Case: 1800999/2017

EMPLOYMENT TRIBUNALS

Claimant:	**Ms C Birch**	
Respondents:	**(1) The Governing Body of Fulford School**	
	(2) City of York Council	
Heard at:	**Leeds**	**On: 9th, 10th 11th, 12th, 13th,16th, 17th , 18th . 19th & 20th July 2018 (reserved decision only)**
Before:	**Employment Judge Lancaster**	
Members:	**Mr M Taj**	
	Mr G Harker	

Representation

Claimant:	In person, assisted by her husband Mr M Birch (9th, 10th, 11th, 12th and 13th July) Did not attend but was represented by her husband Mr M Birch (16th, 17th, 18th and 19th July)
Respondent:	Mr S Healy.counsel

The unanimous decision of the Tribunal is:

JUDGMENT

The claims are dismissed

WRITTEN REASONS

The claims

1. The Claimant is a part-time English teacher at a large comprehensive school in York, though she has not been at work since October 2016.

2. In a claim form (ET1) presented on 22nd June she brought, without then providing any particulars, a complaint of disability discrimination. That claim was amended by the addition of further information, on 11th July 2017, in response to the Tribunal's request for particulars and also, on 28th July 2017, by the identification of the "Grounds of Claim" which had been intended to be served with the ET1.

3. Within the "Grounds of Claim" were set out in 23 paragraphs the various disadvantages to which the Claimant had allegedly been subjected (paragraph 30 (a) to (w); though sub paragraph (o) does not identify any actual detriment). It has, unfortunately, never been easy to understand how these complaints relate to specific provisions of the Equality Act 2010. At a preliminary case management hearing on 28th

July 2017, before Employment Judge Cox, those allegations were explored –evidently in some considerable depth - and they were then articulated by the Claimant primarily as claims of failures to make reasonable adjustments. It is recorded in the annex to the Order that:

"The Claimant alleges that the following practices (sc 21 allegations derived for the most part from paragraph 30) put her at a substantial disadvantage compared with those not suffering from her illness, because of the already elevated levels and anxiety and hyper vigilance connected with her condition."

4. 2 complaints were identified as claims of "discrimination arising from disability" contrary to section 15 of the Equality Act 2010. These are set out in the Annex to Judge Cox's Order as follows:

"5. The Claimant alleges that the following amounted to unfavourable treatment because of something arising in consequence of her disability:

5.1 At the "outcome meeting" on 18 October 2016, the following requirements were imposed on the Claimant: she should not ask for an apology from a student who misbehaved; she should not impose a detention on a student who misbehaved; she should not ask a student to make eye contact with her; she should not go to the Student Support Office; she should not ask students to write targets for improving their behaviour. These requirements were imposed on the Claimant because of the First Respondent's perceptions about her behaviour in School, which behaviour arose in consequence of her condition.

5.2 In April 2017 the School reduced the Claimant's pay to half pay because of the length of her sickness absence, which arose in consequence of her condition."

5. There were then 2 further allegations identified as being claims of victimisation, though one has since been withdrawn. The single remaining complaint under this head is:

"6.The Claimant alleges that the following amount to detriments to which she was subjected because she had complained in her grievance that she had been the subject of disability discrimination:

6.2 On 15 June 2017 Mr Andrew Pennington, the Chair of the School's Governing Body, alleged that she had committed a criminal offence by disclosing the identity of two pupils in her grievance appeal document."

6. At a further preliminary hearing on 26th September 2017 Employment Judge Lancaster granted an amendment to allow all the allegations of detriment potentially to proceed, in the alternative, as public interest disclosure ("whistle blowing") complaints.

7. By way of further case management, and in an attempt to assist the parties, Judge Cox on 26th April 2018 then produced a composite list of the identified allegations. This is reproduced as an end note to this decision, and is used as the framework for the findings of fact which follow[1]. It is only for us to make findings on and to record those factual issues which are necessary to enable us to determine the issues in the case and reference to this document provides a structure for doing that.

The issues

8. It is not in dispute that the Claimant's present level of mental impairment meets the definition of disability within section 6 of the Equality Act 2010. It is still an issue as to when she first became disabled, within the meaning of the Act.

9. A jointly instructed medical expert, a consultant psychiatrist, has prepared a report on the question of disability. Doctor Elanjithara has not, however, had time to reply to further questions now proposed separately by the parties who were unable to agree on a joint further application following the initial report.

10. At the outset of the hearing it was agreed that the evidence would be heard on the factual allegations and that a decision on the issue of disability would also be taken on the currently available evidence unless a specific application were made by either side to postpone that determination to allow the reception of more information from the doctor. Whether or not the Claimant was disabled at any material time is, of course, ultimately a matter for the Tribunal to decide.

11. The date when the Respondents first knew or ought reasonably to have known that the Claimant was disabled is also in dispute.

12. If the Claimant was disabled and the Respondents ought reasonably to have known that the principal issue under the discrimination claim is whether or not the Respondents were under a duty to make reasonable adjustments (section 20 of the Equality Act 2010). That is did they in fact apply a provision, criterion or practice (PCP) which placed the Claimant at a substantial disadvantage compared to persons who are not disabled?

13. It is also in dispute whether the Respondents knew or could reasonably have been expected to know that the Claimant was likely to be placed at any such substantial disadvantage.

14. If the Respondents were under a duty to make such adjustments as it would have been reasonable to take in order to avoid the specific disadvantage to the Claimant there is a dispute as to whether any steps were reasonable and whether they in fact failed in their duty (section 21 of the Equality Act 2010).

15. It is disputed that the Claimant in fact made any protected disclosures as defined by Part IVA of the Employment Rights Act 1996. Although the Claimant, on 18th September 2017, produced a document headed "Details of public interest disclosure for the attention of the Tribunal" which was treated as an amendment to her claim it has remained in issue whether or not she has in fact identified specific qualifying disclosures. This was expressly set out as an issue within the case management order of 2nd October 2017:

> "2.1 What did the Claimant say or write (see the "Details of public interest disclosures document")?
>
> 2.2 In any or all of these, was information disclosed which in the Claimant's reasonable belief tended to show one of the following?

2.2.1 A criminal offence had been committed

2.2.2 A person had failed to comply with a legal obligation to which he was subject

2.2.3 A miscarriage of justice had occurred

2.2.4 The health or safety of any individual had been put at risk

2.2.5 The environment had been put at risk

2.2.6 Or that any of those things were happening or were likely to happen, or that information relating to them had been or was likely to be concealed?

2.2.7 If so, did the Claimant reasonably believe that the disclosure was made in the public interest? "

16. It is in dispute whether any of the allegations, if they in fact occurred either at all or as claimed, amount to a detriment .

17. If they any allegation is properly a detriment the question is was the Claimant subjected to that detriment because she had made one or more identified protected qualifying disclosures?

18. Alternatively, if applicable, the issue is whether there was unfavourable treatment of the Claimant and if so whether that occurred because of something arising in consequence of the Claimant's disability or because she had done a protected act (as defined by section 27 (2) of the Equality Act 2010).

19. There is no dispute that the Claimant had done a protected act or that Mr Pennington believed she may do so. There is a reference in the Claimant's grievance itself only to the fact that "it has been suggested that any claim I may decide to bring could include claims for discrimination" but by the date of the alleged victimisation (15th June 2017) she had also expressly indicated an intention to bring Tribunal proceedings and had completed the process of ACAS Early Conciliation.

20. In respect of the claims under section 15 Equality Act 2010 if the Claimant was in fact treated unfavourably the Respondents assert that such treatment was justified: that is that it was a proportionate means of achieving a legitimate aim. The Respondents rely in their pleaded case upon the aim of "providing education for the students and to care for and protect the students, claimant, parents and school". In respect of the claim in relation to the reductions in sick pay the Respondents rely more particularly, following standard City of York Council policy and having regard to the cost of supply cover, upon the aim of "ensuring that those lessons that would ordinarily be taught by "C" (the Claimant) were covered by other teachers".

21. In respect of the majority of the complaints there is an issue as to whether or not the claim is in time. This was identified in the Order of 2nd October 2017:

"4. **Time/limitation issues**

4.1 The claim form was presented on 22nd June 2017 Accordingly and bearing in mind the effects of ACAS early conciliation, any act or omission which took place before 14th January 2107 is potentially out of time, so that the tribunal may not have jurisdiction.

4.2 Does the Claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

4.3 Was it not reasonably practicable to have presented any complaint of whistle blowing detriment in time and if so was it then presented within such further time as was reasonable?

4.4 Was any complaint of discrimination or victimisation presented within such other period as the employment Tribunal considers just and equitable?"

The law

22. The issues in this case are essentially questions of fact.

23. The relevant statutory framework within those questions must be decided has already been identified within the list of issues.

24. We remind ourselves that we must be careful to apply that legal framework to the specific claims in this case.

25. On the claim of failure to make reasonable adjustments that requires us (Environment Agency v Rowan [2008] ICR 218) therefore to consider:

- The specific PCP applied
- The specific nature of the comparative disadvantage (and the identity of non-disabled comparators if appropriate)
- The nature and extent of the substantial disadvantage suffered by the Claimant.

26. It is not enough for the Claimant simply to identify something which happened in respect to her in the course of her employment. There must be a PCP which was or would have been applied generally to employees, whether disabled or not. This will normally connote "something which occurs on more than a one off occasion and has an element of repetition about it" (Nottingham City Transport Ltd v Harvey [2013] All ER 267). That is a provision with which the Claimant could not comply, a criterion which she could not meet or a practice to which she could not conform.

27. There must be identified by the Claimant a disadvantage to her as a disabled person within the workplace as a result of the application of the PCP. There must then also be some evidence provided by the Claimant of "some apparently reasonable adjustment that could be made" such that the Respondent can "engage with the question of whether it could reasonably be achieved or not (Project Management Institute v Latif [2007] IRLR 579. Only then will the burden of proof shift to the Respondent to show that it has not breached the duty to make reasonable adjustments (section 136 Equality Act 2010).

