened. As we shall come to, that was in fact what happened when the matter progressed to a disciplinary hearing.

148. The Claimant wrote on 30th January 2015 refusing to attend the meeting that Mr. Midgley had scheduled for 3rd February 2015 (see pages 1272 and 1273 of the hearing bundle).

149. By this point having now been appointed investigating officer, Ms. Bloor raised with the police once again a request for confirmation as to whether the investigation could now proceed (see page 1285 of the hearing bundle).

150. On the same date, she also wrote to the Claimant inviting her to an investigatory meeting, again at Shirebrook Academy, on 2nd March 2015. Ms. Bloor subsequently wrote to the Claimant on 2nd March 2015 to rearrange the investigatory meeting to 10th March 2015.

151. In the meantime, on 27th February 2015, the Claimant raised a formal grievance (see pages 1298 to 1303 of the hearing bundle). That included a number of complaints but also an assertion that Julie Bloor was no longer independent and should not deal with any aspect of the investigatory process.

152. Sarah Swift, Vice Chair of Governors, replied on 6th March 2015 to say that she felt it was appropriate for Julie Bloor to continue as investigating officer. She also wrote to the Claimant to propose a meeting in relation to her complaints made under the Confidential Reporting Code.

153. Julie Bloor also wrote to the Claimant to ask her to attend a re-arranged investigatory meeting on 25th March 2015 (see pages 1319 – 1320 of the hearing bundle).

154. In the meantime, the Claimant had a further review by occupational health and a further report was sent by Dr. Sharp on 11th March 2015. The relevant part of the report said this (see page 1321 of the hearing bundle).

> "…
>
> *The adjustments and advice in my last report and in particular in relation to the meeting remain valid. I do feel that Ms Cartwright's symptoms are only likely to increase further without resolution of the issues involved and as such early resolution will be beneficial.*
>
> …"

155. The Claimant also continued to raise concerns about Ms. Bloor dealing with the investigation and accordingly and in order to move the matter forward it was agreed that an alternative investigating officer would be appointed. This was to be Les Biggs, a then Senior HR Consultant with the Second Respondent, who wrote to the Claimant on 19th March 2015 to confirm that in order to conclude the matter as soon as practicable and in the best interests of all concerned, the Governing Body had asked an independent investigating officer to carry out the investigation and that he had been appointed to deal with that matter. He therefore invited the Claimant to an investigatory meeting on 25th March 2015 at Hasland Children's Centre in Chesterfield.

156. The Claimant wrote in response to confirm her attendance at the meeting. The Claimant was permitted accompaniment at the meeting not only by a trade union representative but also by her then partner and now husband, Mr. Walton.

157. As we understand matters, and as appears at page 1332 of the hearing bundle, that meeting with Mr. Biggs was recorded by the Claimant and Mr. Walton. However, somewhat inexplicably transcripts of those recordings have not been provided to the Respondents, either at the time and despite the indication given at page 1332, nor have they been disclosed by the Claimant for the purposes of these proceedings.

158. The Claimant asserts that she did not sign the notes of the investigatory meeting with Mr. Biggs which were later sent to her because, having compared those against the transcript of the recording, they are said to be inaccurate. Despite that being a somewhat important issue, as we say we have not been taken to those transcripts or the recording itself to demonstrate any errors in that regard. Any material matters would no doubt in all events have been addressed by the Claimant and Mr. Walton in their detailed submissions, which we shall come to in due course. However, we have no reason to believe that the notes which appear in the hearing bundle are not a reasonably accurate representation of what occurred at the meeting.

159. At the investigatory interview, it is fair to say that the Claimant gave a number of contradictory answers to Mr. Biggs when compared to what she had earlier told the Audit Team during the course of their investigation.

160. Examples of those issues are as follows:

(i) In relation to the additional payment for the summer school, the Claimant had initially told audit during their investigations that the payment had been authorised by Lynn Asquith. However, that position contrasted with what Les Biggs was told about the matter during his investigation as the Claimant indicated that she had put the hours down and authorised them herself by mistake and that she had not expected them to be paid. That was the version of events which continued in the Claimant's evidence before us. We therefore assume there can be no suggestion of any inaccuracy as to what Les Biggs was told in this regard and we note that the Claimant had signed the audit investigation notes as being accurate. It is clear, therefore, that there were conflicting accounts provided by the Claimant in this regard; and

(ii) In relation to email communications which had been found on the Claimant's School account between herself and Tim Atkinson of AES referring to him as "babe", the Claimant had informed the auditors that she called everyone babe and placed an x at the end of all messages or messages to a significant number of people and/or that this was an unspecified reference to her personalised car number plate. The auditors found no other evidence of other references of that nature, including the use of an x (or kiss) at the end of messages. A conflicting explanation was given by the Claimant to Mr. Biggs at the investigatory meeting, however, as she informed him that Mr. Atkinson had called her "darling", which she considered to be inappropriate, so she placed an x after her name in order to demonstrate that. That was also the Claimant's evidence before us and therefore we again assume therefore that there is no suggestion that that part of Les Biggs's interview note was incorrect.

We have to say we struggle with the logic of that particular argument as advanced to Les Biggs and before us, however, as to how Mr. Atkinson would have been aware that the Claimant signing her name "Bren x", something which again she had previously told the auditors was in reference to her car number plate, was an indication of her displeasure about being called darling.

161. As we shall come to in due course, those matters of inconsistency were considered by a later disciplinary panel, headed by Julie Soboljew, who elected to dismiss the Claimant for gross misconduct.

162. Following the first of the interviews with the Claimant on 26th March 2015, a further investigatory interview with Les Biggs took place on 15th April 2015. Following the first interview, Mr. Walton had commented that he considered Les Biggs to be acting in a fair and professional manner. That position later

changed, although we do not need to deal with the reasons for that given that the whistleblowing claims have now been withdrawn. However, we are satisfied that both the Claimant and Mr. Walton had no cause for concern regarding the way in which Mr. Biggs dealt with the first investigatory meeting given the specific comment made by Mr. Walton in that regard.

163. At the second investigatory meeting, the Claimant provided Mr. Biggs with a list of individuals who she wanted to be interviewed as part of the investigation. This had arisen from a discussion which had taken place at the 30th March meeting and email correspondence thereafter in which Mr. Biggs had invited the Claimant to submit a list of names of individuals who might be able to give relevant information relating to the findings of the original audit report.

164. The Claimant provided that list by email on 21st April 2015. She named the following individuals as those who she wanted to be interviewed and she also set out the questions which she wanted each of them to be asked. That list was as follows:

- Carol Hayes – Finance Officer
- Audrey Ward – Deputy Administration Officer
- Paul Rotherham – Clerk to the Governors of the School
- Robin Needham – IT Manager
- Lynn Asquith – former Head Teacher
- Stella Ward - former deputy Head Teacher
- Ruth Lane – Finance Patch Officer
- Julie Bloor – Executive Head
- Carl Hardman – Audit Services.

165. It appears to be common ground that Mr. Biggs did not interview Lynn Asquith and Stella Ward, although it is clear from his audit report that those individuals had already been interviewed during the earlier audit investigation and that he considered and relied upon the evidence that had been obtained in that regard. We are satisfied from the content of the audit report and the questions that the Claimant suggested be asked of those individuals, that there was no need to revisit those particular matters and interview either Ms. Asquith or Ms. Ward again.

166. Mr. Biggs did, however, interview Tracey Burnside, Carol Hayes, Julie Bloor and Jaime Barrett (see pages 1495 to 1515 of the hearing bundle). However, he did not interview Audrey Ward, Paul Rotherham, Robin Needham, Ruth Lane or Carl Hardman. We have not heard evidence from Mr. Biggs as to why he did not do that. Whilst we have no doubt that his failure to do so gave the Claimant some dissatisfaction in relation to the process, we nevertheless do not find that that caused any unfairness and we say that on the basis of the following:

(a) The Claimant was provided at a later stage with a full copy of Mr. Biggs's investigation report. That report detailed the individuals who had been interviewed during the course of the process. It would therefore have been obvious to the Claimant at that time that the aforementioned individuals had

not been interviewed. In that knowledge, the Claimant was given the opportunity at the later disciplinary hearing to call any witnesses herself to be questioned. She did not seek to do so in respect of any of the individuals who had not been interviewed by Mr Biggs;

(b) Looking at the questions that the Claimant wanted Mr. Biggs to pose it is difficult to see how those could have been relevant to the issues for the disciplinary hearing which the Claimant later faced. For example, interviewing Paul Rotherham about a delay in producing the Governors' meeting notes would not have absolved the Claimant of responsibility for failing to enter a minute number in the records as had been identified in an earlier audit investigation and which the Claimant had said that she would address. Moreover, the evidence of Ms. Soboljew before us was that the way in which this should have been dealt with was that the Claimant should have emailed Paul Rotherham, copying in the Chair of Governors, to directly request the minute number if there was any delay in producing the minutes of Governor's meetings. That would have ensured that there was a clear audit trail to demonstrate that the Claimant was complying, or seeking to comply, with what the Financial Regulations required; and

(c) The Claimant has not taken us to anything to suggest that the interviewing of any of the other individuals would have yielded any relevant information pertaining to the allegations against her.

