



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4112626/2018**

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**Held in Dundee on 29, 30, 31 October 2018; 15 November 2018; 23, 24, 25, 26,  
29, 30 April and 25 July 2019**

**Employment Judge I McFatridge**

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**Mr Daniel Goodey**

**Claimant  
Represented by:  
Mr Hardman  
Advocate**

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**The Corporation of the High School of Dundee**

**Respondent  
Represented by:  
Mrs McClelland  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The claimant was unfairly dismissed by the respondent. The respondent shall pay to the claimant a monetary award in the sum of SIXTY THOUSAND SEVEN HUNDRED AND FORTY FIVE POUNDS AND FORTY PENCE (£60,745.40).

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## REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that he had been unfairly constructively dismissed by the respondent. The respondent submitted a response in which they denied the claim. It was their position that the claimant had simply resigned. At the hearing the claimant gave evidence on his own behalf. Alan Wilson a former colleague of the claimant who had accompanied the claimant to a grievance hearing also gave evidence on behalf of the claimant as did Mr Blackburn a former colleague of the claimant. Evidence was led on behalf of the respondent from Susan Williams Principal Teacher Guidance with the respondent, Mr N Clarke a Deputy Head with the respondent, Lise Hudson the respondent's Deputy Rector, Dr Halliday the respondent's Rector, Mr A Lothian a member of the respondent's Board who was involved in hearing the claimant's grievance appeal, Mr K Srinivasan a member of the respondent's Board who had been involved in hearing the claimant's grievance, and Mr Charles M Sharp the Clerk to the respondent's Board of Governors who was involved in carrying out a grievance investigation. A joint bundle of productions was lodged. On the basis of the evidence and the productions I found the following essential matters to be proved or agreed.

### Findings in fact

2. The respondent is Dundee High School which is a private senior and junior school situated in Dundee. It has over 1000 pupils. The claimant commenced employment with the respondent on or about 17 August 2004 and as at the date of termination of his employment on 17 July 2018 he was employed as a Principal Teacher of Religious, Moral and Philosophical Studies (RMPS).
3. RMPS is a non-certificated course offered by the school to pupils in the senior school. There is no SQA examination associated with this course. It is compulsory for pupils in Primary 6 to S5/S6. In 2018 the claimant was principal teacher and there was one other teacher in this department. The claimant was timetabled to teach RMPS to Form 3 pupils, one Higher mixed class of Form 5/Form 6 pupils, four L7 classes, one F1 and all of F2 classes. The other member of staff taught RMPS to Form 4 pupils.

4. The claimant had a career in law enforcement in the United States before becoming a professional teacher. He is registered with the GTCS. In addition to this he previously sat on the professional standards committee of the GTCS. Prior to working with the respondent, the claimant had been Head of Department at Strathallan, another Scottish private school. He had also previously taught at other schools in Perth and at the University of Louvain. The claimant took pride in his status as a professional teacher.
5. During 2017 the claimant began to be concerned at what he considered to be uncomfortable developments within the school. He became aware of two long-serving members of staff who had, in his view, left the school in mysterious circumstances following disputes with the school management.
6. Pupil X was a pupil studying RMPS in one of the classes taught by the claimant. The claimant had assigned a piece of work to this class which required to be handed in before the end of the term in December 2017. Pupil X and a number of pupils had not completed the task by the original date fixed. This was not treated as something causing concern however pupils were given the opportunity of attending additional lunchtime sessions in the new academic term so as to give them additional time to complete the task.
7. As a professional teacher the claimant was required to follow the Curriculum for Excellence established by the Scottish Government. The claimant's understanding was that part of this involved providing opportunities for pupils to gain experience in working alongside others. The claimant's understanding of the policy was that an important part of this involved ensuring that pupils did not always work only with their close friends but also worked with other pupils. The claimant's view was that encouraging this was in part of his professional obligations as a teacher. During the early part of January the claimant became aware that pupil X was not keen on working with pupil Y with whom she had been assigned. Pupil X had raised the matter with the claimant. The claimant had asked if there was any specific reason and in the claimant's view pupil X had not provided sufficient reason. The claimant's position was that if pupil X had come up with a good reason such as bullying then he would allow her to

change work partner. If she did not come up with a good reason then in order to fulfil his professional duty he should simply tell her that she required to accept the position and get on with working with pupil Y.