28. On the claim of being subjected to a detriment because of having made a protected qualifying disclosure that requires us (Blackbay Ventures Ltd v Gahir [2014] IRLR 416) therefore to consider:
    - The date and content of each disclosure.
    - The nature of any failure to comply with a legal obligation, matter giving rise to a health and safety issue (or as the case may be) which is alleged .
    - The basis upon which the disclosure is said to be protected and qualifying
    - The identification of each separate failure
    - (if applicable and where it is no obvious) the source of any breach of legal obligation
    - Whether the Claimant had a reasonable belief that the disclosed information tended to show a relevant failure under section 47B (1) Employment Rights Act 1996.
    - The specific detriment to the Claimant.
    - Whether the disclosure was in the public interest.

29. The information disclosed must have "a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in (section 47B (1)" (Kilraine v London Borough of Wandsworth [2018] EWCA 1436). It is not enough (per Blackbay) simply to "lump together" a number of complaints some of which may be culpable and some not.

30. A detriment (as stated in Shamoon v Chief Constable of the RUC [2003] ICR 337) is where "a reasonable worker would or might take the view that he has been disadvantaged in the circumstances in which he thereafter had to work" and must be capable of being objectively as such.

31. Only if the Claimant establishes that there is some evidence of these elements does the burden fall on the Respondents to show the grounds on which an act or deliberate failure and which might therefore be a "whistle blowing detriment" was done: section 28 (2) Employment Rights Act 1996.

Disability

32. In April 2008 the Claimant's father took his own life in violent circumstances. As a consequence the Claimant has developed post traumatic stress disorder (PTSD).

33. The Claimant was initially able to return to work but was nonetheless substantially adversely affected in all areas of her life by intrusive thoughts of her father's suicide.

34. In November 2008 she eventually had to take six weeks off work.

35. For some eighteen months she was intermittently receiving counselling. But for that treatment the adverse effects of her PTSD would have continued to be substantial.

36. For an initial period of more than twelve months the Claimant was therefore disabled within the meaning of the Equality Act 2010.

37. That is certainly a past disability within paragraph 9 of Schedule 1 to the Act.

38. However the adverse effects then ceased to continue to be substantial. That is in fact how the Claimant's case is pleaded at paragraph 2 of the Grounds of Claim.

"The Claimant was significantly impaired day to day for the 18 months following this traumatic event".

39. That is corroborated by Dr Elanjithara's report where he describes the improvement in her symptoms after 2010.

40. Throughout this period from 2010 onwards, although the intrusive thoughts did not go away, The Claimant did not have any further medical treatment, she did not any longer need counselling, she did not have any more time off work with stress and she was, on her own account performing exceptionally as a teacher.

41. In particular the Claimant had successfully developed coping or avoidance strategies of the type envisaged in sections B7 to 10 of the Guidance on the Definition of Disability (2011). She has managed, with the support of her husband to avoid triggers, such as exposure to violent and horrific film images. With the cooperation of the English Department she had also avoided having to teach in areas, such as film studies, which she assessed as being beyond her endurance. She did manage to cope with teaching some texts which included themes of death or depression.

42. These are modifications to the Claimant's behaviour which she could reasonably be expected to maintain. The effect of these avoidance strategies, taken in conjunction with the improvement in her condition and the passage of time mean in our judgment that the effects of the impairment were, as is evidenced by her performance at work, no longer substantial.

43. The issue then is whether at any material time it was likely (in the sense that "it could well happen") that the substantial adverse effects would recur.

44. As set out in Dr . Elanjithara's report recovery from PTSD "can be expected in the majority of cases" but that "it is possible to have relapses even after a period of recovery. Clinical presentations of such relapses are influenced by the new set of circumstances and stressors but certain features of PTSD remain the same." It is not, however, every new presentation of stress, even acute stress that will (to use the terminology in the GP's letter) "become a more significant mental illness of PTSD and severe anxiety with depression".

45. As explained in the example at paragraph C6 of the Guidance on the Definition of Disability (2011) there may be two discrete episodes of depression over a period but it will only be if there is evidence to show that they did arise from an underlying condition that this will be treated as a recurring or fluctuating effect of an in impairment.

46. In June 2016 the Claimant self certified as being sick with stress for one day, citing a "combination of factors emotional and physical". By this stage she had effectively been in a period of recovery from the initial PTSD for some six years. Given that most people recover from PTSD and that the absence was merely transient it cannot be said at this point that it was likely that the Claimant would suffer from recurring effects.

47. Prior to her actually going of sick again in October the position remained as it had been in June: it was not at that time likely that the Claimant would suffer from recurring effects.

48. When the Claimant went off sick on 19th October 2016 her GP describes her as presenting with "acute symptoms of work related stress". Nonetheless at this stage it was still expected that her absence would be of very short duration and that she would come back in a few weeks at most, after half term.

49. Even though this episode of stress-related illness commencing in October ultimately became more serious and has been retrospectively diagnosed as a relapse of PTSD it was not immediately obvious that it would do so. As at 24th November 2014 the OH report states that "this stress is not having a significant and sustained impact on her day to day function".

50. At some point however it did become likely that this period of stress would have substantial adverse effects and that it will then have become likely that someone with a past history of PTSD would indeed suffer a relapse as a result of these new perceived stressors in her life.

51. That was certainly the case by the time of the next OH report dated 24th February 2017. By this stage a provisional diagnosis of PTSD had been made following a resumption of counselling.

52. The earliest date when we consider (not attaching great significance in this context to the opinion n the November OH report) that the Claimant's condition met the definition of disability, being the time when she suffered a recurrence of an impairment which was likely to lead to continuing and substantial adverse effects on her normal day to day activities, was the end of October 2016. From that date the Claimant was disabled.

53. However so long as the fresh impairment appeared to be of short lived duration and separate from the earlier PTSD the Respondents did not know and could not reasonably have been expected to have known of this disability. Certainly the OH report of November 2016 did not put the Respondents on notice of any possible disability.

54. The earliest date when the Respondents were in fact put on notice that this absence was not a discreet and finite period of depression that would resolve in a return to work in the near future was when Mr Birch's email was received on 2nd February 2017. Here he refers to the sustained distress, the fact that the Claimant was on medication, undertaking counselling and awaiting EMDR treatment but more significantly for the first time alerts the Respondents to the link with PTSD.

55. The date from which the Claimant was disabled and the Respondents ought reasonably to have known that is therefore 2nd February 2017.

56. This means that the first 10 allegations in the list cannot be disability discrimination, and must be dismissed.. We have nonetheless also analysed all these claims on their merits.

Protected Qualifying Disclosures

57. Although the Claimant had multiple issues with the school's approach to behaviour management and sanctioning the majority of the concerns that she raised are not capable of amounting to protected qualifying disclosures. They do not have the necessary element of specificity.

58. However in the course of raising these issues she did disclose some specific items of information which do satisfy the test in Part IVA of the Employment Rights Act 1996.

59. In the course of her meeting with Mrs Savage in February 2016 and during the course of her six regular meetings with Mr Bodey in about the first half of 2016 she made the following particular disclosures:

- That a bag had been thrown from the tower, had hit a student and that Student Support had failed to act.
- That a group of boys were causing distress to three girls in the class, one of whom suffered from anxiety, and that Mr Walker had failed to take action.
- That students were "shoving" each other into the road and that Mr Walker again had failed to act.

60. These instances disclose information (whether in fact correct or not) which in the reasonable belief of the Claimant, based upon what she had been told, tended to show that physical or mental health had been or would be endangered or that the school was failing in its duty of care towards students.

61. Because these disclosures concerned a public institution, a school, they were made in the public interest.

62. There may have been other disclosures of a similar nature or which qualified for protection on other grounds. Unfortunately the imprecise nature of the Claimant's evidence in this regard means that we are unable to identify them with the degree of precision that is required of us following Blackbay Ventures Ltd v Gahir.

63. Given that these three identifiable protected qualifying disclosures were indeed made it is not proportionate to deal individually with all the other allegations that the Claimant has made of what she considers also to be "whistle blowing".

The Specific Allegations

Allegation:

In June and October 2016 the School required the Claimant to teach the Year 12 A-level literature course, which had suicide-related content in the tragedy unit of the course. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure[2].

June

64. In 2015/2016 the Claimant had taught English Language A Level at year 12.

65. Because of a reduction in student numbers the classes were contracted and only two of the four teachers were required to go forward with this group into year 13.

66. The Head of English, Kasia Davies took herself out of teaching this subject. The Claimant was the other teacher who was selected by Mrs Davies to lose her class.

67. In an informal conversation in about May 206 Mrs Davies informed the Claimant of these likely changes.

68. The Claimant was understandably. unhappy about such a change in her timetable. She had expected to continue with her year 12 class and had begun lesson preparation and had also qualified as an examiner with a view to enhancing her teaching of this subject. It was, however, a perfectly proper decision for Mrs Davies to have taken in the circumstances.

69. In order still to give the Claimant A level teaching, which was generally perceived as desirable by teachers in the department, Mrs Davies then proposed to allocate her a year 12 English Literature class. Because of a timetable clash with existing GCSE groups not all teachers in the department were available to take on this class. It also required an English specialist, which the Claimant was.

70. In a second informal conversation also in about May 2016 Mrs Davies informed the Claimant of her proposal that she teach the literature class.

71. It was reasonably to be expected by Mrs Davies that the Claimant would be aware that the tragedy module had been chosen to be taught at A level. This would have been either through general conversations with her colleagues or from the minutes of departmental meetings.

72. As at Saturday 18th June 2016 the Claimant had familiarised herself with the content of the course. In an email of that date to Mrs Davies she refers specifically to 3 of the texts on the syllabus, namely “Othello”, Keats’ poetry and “The Great Gatsby”. The Claimant does not say that any of these are unsuitable for her to teach because of their suicide or death related content. The Claimant expressly states that she has read “Gatsby” and “Othello” and would feel comfortable “prepping” them. She had in fact previously shared a class on the combined English Language and Literature A level course which had included “Othello”. It is reasonably to be assumed therefore that at this stage the Claimant was not raising any objection to her teaching “Othello” on the grounds that the death scene in the final act would be too distressing for her he circumstances of her own father’s suicide. She did however say that she thought teaching both “Othello” and Keats was an inappropriate allocation of the teaching workload as they were the pre 20th century texts which students might find a bit heavy

73. In the 18th June email the Claimant did repeat her concerns about the increased workload and she also said that was already stressed with different things and that

she feared that the physical heath problems which she was also experiencing might be exacerbated by the additional work burden.