167. There were further investigation meetings with the Claimant on 3rd June and 17th June 2015. Those meetings took place at Hasland School and again the Claimant was accompanied by a trade union representative and by Mr. Walton. The former meeting was in order to discuss the remainder of the allegations that had not already been discussed by that point.

168. The purpose of the 17th June meeting was to consider a number of grievances that the Claimant had raised in relation to the investigation process. It appears to be common ground that during the course of that particular meeting, Mr. Biggs said that he thought that the case would go through to a disciplinary hearing. By that time, Mr Biggs had not finalised his report. That was perhaps not a particularly helpful comment for Mr. Biggs to have made at that stage, although it certainly was not an unreasonable assessment given the weight of evidence in the audit report and also the contradictory accounts that the Claimant had given to Mr. Biggs during the course of the earlier investigatory meetings to discuss the allegations raised against her. The 17th June meeting was of course only to discuss the grievance aspects and so although Mr. Biggs had not finalised his report, he nevertheless already had all of the necessary information to do so by that point.

169. At that stage at least, the Claimant was satisfied with the way in which Mr. Biggs was dealing with the matter and, indeed, thanked him on 8th May 2015

for the "professional and impartial" manner in which he had conducted the management investigation (see page 1350 of the hearing bundle). She similarly thanked him for the way that he conducted the 17th June meeting (see page 1361 of the hearing bundle) and also set out some further information for consideration which Mr. Biggs confirmed he would look into.

170. A further meeting had been arranged with Les Biggs for the purposes of feeding back to the Claimant in respect of the investigation findings. However, on 29th June 2015, the Claimant wrote to Mr. Biggs to say that she wanted to cancel the meeting and that she would not be attending any further meetings to discuss grievances (see page 1376 of the hearing bundle). She also said this:

> "…
>
> *I have taken this decision after suffering from anxiety attacks at the thought of losing it emotionally at further meetings which I find extremely embarrassing and personally very traumatic.*
>
> *This does not mean I wish for your investigation process to end, to the contrary I very much want it to continue in order to address my grievances and will continue communication with regards to it by email.*
>
> *…"*

171. The meeting was duly cancelled and Mr. Biggs went on to carry out further investigation meetings with Tracey Burnside, Carol Hayes, Julie Bloor and Jaime Barratt to address, amongst other things, the grievances that the Claimant had raised.

172. An update as to the timescales was sent by Mr. Biggs on 10th August 2015 at the Claimant's request. In this regard, he confirmed that he had spoken to all individuals he wanted to speak with for the purposes of his investigation and also that he had all relevant documents. He indicated that he was reading through the notes and would send a record of the meetings to the Claimant shortly. He explained that he would also prepare a statement of case and send that to the Claimant in due course so that she would be able to consider it and prepare a response. He indicated that would be unlikely to be that month as he was on leave from 24th August until 7th September 2015. He also referred to the need for three independent local authority Governors to hear the case and that they would need to be identified and that was likely to be in early September with a disciplinary hearing then likely to be in late September or early October. In fact, however, Mr. Biggs's report was not concluded until 30th October 2014 (see page 1425 of the hearing bundle).

<u>Escalation to a disciplinary hearing</u>

173. At a similar time, Mr. Biggs wrote to the Claimant confirming that he considered there to be sufficient grounds concerning allegations of gross misconduct and proceed to formal disciplinary action and asked the Claimant to attend a disciplinary hearing on 10th November 2015 at the Social Care Area Office in Buxton. The letter set out that the allegations were that the

Claimant had:

- Carried out a number of actions during the course of her duties which were in contravention of the School's and the Local Authority's Financial Regulations;

- Had significant personal gains as a consequence of some of her actions;

- On a number of occasions did not declare a personal interest when contracts for work at the School were awarded;

- Enabled others to gain personally as a consequence of her actions;

- Allowed unauthorised access to, and inappropriate use of, IT equipment, programmes, websites and files which could have compromised confidential information about the School and young people with potential implications for the safeguarding of young people; and

- As a consequence she had abused her authority and broken the trust and confidence placed in her by the First Respondent School in relation to financial matters.

174. It was set out that the allegations constituted acts of gross misconduct and, if proven, may lead to her dismissal from the School. The Claimant's right of representation by a trade union representative or work colleague was advised, as was the Claimant's right to call witnesses and also to ask questions of the investigating officer and any witnesses called by him.

175. Mr. Biggs set out that he was mindful that the hearing was likely to be lengthy and that he would make sure that arrangements were made for regular breaks and the availability of refreshments. The Claimant was provided with a copy of Les Biggs's investigation report in the same correspondence and he later provided her with the management statement of case on 30th October 2015 (see page 1644 of the hearing bundle).

176. Around the same time, and again at the request of the Claimant, Tracey Burnside made a further occupational health referral to request information as to whether there was any additional support or adjustments which could be provided to the Claimant (see page 1422 to 1424 of the hearing bundle).

177. As we understand matters, the occupational health referral did not result in a further examination and report by Dr. Sharp as that meeting was cancelled by the Claimant. She subsequently forwarded her own medical evidence to the First Respondent, to which we shall come in due course.

178. In the meantime, on 2nd November 2015 the Claimant wrote to Mr. Biggs acknowledging receipt of his letter of 26th October 2015. She set out that the requirement for her to attend a disciplinary hearing was discriminatory and that there had been a failure to consider any reasonable adjustments other than short breaks. No details of what other adjustments were said to be

necessary were identified by the Claimant at that time.

179. By that time, the Claimant had the management statement of case, which is referred to in the final paragraph of her letter. She indicated that she would not be attending the disciplinary hearing on 10th November and would await further occupational health advice, although as set above that was not furthered by the Claimant as she cancelled the consultation.

180. However, on 27th November 2015, the Claimant's General Practitioner wrote to occupational health (see pages 1653 and 1654 of the hearing bundle). The relevant parts of the letter said this:

> "…
>
> *During the past 18 months Brenda's mental health has been steadily deteriorating whilst she has been under suspension from work. This culminated in a referral to the Mental Health Crisis Team on the 6th November due to symptoms of a psychotic depression. Brenda remains under the close supervision of the Crisis Support Team and Dr Pavlovic at the Hartington Unit.*
>
> *I understand that the Council are keen for her to undergo a disciplinary hearing as soon as possible. While from next year she will be entering a third year of her suspension, I am of the opinion that Mrs Walton really needs time to fully recover from a mental health perspective before she attends a disciplinary hearing. I also feel that it is very important for her to attend in person and be able to defend the allegations against her.*
>
> *I would therefore be grateful if you could support the need for reasonable adjustments to be made to the forthcoming disciplinary hearing following a period of recovery time for Brenda. I understand that Dr Pavlovic has also written to you outlining his recommendations. If you wish to discuss this further, then please feel free to contact me at the surgery.*
>
> *…*"

181. The reference to Dr. Pavlovic having written to the First Respondent relates to a letter of 10th November 2015 which was sent on a "to whom it may concern" basis. Dr. Pavlovic in his letter said this:

> "…
>
> *I have diagnosed her* (i.e. the Claimant) *with a Severe Depressive Disorder with psychotic symptoms and I am treating her with anti-depressant and anti-psychotic medication. I believe her Disorder has been caused and is maintained by severe ongoing stress to do with her difficulties at work. This problem has been long drawn and as a consequence I think that her personal capacity has been significantly weakened to copy with it.*
>
> *I believe that she would qualify under the Equality Act 2010 in*

respect of reasonable adjustments in relation to her mental impairment. I think that expecting her to attend a full day disciplinary hearing would be unreasonable as she does not have enough concentration or energy to copy with this.

…"

182. Unlike the Claimant's General Practitioner, Dr. Pavlovic did not recommend any delay to the proceedings. Indeed, a number of other medical reports had also referred to the Claimant finding the ongoing delay in relation to the disciplinary process to be difficult and that her symptoms would not start to alleviate until such time as the process came to a conclusion.

183. The view of the First and Second Respondents was that the matter needed to be brought to a conclusion, particularly given the fact that the Claimant had by this time been suspended for over two years whilst the audit investigation and Mr. Biggs' investigation took place. In the circumstances, we do not consider that decision to press ahead with a disciplinary hearing at that stage to be unreasonable. Whilst the Claimant's General Practitioner had requested a further delay to the proceedings, we note the following in reaching that conclusion:

(i) The disciplinary hearing did not take place imminently and in fact was not scheduled until December 2015;

(ii) It was clear from all of the other medical evidence, including that from Dr. Pavlov as set out above, that the proceedings needed to be brought to a close as soon as possible so that the Claimant could seek to recover and move on; and

(iii) As we shall come to in due course, various adjustments were put in place to assist the Claimant at the disciplinary hearing, including permitting Mr. Walton to cross-examine witnesses and present her statement of case and the fact that she was not required to be there in person.

184. Indeed, we should observe that these ongoing proceedings before us have also been exceptionally difficult for the Claimant and medical evidence before this Tribunal was such to the effect that until this process itself was over, the Claimant could not begin to recover and move on.

185. In view of those matters, we find it unsurprising that the Respondent elected to press ahead at that stage with the disciplinary process. As we shall come to further below, adjustments were made to enable her participation in the same.

186. Mr. Biggs wrote to the Claimant on 27th November 2015 to invite her to attend a disciplinary hearing at County Hall in Matlock on 15th December 2015. The relevant parts of the letter in respect of adjustments said this:

"*…*

I can also confirm for you that should you not be able to attend in

person your nominated representative may present your case on your behalf or alternatively you can provide a written submission for the Disciplinary Panel to consider. In the absence of all three the Disciplinary Panel will be asked to consider proceeding with the hearing to bring this matter to a conclusion in the best interests of all concerned.

…

As on all other previous occasions I am mindful of the need to ensure that arrangements are made for regular breaks and the availability of refreshments. If there are any other adjustments or support you need please let me know.

…"

187. That letter was sent via the Claimant's GMB representative (see pages 1655 and 1656 of the hearing bundle) as the Claimant had requested contact to be facilitated in that manner.

188. The Claimant replied in response on 29th November 2015 in a lengthy letter complaining that she was being discriminated against and that reasonable adjustments had not been made (see pages 1657 to 1660 of the hearing bundle).

189. Further similar correspondence followed on 7th December 2015, including a complaint that the meeting had been scheduled to take place at County Hall. Mr. Walton, who penned that letter, contended that this was not a neutral venue because the Claimant used to work there. By that stage, the Claimant had initiated these proceedings.

190. Mr. Biggs wrote to Mr. Walton on 10th December 2015 (see pages 1701 and 1702 of the hearing bundle) and set out as follows:

"*…*

I thought it would be helpful to clarify the circumstances of the hearing scheduled for 15 December.

The conduct of a disciplinary investigation and presentation of any subsequent case to both a hearing and any appeal is set out in the Disciplinary Policy; in this case the policy adopted by the Governing Body of Whittington Green Community School, a copy of which Brenda has been given.

The responsibility of an Investigating Officer is to undertake an investigation and gather evidence relating to the allegations made and the context and circumstances of the case.

An Investigating Officer is also responsible for deciding whether there is some substance to the allegations and therefore a case to answer based on the evidence collected.

An Investigating Officer will present the case to a Disciplinary Panel and arrange any witnesses they consider it appropriate to support their Statement of Case.

If the Investigating Officer's decision is that there is a case to answer a Hearing will be arranged and the Investigating Officer will confirm the arrangements and provide the Statement of Case to the employee and their representative within the timescales set out in the Disciplinary Policy.

This is what I have done and in doing so I have asked as far as practicable for there to be compliance with any medical evidence available at the time, and the requests Brenda, her trade union representative, and/or yourself, have made.

The date and time of both the re-arranged hearing for 15 December, and the previously postponed one on 10 November, were not my proposed dates but were dependant on the availability of three Independent Governors to hear the case as requested by Brenda and/or yourself. Similarly the availability of venues on those dates.

The witnesses I have asked to attend are Tracey Burnside, Jaime Barratt, and Carol Hayes, and I have been informed Tracey and Jaime will be attending but I understand Carol no longer works at the school and I will not now be calling her.

In respect of witnesses to support any response to the Statement of Case that is the responsibility for Brenda and/or her representative to contact and arrange for them to attend. You will therefore appreciate it is not the Investigating Officer's, and therefore my, responsibility to do so.

Finally, I am aware that all of the documentation sent to Brenda's Contact Officer has been passed to the Disciplinary Panel.

It is my understanding that the Disciplinary Panel will meet on 15 December and decide whether or not the Disciplinary Hearing will go ahead.

In the circumstances I would expect the Disciplinary Panel to consider any documentation and ask for any statements about why it should or should not go ahead and then make their decision.

The Disciplinary Panel will be advised by an independent advisor who has had no previous involvement in the case.

Should the Disciplinary Panel decide the Hearing should go ahead it will then proceed in accordance with School's Disciplinary Policy."

191. We should note here that we accept the evidence of Ms. Soboljew that she only received the statement of case and other relevant documents five working days prior to the disciplinary hearing. She had no knowledge of, or involvement in, the continued correspondence between Mr. Walton and others within the Second Respondent during this time. When she and the others on the disciplinary panel came to consider the matter, they therefore did so with a fresh pair of eyes and had had no input in relation to Mr. Biggs' communications or any others sent to the Claimant by others prior to the disciplinary hearing.

192. Mr. Walton replied to Mr. Biggs' letter on the Claimant's behalf on 10th December 2015 to confirm that she would be in attendance at the disciplinary hearing (see pages 1703 and 1704 of the hearing bundle). Whilst references were made in that correspondence to reasonable adjustments and a complaint that the matter was taking place at County Hall, no other requests for adjustments were made by the Claimant. Particularly, no suggestion was made by Mr. Walton or the Claimant that a different entrance ought to be used or that there was any concern about entering the main reception of the building.

193. In the meantime, and prior to the disciplinary hearing, Mr. Walton wrote to a number of individuals seeking to obtain information from them and/or their attendance at the disciplinary hearing. This included:

- Ruth Lane, Carl Hardman and Audrey Ward (see pages 1708 to 1711 of the hearing bundle);
- Paul Rotherham (see page 1716 of the hearing bundle);
- Carol Hayes (see pages 1717 and 1719 of the hearing bundle); and
- Robin Needham (see page 1720 of the hearing bundle).

194. None of those individuals elected to attend the disciplinary hearing and no representations were made to the disciplinary panel about them.

<u>The disciplinary hearing and decision to dismiss</u>

195. The question of reasonable adjustments thereafter rumbled on but the disciplinary hearing scheduled for 15th December 2015 went ahead. Notes of the disciplinary hearing appear at page 1740 of the hearing bundle and we accept that those are a broadly accurate reflection of the meeting.

196. The hearing panel was made up of three independent Governors, Julie Soboljew, Sarah Armitage and Don Walton. Although some reference was made to the fact that that panel were not independent because they were not from outside the Second Respondent and it was also suggested that two of the Governors may have had prior knowledge of each other from attendance at meetings, we do not accept those contentions as to unfairness insofar as they are still advanced. It was clear that it would be extremely difficult, if not impossible, to get Governors from outside of the Second Respondent local authority to agree to take the time out to hear the disciplinary hearing. That is most notably due to the fact that all individuals acting as Governors are of course volunteers and have their own commitments aside from those to the local authority which they serve in that capacity.

197. Moreover, none of the individuals who held the disciplinary hearing had any prior knowledge of the allegations against the Claimant or any of the individuals connected with the allegations or the proceedings against the Claimant. Indeed, none were Governors at, or had any link to, the First Respondent School. Some prior personal knowledge by two of the Governors of each other does not in our view impact upon their ability to independently consider entirely unconnected allegations against the Claimant, which was the purpose of this particular hearing.