74. The Claimant requested an early morning meeting with Mrs Davies on the following Monday (20th June) and it appears that must have taken place. There is then an email to the Claimant from Mrs Davies at 9.24 on the Monday morning which suggests an alternative allocation of work where the Claimant would instead teach "Gatsby" and "Death of a Salesman", the two more modern texts. As part of this discussion, the other teacher, Nicola Pugh, is also contacted by Mrs Davies by email on 20th June. This appears to be with a view to identifying the most appropriate sharing of the workload, particularly having regard to the need to support the Claimant because of issues she has raised that are to do with her mental health.

75. Up to this point the Claimant has not, as she had on two previous occasions, yet raised any specific concerns about the content she may be timetabled to teach. These were the only two occasions where she had raised any such concerns in the previous eight years. The last such instance had been in about June 2015 when she expressed a wish to Rachel Boroni – who was then acting up as Head of Department whilst Mrs Davies was on maternity leave up until February 2016 – that she should not teach Film Studies because of the "horror" element. As a result the Claimant had never been required to teach this course. Similarly the Claimant had not been required to supervise a piece of coursework chosen by a pupil in her personal development class which dealt with themes of suicide. Conversely the Claimant had taught a number of texts which contained "dark" subject matter. It was reasonably to be expected that the onus should be on the Claimant, particularly give the previous accommodations by the department, to raise any specific concerns about course content so that the issues could be appropriately addressed.

76. Unfortunately the Claimant, who was off with sickness and diarrhoea on Tuesday 21st June and was not scheduled to work on Wednesday 22nd seems to have let her stresses build up, particularly when she considered the implication of teaching on the major suicide theme in "Death of a Salesman". When she returned to work on Thursday 23rd June she he therefore had what she describes a breakdown in front of Mrs Boroni. This is probably also the date of the meeting with the head teacher, Lorna Savage, where the Claimant says she "begged" not to teach the literature class.

77. As soon as the Claimant's conversation with her was reported by Mrs Boroni, Mrs Davies took action to rearrange the Claimant's timetable. When Mrs Savage made her own enquiries the English Department was already dealing with the matter. The solution, although not ideal for the class, was to move the Claimant to jointly teach a year 11 GCSE group which was timetabled at the same time as the year 12 literature. Mrs Boroni informed the Claimant that this had been done and Mrs Davies confirmed it in an email sent at 14.22 on Friday 24th June 2016. The Claimant by this time had again gone of sick, a one day self-certified absence for a "combination of factors, emotional and physical".

78. The matter was therefore dealt with within 24 hours of Mrs Davies actually having any knowledge that the Claimant's mental well-being might be put at risk if she remained timetabled to teach this course. The Claimant was therefore never in fact required to teach the suicide related content in the A level tragedy module.

79. Even if the Claimant had been disabled at this time the Respondents did not apply the alleged PCP and did not fail to make a reasonable adjustment. What in fact happened was that Mrs Davies cooperated with the Claimant in promptly putting into effect a coping mechanism whereby she could reasonably manage to avoid a situation which could possibly trigger a relapse of the symptoms she had experienced in the more immediate aftermath to her father's suicide eight years previously.

October

80. The Claimant experienced a number of issues when teaching the year 11 class. As a result of parental complaint she was subject to a disciplinary investigation, the outcome of which was announced to her on 18th October 2016.

81. On the day before, 17th October, the Claimant broke down in a staff briefing meeting and Mrs Boroni called for Mrs Savage.

82. At this meeting there was a conversation about the circumstances in which the Claimant had been assigned to teach this class. As at 24th June, because of the advanced stage which had already been reached in preparing the next year's timetable, the only alteration that could be accommodated by Mr Johnson, the deputy head responsible, was a "like-for- like swap" within the existing parameters. That was what was done.

83. That is clearly the context in which Mrs Savage referred to the available "options" of the Claimant either teaching the year 11 class, with which she now had issues, or the year 12 English literature course.

84. Mrs Savage did not say that the Claimant's only other option was to teach the tragedy module with any expectation that she might actually do so. It is, however, clear that this is how the Claimant understood it at the time and said this to Mrs Boroni, who immediately reassured her that this would not happen. Mrs Savage did not ever intend that the Claimant should swap back to teach the year 12 class and she was certainly not in any sense "required" to do so. The Respondent did not therefore, even if the Claimant had been disabled at this time, apply the PCP as alleged.

Time limits

85. In any event these complaints, even if taken together, form a discrete allegation distinct from any other claim of a failure to make adjustments. As such they would be significantly out of time. The tribunal time limit is 3 months. To be in time the Claimant would have had at least to have contacted ACAS by 16th January 2017 at the very latest. She did not do so until 13th April 2017: the time limit has therefore been exceeded by almost 100 per cent. As this matter had been speedily resolved at the time there is no good reason why it would be just and equitable to extend the time for presenting the claim.

86. In this, as in all the claims where a limitation period issue arises, we also note that the Claimant was clearly aware from a very early stage of the possibility of bringing tribunal proceedings. She had first referenced a possible claim (constructive dismissal) in November 2016 and was on 25th March 2017 expressly stating that she would issue proceedings. By this stage she was evidently aware of the existence of time limits because she at least knew that she would need to initiate the legal

process by early April. She also knew that she would be able to issue a claim in time simply with a view to protecting her position.

Allegation:

In September and October 2016 the School failed to follow its usual procedure on dealing with students who walk out of class in relation to students in the Claimant's Year 11 class. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

87. The Claimant had had an excellent record of maintaining discipline within her own classes.

88. From about 2014 she had become increasingly concerned at what she perceived to be an institutional failure properly to address behavioural issues in the school.

89. In particular the Claimant objects to an approach, expressly espoused by Paul Walker the head of student support, which allowed for "creative sanctioning". The Claimant also categorises an external training course which she attended, and which was designed to make her aware of the current thinking on discipline and which informed the school's approach as simply "*ignoring* bad behaviours" (rather than as suggested tactical ignoring of behaviour in some instances).

90. The Claimant's insistence on a rigid application of the sanctions ladder within the school's policy document was perceived by Dan Bodey, the deputy head, and by Mr Walker as contributing unnecessarily to an escalation of potential conflict with students. This led to frustration with the Claimant being expressed in admittedly inappropriate terms within internal emails where her interventions were discussed. Also in a meeting in July 2016 Mr Bodey had made a comment to the effect that he agreed the Claimant was being something of an "arse" in this respect.

91. Although it is agreed that behaviour in the school generally is excellent the Claimant was not alone in voicing concerns about individual incidents or about structural failings in student support. The trade unions had felt sufficiently concerned to make representations to senior management about the way sanctions were managed. This had led to the setting up of a working party (which the Claimant, somewhat to her chagrin, was not selected to join) and the implementation of various recommendations. Whilst, according to Louise Booth, the NASUWT representative, this remains a "work-in-progress" the unions have not raised any further issues.

92. The sanctions policy provides that a "walk out" should be followed by an A7 detention. The PCP which appears to be relied upon by the Claimant is that this policy was not followed in every case without any variation.

93. The Claimant had only taught the year 11 class for a very short time, always on a Friday. On 16th September 2016 a pupil had walked out of her lesson and was duly issued with a detention. On 23rd September 2016 Student B walked out. She then forewent her contact with her father on the following day, Saturday, so that she could prepare for an additional session with the Claimant before school on Monday to go over her missed homework. Whilst this was not formally an A7 detention it was deemed sufficient sanction in all the circumstances. On 30th September 2016 both Student B and Student A walked out at the end of the lesson. Although Mrs Baroni

initially arranged that they should both then serve a departmental detention the following Thursday this was overtaken by the parent of Student A then raising a complaint about the Claimant's conduct in the classroom and the detention was not enforced.

Failure to make reasonable adjustments

94. Even if the Claimant had been disabled at this time she has not identified any disadvantage to which she as a disabled person was subjected by reason of the more flexible approach to discipline and to which she took exception. The Claimant's case is in fact that all teachers were equally being "brought to their knees" by the failure to enforce appropriate sanctions on students.

Detriment on the ground of public interest disclosure.

95. Even if the decisions in respect of the sanctioning of individual students in her class were said to amount to a detriment to the Claimant, in that she reasonably believed it to place her at a disadvantage in her working environment she was not subjected to that detriment on the grounds of her having made a protected disclosure. The reason why students were sanctioned in a particular way was because it was considered to be the appropriate action in all the circumstances having regard to what they had done. The Claimant disagrees with that assessment. That does not mean that it becomes about her rather than the student. Even if a consideration in arriving at the decision on sanction was that the Claimant may have been perceived to have acted disproportionately in the specific instance that is not at all the same thing as saying that it was on the grounds of her previously having disclosed information in respect of a different incident.

Time limits

96. In any event the issues arising from the alleged failure to follow the sanctions procedure had concluded by 24th October 2016 when the possible action to be taken in respect of Students A and B was last addressed with the Claimant and any detriment claim is out of time. It would have been practicable for the Claimant had, she wished to have brought her claim in time. There was nothing to stop her, at least, starting ACAS early conciliation by 23rd January 2017. Had she done she would then have had an extension of time to bring her claim until one month after the issue of the certificate. By that stage , which would have been about 23rd March 2017, she had already submitted a 65 page grievance. She could equally have presented a claim to the tribunal.

Allegation:

On 13 October 2016 the School subjected the Claimant to a formal disciplinary investigatory interview as a result of a parental complaint, rather than interviewing her under the complaints procedure. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

97. The incident involving Students A and B took pace at the end of period 4, about 1.10 pm on Friday 30th September 2016.

98. The Claimant spoke, almost immediately afterwards to Mrs Boroni.

99. On the information reported to her at 1. 42 pm Mrs Boroni arranged that the girls serve a departmental detention the following Thursday.

100. The Claimant set out her own account of the incident in an email to student support and others at 1 51 pm.

101. The students had by this stage already attended student support where they presented as upset.

102. The fact that there was an issue to be addressed was brought to Mr Bodey's attention and he emailed Mr Walker and Mrs Boroni at 2.31pm to arrange a meeting the following Monday (3rd October 2016) in advance of speaking to the Claimant. Mrs Baroni had now taken over as head of curriculum (head of the English department) upon Mrs Davies being promoted to assistant head teacher. It is clear that Mr Bodey had concerns that the Claimant's conduct was contributing to a difficult situation. Whilst it is correct that the year 11 class generally resented the change from being taught only by Lee Carter in year 10 it is the case, as Mr Bodey has often repeated in his evidence that whereas Mrs Carter had previously taught over two hundred lessons without this class having come up on his radar as registering any real concern he had, in the four weeks since the Claimant started teaching it, been aware of a number of issues.

103. There is nothing inappropriate in the content of Mr Bodey's email. He expresses the intention to support the Claimant and makes suggestions as to how avoid escalations occurring.

104. Mrs Boroni's response was to agree that clarity was needed in the situation and that future escalation had to be avoided.

105. On the afternoon of 30th September 2016 Sarah Wright in Student Support received a telephone call from the father of Student A, who was furious, stating that the Claimant had shouted at and goaded his daughter. Ms Wright was unable to placate this parent., who was talking about a formal complaint going to a "full disciplinary". This was his position even though he was told that the Claimant had been personally unaware of the background history of Student A's mental health: she had attempted suicide when in year 10 and since her return to school had been receiving help from Student Support and from Mr Bodey. Irrespective of whether or not the Claimant had been apprised of his daughter's situation the father's view was that the Claimant's conduct was emphatically not acceptable. The matter clearly therefore was not capable of being resolved informally by the member of staff dealing with the initial contact.

106. At 3.52 pm Ms Wright emailed Mr Bodey and Mr Walker to inform them of this parental complaint.

107. Mr Bodey replied to this email at 5.05pm and said: "To be honest I welcome that. Provides a chance to formalise our work with Claire". The context of this response is

clearly that it gives a focus to the meetings that Mr Bodey had already started to arrange with senior staff and with the Claimant.

108. Similarly on the next day, Saturday 1st October 2016, there was an exchange of emails between Mr Bodey and Mrs Savage informing her of the contact between the parent and Ms Wright. When Mr Bodey says to Mrs Savage that "This one will build next week…" the context is clearly that he anticipates that Student A's father will, as he had already indicated he would, make a formal complaint.

109. Then in reply to Mrs Savage's request "What's the story behind it?" Mr Bodey replies "Usual CBU (sc Claire Burdettt, the name use professionally by the Claimant) mismanagement of a minor event…". In context this is properly understood as a "down playing" of the likely significance of the event rather than any prejudgment that the Claimant had in fact conducted herself in a seriously inappropriate manner.

110. Mr Bodey did not immediately instigate any formal investigation of the Claimant's conduct. He continued the approach suggested in his email on Friday afternoon to Mrs Baroni and Mr Walker. Both of them spoke, separately it would appear, to the Claimant on the Monday morning , 3rd October 2016. Mr Bodey then emailed the Claimant at 12.25 on the next day, Tuesday 4th October 2016, to arrange a meeting with himself, Mr Walker and Mrs Baroni on the following Monday, 10th October 2016 to "talk this through" (sc "the issues that you are finding with your year 11 group since beginning sharing these with Lee Carter") and to "discuss strategies going forward".

111. On 3rd or 4th October 2016 Mrs Baroni was assigned by Mrs Davies to take over from Nicola Pugh as the assessor on the Claimant's immediately forthcoming performance management review. The reason for this was because of the issues that had arisen with the year 11 class and because Mrs Boroni was already involved in the management and support of the Claimant in relation to those matters. It is entirely appropriate that Mrs Boroni as the most senior person in the department should assume responsibility for the Claimant's performance management in these circumstances. No appraisal meeting ever in fact took place because as events later unfolded Mrs Savage suggested to Mrs Baroni, who agreed, that it be postponed from 17th October when originally scheduled until after the disciplinary investigation outcome meting on 18th October and the Claimant then went of sick. Mrs Baroni remains assigned to conduct any future performance reviews if and when the Claimant returns to work.

112. Student A's father had understood that he would be telephoned early in the week commencing 3rd October to inform him of what actions would be taken to investigate his complaint against the Claimant. When this had not happened by Wednesday 5th October he did raise a formal complaint about her behaviour and expressed concern that the matter was not being treated seriously. Up to this point, of course, no formal investigation of the Claimant had yet been instigated.

113. The formal complaint was addressed to Mrs Savage who took the decision that there should be an investigation conducted in accordance with the first stage of the disciplinary policy. Such an investigatory meeting would ordinarily be delegated by the head to one of her two deputies, Mr Bodey or Mr Johnson. When Mr Bodey asked if she wanted him to investigate in this instance she agreed.

114. The letter inviting the Claimant to the investigation meeting, although it went out in Mr Bodey's name, was not drafted by him. The initial draft was prepared by Mrs Savage's PA. Mrs Savage herself then amended it in order as she alter explained to "soften" the tone. The amendments made by Mrs Savage reinforced the purely investigatory nature of the meeting and in particular included the additional sentence:

"I appreciate that any investigation of this nature is stressful for all involved. Please be assured we will seek to conclude this investigation as speedily as is compatible with a full investigation of this complaint".

118. On 7th October Mrs Savage told the Claimant that there was to be this investigation. The meeting already scheduled for Monday 10th October was cancelled and the invitation letter, as amended, was sent out on that day. The investigation meeting was arranged for Thursday 13th October 2016.

119. The reason why Mrs Savage decided to commence the disciplinary procedure rather than to term this as an investigation under the parental complaints procedure – which might equally have then proceeded to a disciplinary hearing had it been found that there was a case to answer – is threefold.

120. Firstly the complaint was about the Claimant's alleged misconduct in the classroom " a tirade of shouting" and "screaming". Conduct of this nature would clearly be a disciplinary matter .

121. Secondly the parent's email, and indeed his earlier communication to Ms Wright, made it abundantly clear that this was not something which could be resolved except by carrying out an investigation into the Claimant's conduct. The earlier informal conciliation envisaged in the first instance by the complaints procedure was therefore wholly inappropriate. The parent was expressly stating that there should be a formal investigation under the disciplinary procedure.

122. Thirdly Mrs Savage was aware, which is a matter of undisputed fact, that there had been previous parental complaints against the Claimant. That these had been diffused in conversations with the parents involved and without involving the Claimant directly is not material. Nor is it relevant whether there was or was not any substance to these allegations. Complaints had been made previously and as these potentially indicated a pattern of behaviour rather that this being an isolated accusation Mrs Savage was entitled to take this into account.

123. The Claimant attended the meeting on 13th October 2016. She was accompanied by Ms Booth, who although an experienced trade union representative was simply attending as a colleague. The Claimant gave her account of the events in class on 30th September . By this stage Mr Bodey had already interviewed a number of the students present in the lesson as well as Ms Wright and the mother of Student B. From the conclusion of the meeting it already seems fairly clear that the outcome was not then anticipated to be that there would be any disciplinary hearing. Rather the focus of the outcome meeting scheduled for the next week would be to make a series of recommendations and to look at ways to support the Claimant going forward.

124. At the outcome meeting held on 18th October 2016 the conclusion was indeed that there was no case to answer and that there would be no further disciplinary hearing.

Although requirements or recommendations were made these were not sanctions imposed as part of the disciplinary process and after any finding of misconduct.

Detriment on the ground of public interest disclosure.

125. Mrs Savage made a judgment call. She may have been wrong. There are, however, clearly explained and understandable reasons given as to why she took the decision she did and none of them have anything to do with the Claimant having made any protected disclosure.

Failure to make reasonable adjustments

126. The application of the school's disciplinary procedure up to the end of the investigation stage did not place the Claimant at any disadvantage compared to any other member of staff. Whilst a formal disciplinary investigation would be stressful for any teacher, as expressly acknowledged by Mrs Savage, the Claimant was in no different position to anybody else. The way in which the process was administered did not disadvantage the Claimant in the presentation of her case and she was, of course, exonerated of any actual misconduct before the matter even progressed to a disciplinary hearing. Even if she had been disabled at this time she cannot show any disadvantage to herself as a disabled person.

Allegation:

In October 2016 the School appointed Mr Bodey as investigator in relation to the disciplinary charge against her, when the Claimant had raised concerns that the health and safety of students and staff was being endangered by failure to manage pupils' behaviour, an area that fell within Mr Bodey's management responsibility. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

127. The Claimant did not ever object to Mr Bodey carrying out the investigation.

128. The panel of governors on the grievance appeal hearing concluded that Mr Bodey should not have conducted the investigation because he was mentoring Student A, the principal complainant. Although there was in face no formal mentoring arrangement in place at the time Mr Bodey had been closely involved in managing Student A's return to school the previous year.

129. Mr Bodey did however carry out an impartial investigation into the allegation in respect of the Claimant's conduct and in fact concluded in her favour that there was no case to answer.

130. Mr Bodey did however prepare a full investigation report. This deals with wider issues of concern relating to the support of Student A as well as with the specific misconduct allegation against the Claimant. It is a perfectly proper and balanced conclusion which includes a recognition that the Claimant should have been informed about the historic concerns regarding student A, that Student Support should modify its procedures regarding feedback to teachers and the implementation of A7 detentions.

Detriment on the ground of public interest disclosure.

131. Mrs Savage made a judgment call. She may have been wrong. There are, however, clearly explained and understandable reasons given as to why she took the decision she did and none of them have anything to do with the Claimant having made any protected disclosure.

132. Mr Bodey was appointed to investigate because he was the best placed of the two deputy heads to do so. Even if a more cautious approach might have indicated that he should not have investigated a complaint by Student A the appointment had nothing to do with the fact that the Claimant had made any protected disclosure.