198. At the outset, the panel heard submissions from Mr. Walton as to whether the proceedings should go ahead that day. As the meeting notes make clear, however, Mr. Walton made it perfectly apparent to the panel that the Claimant was adamant that she would attend that day despite his insistence to her that she was not well enough to do so. We accept that it was made clear that the Claimant did not need to be present at the hearing. Indeed, it had been agreed that Mr. Walton would provide her representations, including cross-examination and presentation of her statement of case and therefore the Claimant was offered the opportunity again to not have to be present in person. We accept that it was made clear to Mr. Walton and to the Claimant that she did not need to be in attendance.

199. It is clear to us from the notes of the hearing and the evidence of Ms. Soboljew that the panel was concerned, however, about the length of time that the matter had taken to reach a hearing and that they felt it necessary to come to a conclusion for the best interests of all concerned, including the Claimant. In that regard, they paid reference to the medical advice about the impact of the delay upon the Claimant to which we have already referred. The decision therefore was to proceed on the day.

200. However, in addition to it having been made clear that the Claimant did not need to be present at the hearing herself (particularly given that by that stage and as noted above it had been made clear by Mr. Walton that he was to present the Claimant's case) we accept that the disciplinary panel also made it clear that the meeting did not need to conclude that day and both the panel – and also Les Biggs in his earlier correspondence - had set out that regular breaks could be accommodated when required.

201. We therefore accept Ms. Soboljew's evidence that during the course of the hearing, it was made clear that the proceedings did not need to conclude on that day and that breaks would be given whenever needed. Indeed, we accept the evidence of Ms. Soboljew that a number of breaks were held and that neither the Claimant nor Mr. Walton requested any other additional breaks outside those times (see paragraph 10 of the witness statement of Julie Soboljew).

202. We also accept the evidence of Ms. Soboljew that all went relatively well during the course of Mr. Walton cross-examination of the witnesses called to support the management statement of case and that problems only occurred at the point when he commenced presentation of the Claimant's own statement of case. At that point, the Claimant broke down. The hearing was adjourned at that stage until 18th December 2015 and it was agreed that Mr. Walton could submit the Claimant's statement of case by that date in writing and thus by way of written representations. As we shall come to, he

submitted lengthy written representations on 20th December 2015 after an agreed extension of time. We accept the evidence of Ms. Soboljew that at the close of the meeting, Mr. Walton commented that he considered the panel to have been "as fair as [he] could ask" or words to that effect.

203. We accept the evidence of Ms. Soboljew that the period of time afforded for the Claimant's written submissions to be provided was considered to be a reasonable period of time given that Mr. Walton had indicated his ability to present the statement of case on the day. However, as we have also observed above an extension of time was provided at Mr. Walton's request.

204. Whilst at the outset of the disciplinary hearing Mr. Walton had continued to complain about the venue of County Hall, we accept the evidence of Ms. Soboljew that she and the panel took into account the fact that the Claimant had not worked there for over two decades. There was no suggestion that anybody who she had worked with recently or who knew anything about the proceedings might be present at County Hall or come into contact with her. The panel was satisfied therefore that County Hall was a neutral venue and in keeping with the recommendation from Dr. Rachel Sharp. As we shall come to in our conclusions below, we are similarly satisfied that County Hall was an appropriate and neutral venue.

205. We also accept that it was difficult to secure sufficient available rooms as one was needed for Les Biggs, another room for the witnesses to be called by him, a separate room for the panel and another for the Claimant and Mr. Walton.

206. We are also satisfied that Ms. Soboljew did not make any reference to there being a noisy Christmas party down the corridor as the Claimant has referred to that in her evidence. It is possible that the Claimant heard some noise and that is what she now perceives to have been a Christmas party but we have in mind the comments which we have made above in relation to her recollection of these matters in all events. We are satisfied that there was no reference to any noise or a party by Ms. Soboljew and that she did not observe anything of that nature going on.

207. Indeed, it is clear to us from the representations made by Mr. Walton and the fact that the Claimant broke down at the disciplinary hearing that she had difficulties on that day. Indeed her evidence to us was that she recalled very little of matters on that particular day and for those reasons and those which we have already given, we therefore prefer the evidence of Ms. Soboljew on that particular issue. We note also of course that there is no reference in the disciplinary hearing minutes to a Christmas party or to Mr. Walton making any complaint on the Claimant's behalf about such matters, as we might reasonably have expected had the noise or existence of Christmas party been any issue.

208. On 20th December 2015 and following the adjournment of the disciplinary hearing, Mr. Walton submitted a detailed set of written submissions for the disciplinary panel (see pages 1771 to 1778 of the hearing bundle). They set out in detail the Claimant's responses to each of the allegations against her. By that point, the panel had been scheduled to reconvene on 12th January 2016 and Mr Walton again sent in a further set of detailed submissions on 8th

January 2016 (see pages 1790 to 1796 of the hearing bundle). He also sent in further supporting documentation. We are satisfied that all of that material and representations were considered and taken into account by the disciplinary panel.

209. On 14th January 2016, Mr. Walton was advised that the disciplinary hearing did not go ahead on 12th January as one of the panel members had been unable to attend due to unforeseen personal circumstances and that the panel would now reconvene on 26th January 2016 (see page 1804 of the hearing bundle). Mr. Biggs produced a further submission to the panel on 21st January 2016 (see page 1813 of the hearing bundle).

210. Thereafter, the disciplinary panel met again and we are satisfied that they considered and took into account all representations that had been made by both the Claimant and Mr. Walton during the course of the investigatory and disciplinary process.

211. They also of course had the Audit report and the investigation report of Les Biggs for consideration. We are satisfied that the evidence collated during the course of the two investigations reasonably allowed for the following findings to be made and they were matters which were was taken into account by the disciplinary panel in reaching their conclusions:

(i) That the Claimant had not followed the procurement card policy with regard to use of the School Credit Card. No transactions had been pre-authorised as required by that Policy by Lynn Asquith and instead a process had been adopted whereby Ms. Asquith only signed off on orders after they had already been placed. Whilst there was no suggestion that the card was improperly used by the Claimant, the evidence collated during the course of the investigations was such to demonstrate that the process that the Claimant had adopted and continued to use nevertheless circumvented the established the financial controls which were in place and of which the Claimant should have been fully aware;

(ii) That the Claimant had accepted that she had placed orders for sums which exceeded her authority under the Financial Regulations despite being aware of the limits of her authorisation (see page 1171 of the hearing bundle);

(iii) That the Claimant had been splitting invoices and that the reasons for her doing so were to circumvent the authorisation levels set out in the Financial Regulations. The Claimant had sought to provide an explanation in relation to those matters to the effect that the purchases made related to different areas of the School or, insofar as paper purchasing was concerned, there may have been more than one order placed to take advantage of a certain price if she had become aware of an imminent increase. However, the investigation findings demonstrated that a number of the invoices ran sequentially and related to the procurement of

the same goods and services – such as decorating or repairs to flooring – from the very same contractors, even if in slightly different areas of the School. There was nothing within the Financial Regulations which supported the Claimant's contention that she had been entitled to split the invoices if works took place in different areas of the School – for example in two different classrooms or corridors;

(iv) That the Claimant had had a close relationship with contractors that should have been disclosed to the Governors as a potential conflict of interests. In this regard there was evidence of a close relationship with Tim Atkinson of AES from the investigations undertaken by Audit and Mr. Biggs and the Claimant had placed significant amounts of work with AES, the Company run by Mr. Atkinson, on the School's behalf. The sums spent in this regard with AES amounted to over £23,000.00. In addition to evidence from Carol Hayes that the Claimant had told her that she was in a relationship with Mr. Atkinson, the investigations had also uncovered a number of letters, including complaint letters, written from the School email account on behalf of Mr. Atkinson by the Claimant. There were also a number of emails sent to Mr. Atkinson from the Claimant in which she had referred to him as "babe" and others where she had signed off "Bren x" i.e. the first part of her name and a kiss. Whilst the Claimant had informed Audit during the investigation that she used the term "babe" frequently and that the Bren x was a reference to her personalised number plate and/or that she also ended a number of her emails with a kiss, neither of the investigations uncovered any other email to another individual referring to the recipient as "babe" or with a kiss at the end of it. Nor did the Claimant provide any other evidence to show to the contrary. She had also provided a contrary explanation for the "x" issue to Mr. Biggs.

In addition to those matters, the audit investigation had also uncovered that the Claimant had completed a car insurance quotation naming Mr. Atkinson as her common law partner/partner. Whilst the Claimant sought to suggest that she had done so to obtain a lower car insurance quotation, that was not accepted by the disciplinary panel and in all events they viewed that had the Claimant in fact done so that would have been a fraudulent application and, as the Audit report found, it is difficult to see why Mr. Atkinson would have needed to drive the Claimant's vehicle in all events[6].

The Claimant had made representations that she was in fact not in a relationship with Mr. Atkinson but with a Mr. Tim

[6] It should be noted that the explanation given by the Claimant at the hearing before us differed in that she suggested that there had been a general discussion about car insurance quotes and how adding another named driver could reduce the cost of a quote and that the quote had been generated on that basis to prove a point and had never been submitted.

Anderson. This had been raised when the Claimant was taken to an email sent by her to a friend by Audit which said *"Tim and I have split up".* She told the Auditors that that relationship had ended acrimoniously when she discovered that Mr. Anderson was married, although Audit noted that the Claimant had inexplicably referred in the same email to wanting to stay friends with "Tim". However, she did not provide at any stage of the investigation or to the disciplinary panel any evidence to suggest that Mr. Anderson actually existed. She gave an address for him that did not appear to correlate to any actual street name that existed in the local area but which was similar to that which one would travel along to get to the residential address of Tim Atkinson of AES. Audit had also confirmed that the local authority had confirmed that there was no one by the name of Anderson registered at the street name similar to that provided by the Claimant.

The Claimant did provide a mobile telephone number which had an answerphone message suggesting that it belonged to a Mr. Anderson. However, the Audit report opined that that mobile telephone could in fact have been registered to anyone and the answerphone message simply set to suggest that it belonged to a Mr. Anderson. Audit were, in fact, never able to speak with Mr. Anderson, nor did the Claimant provide any other evidence of his existence. The weight of evidence suggested that it was in fact, as Carol Hayes had said when interviewed, that the Claimant had been in a relationship with Tim Atkinson of AES and that had been at the time when she had been awarding a considerable amount of work to be done at the School to AES;

(v) That the Claimant had placed AES - the company run by Mr. Atkinson – on the approved list of contractors without the authorisation of the Governors and without the Claimant having undertaken any due diligence regarding Mr. Atkinson (which would have demonstrated the insolvency of his previous Company) and that the work undertaken by AES had been awarded without any apparent competitive tendering having taken place;

(vi) That the Claimant had also placed work with BSSB despite that company also not being on the Governor approved contractors list and that the Claimant had also been in a relationship at around the time that work was placed with Mark Wardle, who was a Sales Manager at BSSB. The audit investigation had uncovered a number of photographs on the Claimant's laptop computer of her on holiday with Mr. Wardle shortly after the period when work had been awarded by the Claimant to BSSB. The panel considered the evidence of

the Claimant that she understood Mr. Wardle to have been unemployed at that time rather than in the employ of BSSB[7] but they not unreasonably took into account that that contradicted information provided to Les Biggs when the Claimant told him that Mr. Wardle had been employed by Portland College and that he had only mentioned BSSB to her as a recommendation that she had thereafter Googled the Company. That also contradicted evidence supplied to the panel in the Claimant's second set of submissions prepared by Mr. Walton where the Managing Director of BSSB, a Mr. O'Brien, said that the awarding of the work had come about as a result of a mailshot. The amount of work placed with BSSB amounted to over £12,000.00 and was split over three invoices, each of which was below the Claimant's delegated authorisation limit but when viewed cumulatively, exceeded that limit by some considerable margin;

(vii) That the Claimant had also accepted during the course of the investigatory and disciplinary processes that she had not acted in accordance with the Financial Regulations in the way that orders had been placed (see page 1172 of the hearing bundle). Orders had not been placed on the system as they should have been but instead verbal orders had been placed, with the order then only being put on the School systems at the time that an invoice was received in order that it could be paid. Moreover, there was also further evidence that the Claimant had failed to comply with Financial Regulations in that the Audit report identified that she signed off 58 out of 64 orders without a second signature as the Financial Regulations required. Whilst the Claimant's position was that the then Headteacher, Lynn Asquith, was either not bothered about or was otherwise unwilling to sign paperwork, that was not in the panel's view sufficient given that compliance with the Financial Regulations was the Claimant's ultimate responsibility and this was a matter which should have been escalated and reported to Audit above Lynn Asquith's head if she was in fact failing or refusing to comply;

(viii) That the Claimant had failed to comply with previous audit recommendations to deal properly with pre-authorisation, to implement the Procurement Card Policy properly and to enter a minute number so as to show an audit trail for meetings where there had been Governor approval of orders exceeding the authority of the Claimant and the Headteacher. Whilst the Claimant sought to argue that Paul Rotherham had not produced the minutes in a timely fashion to enable her to enter the minute numbers, the disciplinary

[7] Although the document at page 1929 of the hearing bundle would suggest that position as set out by the Claimant to be incorrect.

panel did not accept that position as the practice should have been to chase Mr. Rotherham for the minutes by email and copy that to the Chair of Governors so that an audit trail was available to show attempted compliance. There was no evidence that the Claimant had attempted to do so but that she had instead continued to make the same entries that audit had previously informed the Claimant should not be made;

(ix) That the Claimant had circumvented the financial systems in relation to a payment for the summer school and that she had received payment for the summer school which amounted to a double payment given that she was on a 52-week contract and therefore had been paid for the same period twice and that payment had been authorised by the Claimant and paid before the summer school had even taken place. Although the Claimant now argues that she had undertaken additional work outside the summer school to catch up on her normal duties which justified the payment, that was not the account that she gave to Audit when interviewed (see page 1166 of the hearing bundle). The Claimant had admitted during the course of the investigatory and disciplinary processes that she had authorised the additional payment to herself and had set the amount of £700.00 which was paid to her. She also accepted that she had not complied with the Financial Regulations in that she had authorised the payment to be made to herself on the School systems[8];

(x) That the Claimant had not complied with the requirements of the Financial Regulations to seek approval from HR for a change in contractual terms in relation to Hayley Lynch and that instead she had manually inputted an extra payment of £200.00 onto the School systems. The payments continued being manually inputted by the Claimant after that instruction for a further period of approximately two years. The Claimant contended that she had been authorised to do so by Stella Ward (in her then capacity as Deputy Head) but there was no evidence that the change had been referred to HR or that it had been approved by the Governors as it should have been. Moreover, the Claimant had ceased the payment when she determined that it was appropriate to do so and without the instruction or authorisation of the Governors; and

(xi) That material of a pornographic nature had been found on

[8] We should observe that this allegation was one which also resulted in differing explanations from the Claimant both during the course of the investigatory and disciplinary processes and the hearing before us. This ranged from the Claimant having been authorised by Lynn Asquith to make the payment and determine the level of it via delegated authority to her having entered the payment onto the system in error, been surprised when the payment was made and having forgotten to notify payroll that it had been made in error.

the Claimant's School issued laptop and that this material had been able to be downloaded given that the Claimant had allowed her sons to use the machine, in breach of the IT Policy, and without supervision.

212. The decision of the panel was to summarily dismiss the Claimant on the grounds of gross misconduct and that was communicated to her on 29th January 2016 by way of a letter from Ms. Soboljew. That letter appears at pages 1822 to 1824 of the hearing bundle.

213. The letter found each of the allegations which had been set out in Les Biggs's letter of 26th October 2015 to be proven and in respect of those matters said this:

> "…
>
> ***Allegation One***
> ***…***
>
> *You did not follow the Local Authority's and the School's Financial Regulations. There are anomalies in terms of the version of accounts given by you specifically around the variations to contracts. The key principle of having two members of staff involved in all financial transactions was not adhered to and a large proportion of the financial transactions were not in line with Financial Regulations. By your own admission you circumvented process in terms of the Audit Action Plan. Audit Actions were not followed up over a period of 4 years. There was an overarching lack of financial compliance.*
>
> ***Allegation Two***
> ***…***
>
> *You determined the level of payments to be made when working as a Cover Supervisor and also for organising the Summer School activities. You also authorised you own additional payments. You are responsible for the financial controls at the School and also ensuring your own and others compliance with the Financial Regulations.*
>
> ***Allegation Three***
> ***…***
>
> *On the balance of probability and based on the information presented a close relationship did take place which could be seen as an advantage and therefore a conflict of interest.*
>
> ***Allegation Four***
> ***…***
>
> *There is evidence of a lack of financial controls and compliance with Financial Regulations all of which were under the control of you as School Business Manager.*

Allegation Five

…

You admitted that the clips, videos and images had been accessed through your user account by your son after you had given him permission to use the laptops for project work, applying for jobs and social media. The actions are in breach of Data Protection and also Safeguarding procedures have not been followed. You have a senior position within the School and should be aware of these requirements.