Failure to make reasonable adjustments

133. Nor has the Claimant shown that, if she had been disabled she was placed at any disadvantage, as a disabled person, by Mr Bodey's investigation into her alleged misconduct.

134. Without any objection having been made to his appointment the Respondents could not have known that this amounted to such a disadvantage.

Time limits

135. In any event all the issues arising from the conduct of disciplinary investigation (also including the alleged detriment of subjecting the Claimant to the disciplinary process rather that the complaints procedure) had concluded by 18th October 2016 when the outcome was announced and any detriment claim is out of time. It would have been practicable for the Claimant had, she wished to have brought her claim in time. There was nothing to stop her, at least, starting ACAS early conciliation by 17th January 2017. Had she done she would then have had an extension of time to bring her claim until one month after the issue of the certificate. By that stage, which would have been about 17th March 2017, she had already submitted a 65 page grievance. She could equally have presented a claim to the tribunal.

136. Nor would it be just and equitable to extend the time limit for the discrimination claim in these circumstances. The outcome of the investigation had concluded speedily with a finding in the Claimant's favour and she took twice as long as the rules ordinarily allow before commencing the process of litigation.

Allegation:

The School required the Claimant to continue to teach two children in Year 11 who had walked out of class without being sanctioned and/or whose parent had made a complaint about her. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

137. The Claimant broke down at a staff meeting on 17th October 2016. She expressed concerns about her continuing to teach the year 11 class. Mrs Boroni stated that it was extremely hard to extricate any concern about teaching Student A, because she had previously attempted suicide, from other concerns about her relationships with these students. As we have already concluded, Mrs Savage did not then say that the Claimant was required to teach the year 12 literature class as her only other

option but it does appear that she said something to the effect that there was no educational reason to move Students A and B out of this group..

138. After this breakdown the Claimant went home. She came in the following day for the outcome meeting, it was not otherwise a normal teaching day for her. She never in fact returned to work after this.

139. At this stage it was expected, following the outcome meeting, that the Claimant would now meet shortly with Mrs Boroni and Mr Bodey to discuss the arrangements for managing her return to work, in particular with respect to the teaching of the year 11 class.

140. On 19th October 2016 Mr Birch wrote to Mrs Savage explaining that the Claimant had been to the doctor and that she needed "space from work" at least up until half term. As half term was very soon (week commencing 24th October) it is clear that an imminent return to work was still envisaged.

141. In his letter Mr Birch expressly contemplates the Claimant returning to teach the year 11 class, including Students A and B.

142. He does however seek to impose his own condition upon this return:

"I feel it's imperative there is a meeting with Claire the student (who has repeatedly defied the rules for both Claire and the cover teacher) and Rachel to establish what will happen if negative behaviours are repeated".

143. In Mrs Savage's reply she affirms the intention to support the Claimant but asserts that the "issue of dealing with any of the students involved will be for us to determine and action in the manner that will best support a smooth return for Claire taking over this class."

144. Mr Birch does not in his further email of 21st October 2016 take any issue with the proposition that the Claimant will come back to teach her year 11 class. An immanent return to work is still contemplated with a meeting to be held with Mrs Boroni and Mr Bodey after half term.

145. During half term Mrs Savage, who was the sole surviving natural parent, was preparing for her daughter's wedding on Friday 28th October, which would obviously have been a poignant family time.

146. On 24th October 2016 Mrs Savage replies to Mr Birch addressing issues he himself had raised as parental concerns about behaviour management in the school but declining to discuss specific maters relating to the Claimant.

147. On Tuesday 25th October 2016, in half term, the Claimant then submitted a 5 page letter to Mrs Savage sated to be "to explain my feelings and the background to recent events". This is the letter which the Claimant now categorises as an "informal grievance" and in respect of which she complains that she has never received a written response.

148. Within this letter the Claimant says for the first time that she cannot teach Students A and B because her "position with them has been made untenable". She refers to the "extra complication" arising from the fact that Student a had attempted suicide but the

primary focus is upon protecting herself from what she describes as "the fear of unwarranted accusations" made by these two students in the future. She concludes by stating that her doctor has told her that she should not return to work until she feels "confident in the way these issues are being handled" but that she had still wanted to be in the meeting with Mrs Boroni and Mr Bodey..

149. Mrs Savage issued a brief reply at 9.26 am on 26th October 2016. She was evidently still assuming that the meeting after half term would go ahead, and had not appreciated that the Claimant was not in fact now intending to return as previously expected . Her email concludes:

"Communication of this nature is not going to help you get the break that your GP said you need.

I hope you are managing to get a rest."

150. The Claimant then made her position explicit in an email sent at 12.23 pm on 26th October 2016 where she states that she cannot teach students A and B anymore and that she is not coming back into school, either to teach or to attend a meeting until she is confident that the letters raised in her letter are resolved.

151. Mrs Savage replied at 3.06 pm reaffirming that there were no grounds to move the two girls out of the group. Because the Claimant has now raised a medical issue and stated that she is not going to return to work at this time Mrs Savage makes a referral to occupational health. The Claimant's letter of 25th October was, with her consent, passed on to the OH doctor. It was not also passed on to Mrs Boroni and Mr Bodey as the Claimant had suggested it might be but as the projected meeting with them never took place the immediate need for them to be apprised of the Claimant's feelings did not in fact materialise.

152. On 31st October 2016 Mrs Savage confirmed to the Claimant that it was not possible to make any further changes to the timetable and that there were no educational reasons to move the two students. The Claimant was asked to get in touch when she wished the head teacher to broker the support meeting with Mrs Boroni and Mr Bodey. That is reflected in the part of the OH referral which Mrs Savage filled in: she was seeking advice on how to facilitate the Claimant's return to teaching her full timetable, including the year 11 class.

153. There was in fact no parallel class to which the two students could have been transferred and such a move would clearly have been highly disruptive in their GCSE year in any event. Nor was there any like-for-like swap within the timetable which could have enabled the Claimant to move to another class and for that teacher to take over her year 11 group on Fridays.

154. Whilst alternative arrangements had to be and were made to cover the Claimant's year 11 class (and indeed all her classes) during her absence it is correct that Mrs Savage did not specifically address her mind to whether the Claimant's hours should be reduced to take the year 11 class off her. This would, of course, have reduced the Claimant's income significantly as she was already only on a part-time contract.

155. The Claimant never stated that she wished for or would be prepared to countenance a reduction in hours so that she could stop teaching this class altogether. Nor did she suggest that she would be able to return to work after May half time in 2017 when

there would no longer have been any teaching of this GCSE group prior to their exams in the summer.

Detriment on the ground of public interest disclosure.

156. The Claimant did not want to continue to teach these two students although there was no educational reason to move them. The expectation that, with appropriate support in place, she should still take this class if she returned to work is not subjecting her to a detriment and it certainly was not done because she had made any protected disclosures.

Failure to make reasonable adjustments

157. Nor, even if she had been disabled and the Respondents ought reasonably to have known that at this stage, has the Claimant identified any disadvantage to which she was subjected as a disabled person as compared to any other teacher in this situation. The reference to the situation with Student A (but not, of course, Student B) being complicated by the fact of her attempted suicide would not be sufficient to put the Respondents on notice of any substantial disadvantage to the Claimant by reason of the issues arising from her father's death. The Claimant taught Student A, she did not have any pastoral role: the school works on the model of a centralised hub to provide student support so that individual teachers are freed up to concentrate on classroom teaching.

Time limits

158. Also these claims, which are factually distinct from any other allegations and not properly described as part of a series, are out of time. Time begins to run from the date when the decision was made. At the latest this is 31st October 2016. The 3 month limitation period will therefore have expired on 30th January 2017.

Allegation:

On 18 October 2016 at the "outcome meeting", the following requirements were imposed on the Claimant: she should not ask for an apology from a student who misbehaved; she should not impose a detention on a student who misbehaved; she should not ask a student to make eye contact with her; she should not go to the Student Support Office; she should not ask students to write targets for improving their behaviour. Discrimination because of something arising from disability (namely, the First Respondent's perceptions about her behaviour in School, which behaviour arose in consequence of her condition). Detriment on the ground of public interest disclosure.

159. Within Mr Bodey's investigation report he identified seven "changes in working practises for Claire". The stated intention of the sprit in which these changes is made is that they are "to reduce pressure and stress on Claire and to support the school in the application of the Rewards and Sanctions routines."

160. It is also expressly stated in the report that in order to review the success of these changes they "should be included in Claire's performance management to provide a point of formal review". It was not, however, the intention that they should be targets set within the appraisal process and which might therefore result in sanctions should the Claimant fail to meet them. These areas were never communicated to Mrs Boroni

who was the carry out the Claimant's performance management review that year and as there was never any return to work there was no further discussion on these proposed changes.

161. In the edited version of his report which Mr Bodey prepared on 19th October 2016 for sending to the Claimant, but which she did not ever receive, he indeed omits any reference to performance management, or indeed any review process. In the final version of the report prepared by Mrs Savage and sent on 17th January 2017 it says instead that "the relationship between the class and Claire should be reviewed by Rachel and Claire at regular intervals". In Mrs Savage's final version of the outcome document there is also no specific reference to the seven bullet pointed changes in behaviour. Instead they are summarised as the avoiding of "adding additional layers to the school Rewards and Sanctions policy (setting behavioural targets, routine apologies)" and avoiding "following students down to student support immediately". There is no note of the oral communication on 18th October but clearly at that stage the bullet points were referred to specifically and some mention was made of performance management being the forum for review.

162. It is however the case that these changes can reasonably be interpreted by the Claimant as placing her at a disadvantage in her working environment. It is not how she would wish to enforce the sanctions policy and she sees it as preventing her own professional judgment as to how she should interact with students. She considers these to be enforced requirements or restrictions upon her practice. It is therefore a detriment.

Detriment on the ground of public interest disclosure.

163. It is not, however, a detriment to which she was subjected because she had made any protected disclosures. Even if a consideration in arriving at the decision on these changes was that the Claimant may have been perceived to have acted disproportionately in the specific instance – or indeed in other similar instances - that is not at all the same thing as saying that it was on the grounds of her previously having disclosed information in respect of a different incident.