Allegation Six

…

There has been a breach of trust and confidence in you and your relationship with the Governing Body at the School. There have been poor financial practices over a number of years in contravention of the Local Authority's and School's Financial Regulations.

As a panel we have also taken into account that as School Business Manager you are in a senior role within the School, you are an experienced and long serving member of the team. There has been a serious infringement of financial regulations which has breached the trust and confidence of your employer.

…"

214. The letter set out that the decision was summary dismissal and the Claimant was advised of her right of appeal.

215. We accept the evidence of Ms. Soboljew that the panel took into account all the detailed representations that the Claimant had made by way of representations by Mr. Walton. However, they were satisfied that there had been conflicting information provided by the Claimant and ultimately the submissions made did not address the serious issues of concern set out in the audit report and also the report of Mr. Biggs. Having found the allegations to be upheld, we are satisfied from the evidence of Ms. Soboljew that the view of the panel was that the appropriate sanction to impose as a result of the conclusion that there had been a breach of trust and confidence, was one of summary dismissal. Given what the panel had found to be proven, we do not find that to have been a decision outside the band of reasonable responses open to a reasonable employer.

Appeal against dismissal

216. Via Mr Walton, the Claimant subsequently appealed against the decision to dismiss her. Judith Sharkey had been due to deal with the appeal. However, we need say no more about it in these circumstances given that on 11th July 2016, Mr. Walton made further assertions as to victimisation, discrimination and harassment of the Claimant and said that in view of those issues and the Claimant's mental wellbeing that she wished to formally and

immediately withdraw from the appeal hearing process and would be pursuing the matter through the Employment Tribunal proceedings which, as we have observed above, were already in train.

217. There was therefore no appeal hearing as a result of that issue and we need therefore say no more about the appeal grounds.

CONCLUSIONS

218. We begin firstly with the unfair dismissal claim. Our first consideration in this regard is whether the First and Second Respondents have persuaded us that they had a potentially fair reason for dismissal and that reason was conduct. We are entirely satisfied on that point. The information in the mind of the disciplinary panel at the time was clearly the issues raised within the audit report and the report of Les Biggs, which can be described as nothing other than matters related to conduct. It is clear from the evidence of Ms. Soboljew that the reason in the mind of the disciplinary panel when terminating the employment of the Claimant was that she had not complied with Financial Regulations; had entered into transactions in excess of her authorisation levels and in circumstances on occasion that could be seen as a conflict of interest and had breached data protection and safeguarding requirements in respect of access to her laptop. Those matters, we are satisfied, related to conduct and we are equally satisfied that it was those matters that caused the disciplinary panel to dismiss the Claimant.

219. Therefore, we have no doubt whatsoever that conduct was the reason for the Claimant's dismissal and the Respondents have satisfied in that regard that they had a potentially fair reason to dismiss on that basis.

220. The situation does not end there, however, and we are required to consider whether or not we are satisfied from the evidence presented by both parties that the First and Second Respondents acted fairly and reasonably in treating conduct as a sufficient reason to dismiss. We remind ourselves that in dealing with that question it is not for this Tribunal to step into the shoes of the employer and to decide whether we ourselves would have dismissed the Claimant on the evidence that we have heard. Our role here is simply to consider whether or not the First and Second Respondents acted so unreasonably, in either dismissing or in regard to the process adopted, that their actions fell outside the band of reasonable responses open to a reasonable employer.

221. We have considered that matter extremely carefully. We are alive to the fact that this is an extremely important matter to both parties and, particularly, the fact that the Claimant has been left, we have no doubt whatsoever, devastated by the termination of her employment. However, having considered matters carefully, we are satisfied that the Respondent acted fairly and reasonably in treating the Claimant's conduct as a sufficient reason for dismissal.

222. Particularly, in reaching that conclusion we have taken account the fact that it was accepted by the Claimant during the course of the investigatory process, both at the stage of audit investigation and the later investigation by Les Biggs, that she had breached Financial Regulations. Whatever the rather

lackadaisical position at the School under the headship of Lynn Asquith was, ultimately we accept that as School Business Manager the buck stopped with the Claimant in respect of financial matters. She could and should have reported matters to audit at the Second Respondent if Mrs. Asquith was making it difficult or impossible for her to comply with Financial Regulations.

223. There was clearly nothing that prevented her from ultimately doing so and instead she allowed processes to develop and continue which did not comply with the Financial Regulations of which she was well aware. That included not setting out the minute numbers for Governor authorised spend so that there was no audit trail; splitting invoices where those exceeded her own authorisation limits or otherwise exceeding her authorisations; failing to obtain pre-approvals in respect of use on the school credit card; failing to maintain and seek Governor approval with regard to the approved contractors list; making amendments to contractual terms without any apparent authority to do so and deciding upon and authorising payments to herself. We say more on each of those matters below.

224. Firstly, there was sufficient evidence before the disciplinary panel to show that the Claimant had not followed the procurement card policy with regard to use of the School Credit Card. No transactions had been pre-authorised as required by that Policy by Lynn Asquith. Instead, in the Claimant's own words at this hearing, the School had developed their own system - a system for which the Claimant as Business Manager was ultimately responsible - with Ms. Asquith only signing off on orders after they had already been placed. The fact that the card was not improperly used was not to the point, the process that the Claimant adopted and continued to use circumvented the established the financial controls which, for very good reasons, were in place and of which the Claimant was fully aware. Whilst the Claimant points to the fact that the School was running the use of the credit card as something of a pilot scheme, that does not in our view detract from the fact that there was a clear procurement policy in place which could and should have been followed and she had been reminded about proper compliance with that process by audit previously. The Claimant simply elected not to do so and it was her responsibility as Business Manager to ensure that that was done.

225. Secondly, there was also sufficient evidence before the panel at the disciplinary hearing to conclude that the Claimant had, by her own volition, exceeded her authorisation levels and, further, that she had been splitting invoices and it was a reasonable conclusion for them to have reached that the reasons for her doing so was to circumvent the authorisation levels set out in the Financial Regulations. Whilst the Claimant had sought to provide an explanation in relation to those matters to the effect that the purchases made related to different areas of the School or, insofar as paper purchasing was concerned, may have had different orders placed to take advantage of a certain price if she had become aware of an imminent increase[9], it was not an unreasonable conclusion for the disciplinary panel to have reached to reject that contention. Particularly, a number of the invoices ran sequentially and related to the procurement of the same goods and services – such as

[9] Albeit we note that that was not the explanation given to Audit in respect of the paper purchasing in that at that stage the Claimant's position was that the former Headteacher "could have" authorised the spend (see page 1173 of the hearing bundle).

decorating or repairs to the flooring– from the very same contractors, even if in different areas of the School. There was nothing within the Financial Regulations which supported the Claimant's contention that she had been entitled to split the invoices if works took place in different areas of the School – for example in two different classrooms – and logically we accept that it would not make sense for separate invoices to be rendered by the same contractor for the same works undertaken in the School at the same time.

226. On the evidence before the disciplinary panel, it was therefore not in our view an unreasonable conclusion for them to have reached that invoices had been split to circumvent purchasing authorisation limited given that there were a number of sequential audit invoices from the same contractor which cumulatively exceeded the Claimant's purchasing authorisation limits. The panel simply did not accept the Claimant's explanation for those matters, something which on the evidence it was entitled to do.

227. There was also sufficient evidence before the disciplinary panel that the Claimant had a close relationship with contractors that should have been disclosed to the Governors as a potential conflict of interests. The issues set out in the audit report could be entirely reasonably relied upon in that regard. Again, the panel simply, and in our view reasonably, did not accept the Claimant's explanations with regard to those matters.

228. As confirmed by the evidence of Ms. Soboljew from her own experience as a Governor the Claimant had had the opportunity on an annual basis to declare any conflicts of interest but she had failed to do so. There was adequate evidence of a close relationship with Tim Atkinson of AES from the investigations undertaken by Audit and Mr. Biggs and the Claimant had placed significant amounts of work with AES on the School's behalf and had, from the emails written from the School account on behalf of Mr Atkinson; the car insurance quote, the references to "babe" (those being references not made to anyone else) and the "Bren x" issue, to conclude that a personal relationship and conflict of interest had been present.

229. It was not outside the band of reasonable responses in view of that evidence for the panel not to accept the contrary assertions made by the Claimant as her explanations did not appear to either the panel or to this Tribunal as being credible nor could she provide any evidence to suggest that the Mr. Anderson that she contended that she had in fact been in a relationship with, actually existed. That was save as for the mobile telephone number which had an answerphone message suggesting that it belonged to a Mr. Anderson. However, we accept that, as the Audit report opined, that mobile telephone could in fact have been registered to anyone and the answerphone message simply set to suggest that it belonged to a Mr. Anderson. As we have already set out above, audit were, in fact, never able to speak with Mr. Anderson, nor did the Claimant provide any other evidence of his existence.

230. In view of that and the information located with regard to the Claimant's interactions with Tim Atkinson, it was not unreasonable for the disciplinary panel to have concluded that there was a close connection with or relationship with that individual. As such, clearly it represented a conflict of interest for the Claimant to have placed AES – the company run by Mr.

Atkinson – on the approved list of contractors without the authorisation of the Governors and to award him significant amounts of work which amounted to over £20,000.00. Moreover, that work had been awarded without any apparent competitive tendering having taken place and AES had been placed on the approved contractors list without the Claimant having undertaken any due diligence regarding Mr. Atkinson, which would have demonstrated the insolvency of his previous Company. The Claimant's actions affected the ability of the First and Second Respondents to demonstrate competitive tendering and the best value for money. Given that the School was spending public money, for the reasons that we have already set out above the ability to demonstrate competitive tendering and best value for money was an essential issue. All of those matters were clearly in serious breach of the Claimant's duties as Business Manager and the Financial Regulations and Financial Handbook.

231. In addition, the Claimant had also awarded work to BSSB despite that organisation also not being on the Governor approved contractors list. The panel also had sufficient information before them to conclude that the Claimant had acted in conflict when placing work with BSSB as there was also evidence within the audit report that the Claimant had had a relationship at around the time that work was placed with Mark Wardle, the then Sales Manager at BSSB.

232. There was no evidence that the Claimant had obtained quotes to ensure best value in resect of either AES or BSSB and the panel was on the evidence before it entitled to conclude that there were close personal relationships between both Tim Atkinson of AES and Mark Wardle who had links to BSSB.

233. In relation to the latter, there were of course a number of photographs which had been found by Audit on the Claimant's laptop computer of her on holiday with Mr. Wardle shortly after the period when work had been awarded by the Claimant to BSSB. The panel considered the evidence of the Claimant that she understood Mr. Wardle to have been unemployed at that time rather than in the employ of BSSB but they, not unreasonably, took into account that that contradicted information provided to Les Biggs when the Claimant told him that Mr. Wardle had been employed by Portland College and that he had only mentioned BSSB to her as a recommendation that she had thereafter Googled the Company. That also contradicted evidence supplied to the panel in the Claimant's second set of submissions prepared by Mr. Walton where the Managing Director of BSSB, a Mr. O'Brien, said that the awarding of the work had come about as a result of a mailshot. The panel were, in our view, entitled to take account of those discrepancies in concluding that Mr. Wardle still had links to BSSB and it was the Claimant's personal relationship with him that had led to the work at the School, which again came at a not insignificant cost, being awarded to BSSB by the Claimant. Again, that represented a clear conflict of interest that the Claimant had not disclosed to the Governors and the invoices for that work had also been split into three in order to bring each below the Claimant's authorisation limit.

234. The Claimant had also accepted during the course of the investigatory and disciplinary processes that she had not acted in accordance with the Financial Regulations in the way that orders had been placed. Orders had not been

placed on the system as they should have been but instead verbal orders had been placed, with the order then only being put on the School systems at the time that an invoice was received in order that it could be paid. Again, we are satisfied that that was a breach of the Financial Regulations and the Claimant of course accepted that position. She did not provide any reasonable explanation for that position to the disciplinary panel and it was her ultimate responsibility as Business Manager to comply with Financial Regulations.

235. There was also further evidence that the Claimant had failed to comply with Financial Regulations in that the Audit report identified that she signed off 58 out of 64 orders without a second signature as the Financial Regulations required. Whilst the Claimant's position was that the then Headteacher, Lynn Asquith, was either unconcerned about or unwilling to sign paperwork it was not unreasonable for the disciplinary panel to conclude that that explanation was insufficient given that compliance with the Financial Regulations was the Claimant's responsibility and this was a matter which should have been escalated to Audit if Lynn Asquith was refusing or failing to comply.

236. The disciplinary panel had also reached the conclusion that the Claimant had circumvented the financial systems in relation to a payment for the summer school. It is not in this regard in dispute that the Claimant received payment for the summer school nor that this effectively amounted to a double payment given that she was on a 52 week contract and therefore had been paid for the same period twice. The Claimant admitted during the course of the investigatory and disciplinary processes that she had authorised the additional payment to herself and had set the amount of £700.00 which was paid to her. She contended that she had done so under authority which she said had been delegated to her by Lynn Asquith. However, it was clearly in breach of the Financial Regulations for the Claimant to have determined any additional payments to herself and to thereafter authorise that payment. It was a reasonable conclusion that the disciplinary panel reached to determine that the Claimant had again circumvented established financial procedures in this regard and we also remind ourselves here that this was an area where the Claimant had given contradictory accounts to Audit and to Mr. Biggs.

237. There was also more than sufficient evidence before the disciplinary panel to enable them to conclude that the Claimant had also not complied with the requirements of the Financial Regulations to seek approval from HR for a change in contract in relation to Hayley Lynch and that instead she had manually inputted an extra payment of £200.00, which it appeared that she had decided upon, as an additional payment onto the School systems. Whatever the position as to whether the Claimant had been told to do this, this was again in clear breach of the Financial Regulations and it had not been approved by the Governors as it should have been. Again, therefore, if there had been any issue of authorisation in this regard that should have been taken above the head of both Stella Ward and Lynn Asquith and reported to Audit. The Claimant as Business Manager had ultimate responsibility for the financial position and compliance with the Financial Regulations in School. At best in relation to this allegation, the evidence was such that it demonstrated that she had clearly failed to ensure such compliance. Again, the conclusions reached by the disciplinary panel in respect of this particular allegation cannot be said to be an unreasonable one.

238. Whilst the Claimant did provide some explanations to seek to counter a number of the allegations against her, those did not in our view bear scrutiny when considered against the weight of evidence that was contained in the investigation reports, and particularly the extremely detailed investigation conducted by Audit. We accept that the panel was entitled to prefer the weight of that evidence over the otherwise generally unsupported accounts provided by the Claimant. That was particularly the case given the varying accounts provided by the Claimant to Mr. Biggs when compared to those given to Audit, and which we have already set out above, which invariably in the eyes of the disciplinary panel not unreasonably damaged the credibility of her accounts.

239. In addition to the issues as to breaches of the Financial Regulations, there was also the issue as to material that had been found on the Claimant's School issued laptop. It is not disputed in this regard that material of a pornographic nature was located on the device although we would stress that there is and never has been any suggestion that that material was downloaded or accessed by the Claimant and we accept that she knew nothing at all about it until it was found during the course of the Audit investigation.

240. However, the Claimant accepted, as indeed she did before us, that she was required to comply with the School's IT policy. She also accepted that she had allowed her sons to use her work issued laptop and as a result one of her sons had done so for improper use in the terms which we have referred to above. The Claimant had not supervised her son to ensure what he was doing and had simply accepted what he told her that he was using it to create documents or access Facebook. However, the fact that she had permitted that access and had done so without supervision had allowed her son to download inappropriate images and material onto the device. We accept that in the view of the disciplinary panel, that could have brought the School into disrepute and also gave rise to safeguarding concerns given that the evidence was such as to show that it was possible to access the Claimant's emails on the laptop and those had the capacity to hold sensitive information. There was therefore a potential breach to the First Respondent's email and IT systems and the confidential information referred therein. The conclusions reached by the disciplinary panel in this regard were certainly not unreasonable or outside the band of reasonable responses.

241. Having regard to all those matters, we are satisfied in the circumstances that the Audit investigation and the further investigation undertaken by Mr. Biggs was sufficient and yielded more than enough evidence to allow the disciplinary panel to form a reasonable belief that the Claimant was guilty of the allegations which had been levelled against her, notwithstanding hers and Mr. Walton's explanations in respect of the same. We should observe here that in an unfair dismissal case, the question is one of reasonable belief and not a test of beyond all reasonable doubt. On the material before the disciplinary panel, there was certainly sufficient to conclude a reasonable belief, following a detailed investigation, in the Claimant's "guilt" in the allegations against her. We stress that we make no finding that the Claimant acted as alleged here, merely that the disciplinary panel had sufficient to hold a reasonable belief, that she had.