164. The reason for these changes in practice being proposed was to reinforce the school's position in respect of behaviour management, notwithstanding the fact that the Claimant did not want to adopt this approach. That, in fact, appears to have been accepted as the true position by Mr Birch in his letter of 24th October 2016. He says there:

"I appreciate that different people have different philosophies and approaches to teaching…The restrictions placed on Claire seem to be an extension of this philosophy. I have to say that all the parents that I know would be fundamentally opposed to this ethos or very concerned by it".

Discrimination because of something arising from disability

165. The Claimant does not accept that she did anything wrong in her interacting with Students A and B. It is not her case that she behaved in this way because of stress arising from her disability but rather that the School's alleged failure to support her proper approach caused her stress. Similarly it is not the Respondent's contention that the changes were because she acted out of stress but in order to prevent

stressful situations arising in the future that could, in their opinion, be avoided if she reacted differently to situations. Even if she had been disabled the "something arising from disability" as it is particularised ("perceptions about her behaviour in School, which behaviour arose in consequence of her condition") is not therefore the reason for the proposed changes in her practice.

166. If this were discrimination arising from something in consequence of the Claimant's disability the addressing of these issues in this way, would in the circumstances as they had arisen very rapidly in relation to this year 11 class have been a proportionate means of achieving the Respondents' aim. It would therefore be justified.

167. In the outcome letter prepared by Mrs Savage shortly afterwards, although not sent until 17th January 2017, the aim is succinctly expressed as "to reduce her workload, to ensure a more consistent approach to sanctioning any misbehaviour in the group across the two teaching staff and to reduce the potential for the escalation of behaviour incidents".

Failure to make reasonable adjustments

168. Given the difficulty the Claimant has in formulating her discrimination claim we have considered, even though not currently identified as an issue, whether alternatively this too might be a reasonable adjustments complaint. The Claimant would not however have been disadvantaged as a disabled person. She was not unable to comply with the changes in practice by reason of any disability; she simply did not think she ought to be required to do so.

Time limits

169. Also this is a stand-alone claim, which is factually and legally distinct from any other allegations and not properly described as part of a series, so that it is out of time. Time begins to run from the date when the decision was made. That is 18th October 2016. The 3 month limitation period will therefore have expired on 17th January 2017

Allegation:

The School did not respond to the Claimant's informal grievance dated 25 October 2016. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

170. Mrs Savage did acknowledge the letter immediately. Given the preamble in the accompanying email, and indeed having regard to the nature of its content, it is perfectly understandable that Mrs Savage did not treat it at the time as a grievance to be addressed with a formal response.

171. It is also reasonable not to have replied in detail given that it was half term and the Claimant was understood to be resting on doctor's orders – which is what Mrs Savage said on 26th October 2016.

172. When the OH referral was made the letter was expressly referred to the doctor.

Having read that letter and having seen the Claimant the OH doctor in a report dated 24th November 2016 recommended that a work stress risk assessment be carried out.

173. At the Claimant's insistence the doctor had added a paragraph to her report stating in her own words what she wanted to be addressed within that work stress investigation. These were:

> "One thing I would like clarity on is the fact that, despite requests (written and verbal) I haven't had any information on areas around the Disciplinary Investigation, the minutes from the Investigation Meeting, the outcomes and informations from the Outcome meeting, no response from the head to the issues /concerns in my letter and I haven't seen the information regarding myself sent to OH….) I would really appreciate it if you could explain that the lack of transparency has led to trust issues and that I am asking that these be sent so that I can better understand the issues…"

174. The context in which the Claimant's letter of 25th October was to be addressed was therefore within the stress risk assessment, which would involve a meeting with the Claimant.

175. Mrs Savage responded to the OH report on 16th December 2016 when she sent the Claimant a copy of the pro forma risk assessment for her to fill in.

176. In that letter Mrs Savage referred to her correspondence of 26th October 2016 and the reason given there for not engaging in lengthy and detailed written communications. She also referred to the fact that the issues had gone on to be addressed through the process of the OH referral and were now awaiting resolution through the recommended risk assessment. That was to be meeting where a key focus was to be re-engagement with the Claimant and establishing trust.

177. The Claimant did not then say that there should nonetheless now be a written response to her letter in advance of the soon to be anticipated meeting.

178. On 13th January 2017 the Claimant acknowledged receipt of the risk assessment forms and said that she had been awaiting advice. That advice was now that because she did no feel that she could fully complete the assessment until she had them that she should only fill it once she had also received the Minutes from the Investigation Meeting, the Investigation Findings, the information/questions sent by the school to OH about herself and any information sent to the father of Student A about her.

179. There is no objective reason why this information was necessary for the completion of the stress risk assessment form.

180. Mrs Savage sent to the Claimant on 17th January 2017 a copy of an edited version of Mr Bodey's investigation report dated 17th October 2016, and which had formed the basis of the unminuted outcome meeting on 18th October. She also enclosed the OH referral form and confirmed that Mr Bodey had spoken to Student A's father by telephone and had informed him that after investigation no action was to be taken and that this had resolved the matter. Mrs Savage said that she would appreciate it if the Claimant could complete the form by the end of the month so that the return to work meeting to discuss it could be held before February half term.

181. The Claimant replied on 29th January 2017. She said that she would do her best to complete it by the end of half term. She again did not at this time specifically request a written reply to her letter of 25th October 2016.

182. Mrs Savage's response of 1st February 2017 said that she was sorry that the Claimant felt she still needed significant additional time to complete the assessment as it delayed the meeting that it was hoped would get the Claimant back to work as soon as possible.

183. Mr Birch responded on 2nd February 2017 stating that as there had been no response to the October letter the Claimant did not know if Mrs Savage fully understood what the stressors were. He repeated that the assessment should be filled in before half term but also said that the Claimant would then require a response to the stress report in writing.

184. Mrs Savage then wrote directly to the Claimant also on 2nd February. On the understanding that Mr Birch's letter was to be interpreted as meaning that she was still in fact awaiting a reply to the 25th October letter Mrs Savage reiterated the reasons why she had not responded at the time. She also expressly stated that she did not consider that a written response was now appropriate but that the issues should be addressed face to face, either at the delayed return to work meeting or in subsequent discussions within the English Department as appropriate.

185. Because of further concerns about the Claimant's health that had been expressed in her husband's letter Mrs Savage made a fresh referral to OH. This was partly to consider whether a stress risk assessment was still now the route that they would recommend.

186. In a report dated 24th February 2017 the OH doctor confirmed that there should still be a stress risk assessment. Mrs Savage never made a specific further request that the forms be completed. Nor has the Claimant ever done so. There has, since then, been no prospect of a return to work so that the proposed meeting to enable re-engagement with the Claimant and to address the perceived causes of her stress has never been appropriate..

Detriment on the ground of public interest disclosure.

187. Mrs Savage did respond to the letter of 25th October 2016**.** What she did not do was reply in writing or take immediate action on the points raised in the way that the Claimant wanted her to.

188. The taking of a decision to address this expression of the Claimant's feelings within the context of an OH referral and thereafter at a return to work meeting is not subjecting the Claimant to a detriment. It has, in any event, nothing to do with any protected disclosures which she may have made.

Failure to make reasonable adjustments.

189. The way in which the school chose to deal with a particular piece of correspondence solely in relation to the Claimant is not the application of a PCP.

190. Nor has the Claimant identified a disadvantage to her as a disabled person, had her condition met the definition of disability at this stage, arising from the decision to seek to address her concerns at a projected meeting rather than in a written reply to a letter.

Allegation:

In October 2016 the School pressured the Claimant to return to work when her GP's advice was not to return until adjustments had been made. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

191. The Claimant had said in her letter of 25th October 2016 that her doctor has told her that she should not return to work until she feels "confident in the way these issues are being handled" but that she had still wanted to be in the planned meeting with Mrs Boroni and Mr Bodey.

192. Mrs Savage issued a brief reply at 9.26 am on 26th October 2016. She was evidently still assuming that the meeting after half term would go ahead, and had not appreciated that the Claimant was not in fact now intending to return as previously expected .

193. The Claimant then made her position explicit in an email sent at 12.23 pm on 26th October 2016 where she states that she cannot teach students A and B anymore and that she is not coming back into school, either to teach or to attend a meeting until she is confident that the letters raised in her letter are resolved.

194. There was then no expectation that the Claimant would return shortly after half term as had been anticipated.

195. Mrs Savage immediately then started the process of making a referral to OH. Thereafter in her communications with the Claimant Mrs Savage reaffirmed that she was a valued member of the school and that there was a commitment to get her back to work as soon as possible. This subsequent correspondence could be construed as series of acts so that there is no out of time point.

196. The Claimant has now been off sick for effectively two academic years. She remains an employee.

Detriment on the ground of public interest disclosure

197. The Claimant was not in these circumstances "pressured" to return to work.

198. The Claimant has not been subjected to any detriment and none of Mrs Savage's correspondence with her was entered into because of any protected disclosures having been made.

Failure to make reasonable adjustments

199. If the Claimant had been disabled at this time he way in which Mrs Savage, on 26th October 2016, replied to a particular piece of correspondence solely in relation to the Claimant is not the application of a PCP.

200. When it was made clear that the Claimant would not in fact be returning to work as expected the matter was referred immediately to OH. There is no failure to make a reasonable adjustment.