242. Having reached that conclusion, we turn then to consider the sanction imposed by the disciplinary panel. We remind ourselves here that it is not for this Tribunal to substitute our decision for that of the employer and we must simply consider if the decision to dismiss the Claimant was outside the band of reasonable responses. We cannot in these circumstances conclude that it was. The Claimant as Business Manager held a position of considerable autonomy and responsibility and it was clear from the evidence before the disciplinary panel, and even from admissions made by the Claimant, that she had not complied with Financial Regulations; had not declared conflicts of interest; had awarded work to those with whom she had a personal connection; had split invoices so as to circumvent financial procedures; had made changes to contracts without authority; had failed to comply with the Procurement Policy regarding the School credit card and had failed to comply with the IT Policy which saw pornographic material being downloaded onto her School issues laptop.

243. We accept that those matters caused the disciplinary panel to conclude that there had been a breakdown in trust and confidence. That was not an unreasonable conclusion to have reached given the multitude of failures to comply with Financial Regulations that the disciplinary panel had found to be made out and the position of trust that the Claimant held at the School. The Claimant had not, in the representations prepared for the disciplinary panel, shown any insight or contrition in respect of the matters which were alleged against her, and it is difficult to see in light of that and the severity of the matters which the disciplinary panel had found to be made out, to see how dismissal could fall outside the range of reasonable responses in these circumstances.

244. We are therefore entirely satisfied for those reasons that the decision to dismiss the Claimant was one which did not fall outside the band of reasonable responses open to a reasonable employer.

245. Whilst we have been critical, as we have set out above, of some of the procedures adopted by the First Respondent - for example that the suspension meeting could have been better handled; that perhaps too much was said to Governors about the circumstances of the Claimant's ongoing suspension and the matter of delay in bringing the matter to a conclusion, we are ultimately satisfied for the reasons that we have given above that those matters did not fall outside the band of reasonable responses open to a reasonable employer and thus did not taint the process and render this dismissal unfair.

246. We should observe that we have also considered in respect of the issue of delay whether that delay in concluding the process was unreasonable and thus a breach of the ACAS Code of Practice on Disciplinary & Grievance Procedures. Ultimately, we do not conclude that the delay was unreasonable. Whilst the matter of the Claimant's suspension was protracted, this was a complex investigation. It included not only the Audit investigation but a second layer of investigation by Mr. Biggs. The investigation process stalled more than once as a result of the Claimant's request to change investigating officers; the concern about prejudicing any police investigation; the Claimant's ill health; the need to investigate and consider grievances and the need to locate Governors from outside the First Respondent to sit on the disciplinary

panel. When all of those matters are taken into account, we do not consider the delay to amount to unreasonable delay.

247. For all of those reasons, we are satisfied that the disciplinary panel was able to form a reasonable belief, on reasonable grounds and after reasonable investigation, that the Claimant was guilty of the misconduct which it found made out in the disciplinary outcome letter. We are further entirely satisfied that given the severity of those matters, dismissal did not fall outside the range of reasonable responses open to a reasonable employer and nor did the processes adopted by the First and Second Respondents.

248. Therefore, the Claimant was not unfairly dismissed and the complaint of unfair dismissal fails and is dismissed.

249. We turn then to the complaint of a failure to make reasonable adjustments. We are satisfied that this claim falls at the first hurdle on the basis that we accept the submissions of Ms. Wedderspoon that neither the First nor Second Respondents imposed a requirement for the Claimant to attend a disciplinary hearing at County Hall. The correspondence from Les Biggs made it abundantly clear that the Claimant was invited to such a meeting but that her personal attendance was not necessary. She was able, for example, to make written representations or to send a representative.

250. However, to any degree that there was a requirement placed upon the Claimant to attend the disciplinary hearing at County Hall (i.e. to the extent that if she chose to attend then the location was to be at County Hall) then we are satisfied that that did not place the Claimant at a substantial disadvantage. In this regard, Dr. Sharp had recommended a neutral venue and we are satisfied that County Hall was such a neutral venue. The Claimant had not worked at County Hall for over 20 years. No representations were made by her that she knew anyone at County Hall that she might run into who might be aware of the allegations against her. Whilst the Claimant's evidence before us was that she had some contact with HR members of staff as part of her Business Manager duties, we accept that County Hall was a vast building and the likelihood of her coming into contact with anyone, let alone anybody that she knew, was slim to say the very least. It was even less likely still that she might come into contact with anyone who had any knowledge of her suspension or the reasons for her attendance at County Hall.

251. We accept that there were difficulties in obtaining a suitable venue which was available on the day scheduled for the hearing given the number of rooms needed for all of the participants and that County Hall was a suitable venue. We do not accept the Claimant's evidence that it was the venue that placed her at a substantial disadvantage and it appears to us from the evidence before us that her distress was caused by the allegations against her. County Hall was a neutral venue which complied with the requirements suggested by Dr. Sharp and the Claimant would have suffered distress dealing with the allegations at any venue. Indeed, as we have remarked above, it was only at the point that Mr. Walton began to present the Claimant's statement of case that she became distressed and the meeting had to be halted.

252. Moreover, the Claimant was asked about further adjustments when she was informed about the details of the meeting and where it was to be held by Les Biggs. At no point did the Claimant indicate that she would have difficulty arriving at County Hall at the reception or that alternative arrangements should be made for her to enter via a back entrance. Had that been something that was genuinely in the Claimant's mind at the time, there is no reason why Mr. Walton in his subsequent and numerous items of correspondence on the subject of attendance at County Hall would not have mentioned it. It was simply the venue that was said to be unacceptable and as we have already observed, we do not accept that to have been the case. We do not accept therefore that not providing the Claimant with an alternative entrance amounted to a failure to make a reasonable adjustment.

253. Moreover, we are satisfied that the First and Second Respondents made sufficient and appropriate reasonable adjustments for the Claimant in respect of the disciplinary hearing. Particularly, we are satisfied that the disciplinary panel made it clear that the meeting did not need to conclude that day (and indeed it did not as it concluded via detailed written submissions at a later stage) and both the panel and Les Biggs in earlier correspondence had set out that regular breaks could be accommodated. Breaks were scheduled as set out above and neither the Claimant nor Mr. Walton requested any further adjournments. Furthermore, Mr. Walton was permitted to deal with cross-examination and present the Claimant's case, albeit of course that was something outside the terms of both the Disciplinary Policy and the Claimant's statutory rights under Section 10 Employment Relations Act 1999. In addition, a further adjustment was made to allow the Claimant, via Mr. Walton, to submit written representations after the adjournment of the hearing.

254. In addition, options were provided to the Claimant if she did not want to attend - such as the provision of written representations or sending a representative on her behalf to present her statement of case. Indeed, that is exactly what happened, albeit with the Claimant also in attendance, on 15th December when Mr Walton undertook cross-examination of the Respondent's witnesses and presented the statement of case on the Claimant's behalf.

255. The panel thereafter accommodated lengthy written submissions being made on the Claimant's behalf. We have not heard any evidence that the Claimant was unable to put forward by way of the cross-examination by Mr. Walton any subsequent detailed written submissions or anything which she would have relied upon had the hearing been conducted in a different way. There was quite simply no requirement for her to attend the hearing and we are satisfied that the First and Second Respondents made all reasonable adjustments that were necessary to facilitate the Claimant attending at the hearing if that was what she wanted to do.

256. We are therefore satisfied that in making the above arrangements, even if there was a requirement to attend at County Hall, the First Respondent made sufficient reasonable adjustments to enable the Claimant to be present.

257. For all those reasons, the remaining complaints of a failure to make reasonable adjustments also fail and are dismissed.

258. We should observe that we fully understand and appreciate that the outcome of these proceedings and the decision that we have made will not be the one that the Claimant wanted. We wish to assure her, and Mr. Walton for whom there is also an understandable strength of feeling in respect of these matters, that we have considered all of the evidence very carefully and all that both of them have had to say before reaching the conclusions that we have set out above and we hope that the reasons that we have given will enable the parties to understand why we have arrived at the decisions that we have made. We hope that, although not the outcome that the Claimant wanted, the reasons that we have given may enable her to have some closure on the matter.

Employment Judge Heap
Date: 14th August 2018

JUDGMENT SENT TO THE PARTIES ON
17 August 2018
.....

.S.Cresswell.....
FOR THE TRIBUNAL OFFICE

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