201. There is, throughout this very brief exchange of correspondence, no identified disadvantage to the Claimant as a disabled person

Allegation:

In June 2016 to January 2017 the School failed to provide the Claimant with the following information and/or documentation. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

> **Information that Child A had attempted suicide when the Claimant was first allocated that child's class in June/July 2016.**
>
> **A copy of the letter of complaint sent by Student A's parent on 6 October 2016. (Part only of this was provided, and only after the Claimant's investigation meeting on 13 October 2016.)**
>
> **Notes of the telephone conversations between the parent and the school about the complaint in October 2016.**
>
> **A copy of any written communications or notes of any oral communications between the school and the parent relating to the outcome of the complaint in October 2016.**
>
> **A copy of the notes of the disciplinary investigation meeting held between the Claimant and Mr Bodey on 13 October 2016. (Some notes sent to the Claimant on 17 January 2017 but these were not an accurate record.)**
>
> **Confirmation of the outcome of the disciplinary proceedings, including the requirements imposed on the Claimant at the "outcome meeting" on 18 October 2016. (These were not provided until 17 January 2017.)**
>
> **A copy of the referral to Occupational Health on 1 November 2016 (which was not provided until 17 January 2017).**
>
> **Information that Child A had attempted suicide when the Claimant was first allocated that child's class in June/July 2016.**

202. Student A had returned to school in year 10. At that time staff who had direct dealings with her were informed as necessary about her circumstances. Not all teachers were informed.

203. By the time she entered year 11 Student A appeared more stable although issues, particularly in respect of her increased self-medication, began to emerge again in the weeks immediately before the 30th September 2016 incident.

204. Mrs Carter who had taught the class in year 10 and continued to do so into year 11 therefore knew the circumstances.

205. The Claimant was never specifically informed.

206. It is accepted in Mr Bodey's investigation report that The Claimant should have been notified.

207. The failure to notify the Claimant had, however, nothing to do with any protected disclosures she may have made.

208. Nor has the Claimant identified any actual disadvantage to her as a disabled person. The fact that the Claimant now regards the situation with Student A as being complicated by the fact of her attempted suicide would not have been sufficient, at the time, to put the Respondents on notice of any substantial disadvantage to the Claimant by reason of the issues arising from her father's death. The Claimant taught Student A, she did not have any pastoral role: the school works on the model of a centralised hub to provide student support so that individual teachers are freed up to concentrate on classroom teaching.

209. Also this claim, is factually distinct from any other allegations and is not properly described as part of a series. Time begins to run, at the latest from 30th September 2016 when the Claimant last taught this class. The 3 month limitation period will therefore have expired on 29th December 2016.

Notes of the telephone conversations between the parent and the school about the complaint in October 2016.

A copy of the letter of complaint sent by Student A's parent on 6 October 2016. (Part only of this was provided, and only after the Claimant's investigation meeting on 13 October 2016.)

210. In the invitation latter of 10th October 2016 when the Claimant was informed that there was to be an investigation meting she was told that the issue was in respect of her conduct in the lesson on 30th September. The Claimant had already set out in writing her contemporaneous account of what had happened in this lesson.

211. The Claimant was not provided with any further information in advance of the investigative meeting. She was not therefore aware of the specific content of the initial phone call or the email from Student A's father, nor indeed that it was he who had made a complaint.

212. It is not at all uncommon for a preliminary investigative or fact-finding meeting into alleged misconduct to take place without prior disclosure in relation to the possible charges.

213. On 13th October 2106, immediately after the meeting with Mr Bodey, Mrs Savage provided to the Claimant a copy of those parts of the parent's letter which referred specifically to the complaint about her conduct in the classroom, which was the only matter under investigation. This was clearly stated to be only part of the email.

214. The non-disclosure of the other parts of the email in the course of an investigation into specific concerns which led to no further disciplinary action does not constitute any detriment to the Claimant.

215. The decision on what parts of the email should be disclosed was clearly based upon issues of materiality to the investigation and confidentiality. It had nothing to do with any disclosures the Claimant may have made.

216. Nor has the Claimant identified any actual disadvantage to her as a disabled person in her not seeing the entirety of the email or the note of Ms Wright's initial contact . The fact that she would have liked to have seen that correspondence because she believes

it supports her contention that this complaint is really about a failure of safeguarding and not about her alleged misconduct has nothing to do with any disability.

217. Also this claim, is factually distinct from any other allegations and is not properly described as part of a series. Time begins to run, at the latest form 13th October 2016 when the Claimant knowingly received a partial email. The 3 month limitation period will therefore have expired on 12h January 2016.

A copy of any written communications or notes of any oral communications between the school and the parent relating to the outcome of the complaint in October 2016.

218. There are no notes of the telephone conversation between Mr Bodey and the parent.

219. Under the complaints procedure, even if resolved informally, there ought to be a proper record.

220. The absence of proper record keeping by the school in accordance with clear procedures is a cause of concern and steps should be taken to address this.

221. The Claimant also should have been notified of the outcome of the conversation with the parent at the earliest opportunity.

222. No specific request was made to the school for sharing of this information until 13th January 2017 and it was then provided immediately.

223. These procedural failings have, however, nothing to do with any protected disclosures and nor have they placed the Claimant at any disadvantage as disabled person.

A copy of the notes of the disciplinary investigation meeting held between the Claimant and Mr Bodey on 13 October 2016. (Some notes sent to the Claimant on 17 January 2017 but these were not an accurate record.)

224. The investigation meeting on 13th October 2016 was minuted by an independent note taker, Jade Mountain who was PA to Mrs Savage.

225. As there was no case to answer the notes of that investigative meting are not as significant as they would have been had they formed part of the evidence at a subsequent disciplinary hearing.

226. Nonetheless the Claimant should have been provided with a copy, particularly when she specifically requested it.

227. The Claimant did request a copy of the minutes at the meeting itself, in her letter of 25th October 2016, in the OH report of 24th November 2016 and again in her email of 13th January 2017.

228. When Mrs Savage responded to that final request on 17th January 2017 she did not provide any notes. The issue is incorrectly stated in Judge Cox's summary which suggest that partial or inaccurate notes were supplied for the 13th October meeting.

229. By this stage Mrs Savage had ceased to appreciate, as she should have done, that there was a distinction between the investigation meeting of 13th October (which was noted) and the outcome meeting of 18th October (which was not). There was never, however, any conscious intent on the part of the Respondents to deny or to conceal the existence of the notes taken on the 13th October.

230. The failure to provide the notes, together with the other information requested, on 17th January 2017 was a mistake. Mrs Savage clearly from the content of her letter thought only that the outcome notes from the 18th October meeting were being asked for. That is what she is referring to when she says that this was an unminuted meeting.

231. The Claimant did not then inform Mrs Savage of the omission so her mistake went uncorrected.

232. The error on the part of Mrs Savage is culpable. These notes should have been provided earlier.

233. It has however nothing to do with any protected disclosure and nor has it placed the Claimant at any disadvantage as disabled person.

234. Nor is the misapplication of the investigative procedure in a single instance properly construed as the application of a PCP.

Confirmation of the outcome of the disciplinary proceedings, including the requirements imposed on the Claimant at the "outcome meeting" on 18 October 2016. (These were not provided until 17 January 2017.)

235. The Claimant was not ever provided with the full version of Mr Bodey's investigation report.

236. It was however intended that she receive a written record of the outcome of the meeting held on 18th October 2016. Mr Bodey therefore prepared an edited version of his report on 19th October and it was further amended shortly thereafter by Mrs Savage. That final version was what was sent to the Claimant on 17th January 2017.

237. Although there was a projected meeting with the Claimant, Mrs Baroni and Mr Bodey where the changes to her practice would have been discussed the outcome should have been sent to her in writing, particularly when that meeting did not in fact take place.

238. The Claimant specifically requested the written outcome in the OH report of 24th November 2106. It should certainly have been provided then.

239. This procedural failing has however nothing to do with any protected disclosure and nor has it placed the Claimant at any disadvantage as disabled person.

240. Nor is the misapplication of the procedure in a single instance properly construed as the application of a PCP.

A copy of the referral to Occupational Health on 1 November 2016 (which was not provided until 17 January 2017).

241. The full contents of the referral should have been provided to the Claimant in writing at the time. That would have been normal practice unless it was clear that the employee had been verbally informed of everything in the form, and that evidently did not happen here.

242. Mrs Savage was however advised by her PA that it was not normal practice for an employee to see a copy of the form but that OH were content for one to be supplied.

243. Mrs Savage took a decision that that should not be done in this instance "given the issues she is experiencing. They (sc OH) can give her the details orally and we can supply it to her later if needed"

244. Mrs Savage was not therefore concealing the referral and she also expected that the OH doctor would tell her what was in it. The Claimant was aware that her own letter of 25th October was annexed to the referral.

245. When the form was specifically requested in the OH report of 24th November 2016 it should have been provided immediately.

246. This procedural failing has however nothing to do with any protected disclosure and nor has it placed the Claimant at any disadvantage as disabled person. Even though the Claimant, having now seen the contents of the referral takes exception to a number of statements made by Mrs Savage she has not in fact been disadvantaged or subjected to any detriment by reason of that. There is no suggestion that the conclusions of the doctor are wrong or adversely influenced by the content of the employer's referral where the Claimant's own position was fully explained both in writing and in person at the OH appointment.

247. Nor is the misapplication of the procedure in a single instance properly construed as the application of a PCP.

Allegation:

On 1 February 2017 the School exerted pressure on the Claimant to complete a stress assessment. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

248. Mrs Savage's sent an email of 1st February 2017 in which she said that she was sorry that the Claimant felt she still needed significant additional time to complete the assessment as it delayed the meeting that it was hoped would get the Claimant back to work as soon as possible.

249. This is not exerting pressure on the Claimant to complete the stress assessment.

Allegation:

In March 2017 the School would not allow the Claimant to be accompanied by her husband at a grievance meeting or copy him in to emails sent by the School to the Claimant. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

250. When on 12th March 2017 the request was first made that Mr Birch accompany the Claimant to the grievance hearing this was, on 15th March 2017, declined, upon HR advice, on the grounds that she was only entitled to ask for a nominated trade union representative or work colleague to attend.

251. On 16th March 2017 the Claimant repeated her request to be accompanied by her husband on the grounds that this would be a reasonable adjustment.

252. It is wholly inappropriate that Mr Pennington referred to this in an internal email where he then sought legal advice from York City Council as the Claimant "overtly playing the disability discrimination card"

253. Mr Birch was however then given permission to accompany the Claimant and he did attend at the re-arranged hearing on 26th April 2017. The minutes of that hearing show that he took an active part and that the Claimant was fully able to express her grievance.

254. There is therefore no failure to make the sought for adjustment.

255. On 2nd February 2017 the Claimant requested that her husband be copied into emails in respect of a pending OH appointment. This was in case she missed checking her inbox and missed important information. She did not want, inadvertently, to delay matters.

256. This adjustment was not made. We can see no good reason why not.

257. However the envisaged possible disadvantage did not in fact materialise. The Claimant did see her emails, she did keep the OH appointment and there was no delay.

258. These matters have nothing to do with the making of any protected disclosure.

Allegation:

In March 2017 the School did not reconvene the rescheduled grievance meeting promptly. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

259. The Claimant raised her grievance on 5th March 2017. It ran to 65 pages.

260. The hearing before Andrew Pennington, the chair of governors, was arranged for 22nd March 2017. That was slightly outside the indicative timetable which provides that a hearing should take place within ten working days. There is no suggestion that in the circumstances that minimal delay was unreasonable., particularly as Mr Pennington had been away until 13th March.

261. On 21st March the Claimant applied to postpone the hearing because she was awaiting a decision as to wheat the Union, which she had only recently joined, would represent her. The hearing was postponed.

262. On 22nd March the Claimant was in fact able to inform the school that the hearing could be re-listed and that she and her husband would be in attendance.

263. On 23rd March the clerk to the governors rescheduled the hearing for 26th April 2017. She had been unable to find a convenient date, as she had hoped to do, before the impending Easter holidays. The rescheduled hearing required the attendance of Mr Pennington, who is of course a volunteer, an HR representative and a minute taker as well as the Claimant and her husband.

264. The Claimant responded on 25th March saying that she was concerned about time frames and that she "would appreciate it if there was any way of having the meeting in the next week or so before Easter" and that she was "worried that protracting things is having an increasingly negative impact on my health".

265. The clerk to the governors replied on 27th March having consulted Mr Pennngton and HR and confirmed that it was not practicable to find an alternative date.

266. The Claimant did attend on 26th April 2017 and was not disadvantaged in the presentation of her appeal by reason of the delay.

267. In the circumstances the prompt re-listing of the hearing at the first available opportunity and within 5 weeks (including 2 weeks holiday) is not unreasonable.

268. This clearly has nothing to do with the making of any protected disclosures.

Allegation:

In April 2017 the School reduced the Claimant's pay to half pay because of the length of her sickness absence. Discrimination because of something arising from disability (namely, the Claimant's sickness absence). Detriment on the ground of public interest disclosure.

269. The sick pay policy is generous. The Claimant had been on full pay for six months.

270. The Claimant gave evidence that she did not return, and has not returned to work because she has lost trust and confidence in senior management.

271. The application of a consistent sick pay policy to both disabled and non-disabled employees alike is a legitimate aim.

272. The extension of any period on full pay has significant cost implications because cover has to be paid for in addition to the employee's salary and it also acts as disincentive to return.

273. Ordinarily the reduction of sick pay in accordance with policy will not amount to a failure to make reasonable adjustments of discrimination arising from disability. There is nothing in the circumstances of this case to suggest that the application of the policy to the Claimant is not a proportionate means of preserving a legitimate consistency of approach.

274. This clearly has nothing to do with the making of any protected disclosures

Allegation:

On 6 June 2017 the School required the Claimant to provide any information she relied upon in relation to her grievance appeal within a day. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

275. The policy on grievance appeals provides in the first instance that all relevant information should be sent with the notice of appeal. Alternatively the policy provides that all supporting documents should be sent in no later than five working days before the appeal. The indicative timetable suggests that the appeal meeting should be held within ten working days.

276. The Claimant appealed on 25th May 2017. She did not at that time submit any further evidence in support although she will have been aware of the short time frame in which to do so.

277. The appeal was fixed for 15th June. This was slightly outside the ten day period.

278. On 6th June the clerk to the governors sent the pro forma letter inviting the Claimant to the appeal hearing. Applying the five day policy this meant that the letter stated that any information the Claimant wished to rely on should be provided no later than the following day, 7th June 2017. This was a purely administrative matter.

279. Any such information should however have already been provided by the Claimant , either when she raised her appeal or in contemplation of a hearing after ten days.

280. The Claimant did not apply for any extension of time.

281. She provided two additional documents, over and above her original lengthy grievance and the 11/12 page appeal document on 8th June 2017, one day late.

282. These documents were sent to the appeal panel and were in fact considered by them, notwithstanding that Mr Pennington had requested that they be excluded because of the late service.

283. The Claimant has not in these circumstances been subjected to any detriment nor placed at any actual disadvantage.

Allegation:

On 15 June 2017, because the Claimant had complained in her grievance that she had been the subject of disability discrimination, Mr Andrew Pennington, the Chair of the School's Governing Body, alleged that she had committed a criminal offence by disclosing the identity of two pupils in her grievance appeal document. Victimisation. Detriment on the ground of public interest disclosure.

284. At the grievance appeal hearing it is recorded in the minutes (which have not ever been challenged) that Mr Pennington said that he had concerns regarding breaches of confidentiality by the Claimant, in that she had "named students in her submission and had disclosed sensitive information to third parties"

285. Although part of Mr Pennington's concern was simply that the names of students had not been redacted in the appeal submissions, as indeed they had not in the original grievance hearing before him, his principal complaint was that:
"the information had been shared more widely than necessary by (the Claimant)" and that she "had stated that she had shared the information with a senior member of staff in another school".

286. Mr Pennington had referred these concerns to Peter Cairns the Second Respondent's senior legal officer, and he had agreed that "this was possible misconduct and potentially a criminal offence".

287. The Claimant was understandably very upset at the suggestion that her behaviour was in any way criminal.

288. There is no realistic possibility of the Claimant ever having been prosecuted in these circumstances.

289. The reason why this hurtful comment was made was not, however, because of the protected act or the making of any protected disclosure but because the Claimant was perceived to have breached her duty to maintain confidentiality by disclosing information about students to a third party or parties.

Conclusion

290. For these reasons we conclude that the Claimant has not in fact been subject to any unlawful discrimination as alleged. Nor has she been subjected to any detriment because she has made a protected qualifying disclosure. Accordingly the claim is dismissed in its entirety.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

EMPLOYMENT JU DGE LANCASTER

DATE 26th July 2018

[1] **Birch v Governing Body of Fulford School**

List of allegations

1. In June and October 2016 the School required the Claimant to teach the Year 12 A-level literature course, which had suicide-related content in the tragedy unit of the course. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

2. In September and October 2016 the School failed to follow its usual procedure on dealing with students who walk out of class in relation to students in the Claimant's Year 11 class. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

3. On 13 October 2016 the School subjected the Claimant to a formal disciplinary investigatory interview as a result of a parental complaint, rather than interviewing her under the complaints procedure. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

4. In October 2016 the School appointed Mr Bodey as investigator in relation to the disciplinary charge against her, when the Claimant had raised concerns that the health and safety of students and staff was being endangered by failure to manage pupils' behaviour, an area that fell within Mr Bodey's management responsibility. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

5. The School required the Claimant to continue to teach two children in Year 11 who had walked out of class without being sanctioned and/or whose parent had made a complaint about her. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

6. On 18 October 2016 at the "outcome meeting", the following requirements were imposed on the Claimant: she should not ask for an apology from a student who misbehaved; she should not impose a detention on a student who misbehaved; she should not ask a student to make eye contact with her; she should not go to the Student Support Office; she should not ask students to write targets for improving their behaviour. Discrimination because of something arising from disability (namely, the First Respondent's perceptions about her behaviour in School, which behaviour arose in consequence of her condition). Detriment on the ground of public interest disclosure.

7. The School did not respond to the Claimant's informal grievance dated 25 October 2016. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

8. In October 2016 the School pressured the Claimant to return to work when her GP's advice was not to return until adjustments had been made. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

9. In June 2016 to January 2017 the School failed to provide the Claimant with the following information and/or documentation. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

9.1 Information that Child A had attempted suicide when the Claimant was first allocated that child's class in June/July 2016.

9.2 A copy of the letter of complaint sent by Student A's parent on 6 October 2016. (Part only of this was provided, and only after the Claimant's investigation meeting on 13 October 2016.)

9.3 Notes of the telephone conversations between the parent and the school about the complaint in October 2016.

9.4 A copy of any written communications or notes of any oral communications between the school and the parent relating to the outcome of the complaint in October 2016.

9.5 A copy of the notes of the disciplinary investigation meeting held between the Claimant and Mr Bodey on 13 October 2016. (Some notes sent to the Claimant on 17 January 2017 but these were not an accurate record.)

9.6 Confirmation of the outcome of the disciplinary proceedings, including the requirements imposed on the Claimant at the "outcome meeting" on 18 October 2016. (These were not provided until 17 January 2017.)

9.7 A copy of the referral to Occupational Health on 1 November 2016 (which was not provided until 17 January 2017).

10. On 1 February 2017 the School exerted pressure on the Claimant to complete a stress assessment. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

11. In March 2017 the School would not allow the Claimant to be accompanied by her husband at a grievance meeting or copy him in to emails sent by the School to the Claimant. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

12. In March 2017 the School did not reconvene the rescheduled grievance meeting promptly. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

13. In April 2017 the School reduced the Claimant's pay to half pay because of the length of her sickness absence. Discrimination because of something arising from disability (namely, the Claimant's sickness absence). Detriment on the ground of public interest disclosure.

14. On 6 June 2017 the School required the Claimant to provide any information she relied upon in relation to her grievance appeal within a day. Failure to make reasonable adjustments. Detriment on the ground of public interest disclosure.

15. On 15 June 2017, because the Claimant had complained in her grievance that she had been the subject of disability discrimination, Mr Andrew Pennington, the Chair of the School's Governing Body, alleged that she had committed a criminal offence by disclosing the identity of two pupils in her grievance appeal document. Victimisation. Detriment on the ground of public interest disclosure.

[2] Judge Cox is incorrect in stating that the first allegation in the list is also a claim of protected disclosure detriment. This allegation does not derive from paragraph 30 of the “Grounds of Claim” and is not therefore one of the pleaded detriments. It clearly has nothing to do with the making of any alleged protected qualifying disclosure.