- 5 8. On or about 16 January 2018 the claimant was in his classroom during a lunch break. This was one of the lunch breaks where the claimant had said pupils could come in to complete the task which had been due to be handed in at the end of the previous term.
- 10 9. Pupil X came in with one of her friends. The claimant had thought she was coming in to do her work. Pupil X approached the claimant and said again that she did not want to work with Y. The claimant asked pupil X if pupil Y had said anything or if there was a good reason. He reiterated his position that if there was not a good reason then he was not prepared to change things. Pupil X indicated that she felt that pupil Y was 'just mucking about'. The claimant indicated that if pupil X was worried about her grade then he would ensure that the project work was marked individually so that pupil X's grade would not suffer. The claimant then said that if she wished to do so pupil X could speak to her guidance teacher. At that point pupil X, in the claimant's words, stormed out of the room. The claimant then said words to the effect of "don't walk away angry". He then made a sound approximating to "grrrr". Pupil X's friend who had been standing there simply shrugged her shoulders and left. The incident only took a few minutes and the claimant did not think any more about it.
- 15 20
- 25 10. The following day the claimant was out of school at a funeral. He received an e-mail from Mrs S Williams who is a principal teacher of guidance with the respondent. The e-mail was lodged. It is part of a substantial chain of e-mails which was lodged in redacted form (redacted so as to remove identifying details of the pupil) for the hearing. This e-mail is on page 74. It was dated at 10:10 GMT and stated

"Dear Daniel,  
Are you free lesson 3 today to discuss [Pupil X]?"

The claimant responded immediately to advise he was out at a funeral. Mrs Williams then responded saying

“No problem – it will wait.”

Shortly thereafter the claimant sent Mrs Williams a further e-mail saying

5 “If it’s [pupil X], tell her just to submit her work and be done with it. She’s stretching it out.”

The claimant’s purpose in sending this was that he thought that pupil X was trying to submit a perfect piece of work and he believed that what she had already done was probably more than sufficient for what the task required.

10 11. That morning Mrs Williams had spoken on the telephone to pupil X’s mother. At that time Mrs Williams was Assistant Principal Teacher of Guidance. She took over as Principal Teacher of Guidance at the end of 2018. She was familiar with pupil X. Pupil X’s mother had telephoned the previous afternoon leaving a message for Mrs Williams to contact her. Mrs X phoned back during  
15 first period before Mrs Williams had had a chance to revert to her. Pupil X’s mother spoke to Mrs Williams about the incident the previous day. Pupil X’s mother (Mrs X) stated that some of the things said by the claimant during the discussion with her daughter the previous day were unacceptable. She stated that it amounted to unprofessional conduct. Mrs X was quite angry and  
20 believed that the claimant had been unprofessional. Mrs Williams’ understanding of the complaint was that at the end of the conversation pupil X had got up to leave the room and that the claimant had told her not to leave the room when I am speaking to you and growled “grrr” loudly. Mrs X also reported that the claimant had said something else to pupil X but that she  
25 hadn’t heard it. Mrs X said that she did not want pupil X to be in the claimant’s class again. Mrs Williams made the suggestion that she would look into whether another RMPS teacher taught third year. If this had been the case it would have been relatively easy to transfer pupil X from the claimant’s class to the other teacher’s class. Mrs Williams subsequently checked this but found

that it was not a possibility because the claimant taught all of the third year pupils.

12. At some point subsequent to this Mrs Williams prepared a summary sheet setting out her understanding of events. This is not dated but appears to have been completed some two weeks after 15 January. It was lodged (page 336). It states

“Summary of situation so far:

Two weeks ago, [pupil X] was complaining about an assignment that she (and many others) had not handed in to Mr Goodey. It was due before Christmas. [Pupil X] was struggling with the content of the four paragraphs. Mrs (X) contacted SW requesting more clarification about this. DG sent two very detailed emails back to Mrs X and outlined the extra help that was available at lunchtimes. Subsequently, [pupil X] attended two of the lunchtime sessions and by 17<sup>th</sup> Jan, [pupil X] had done 3 out of the four paragraphs for the assignment.

However, on Monday 15<sup>th</sup>, during RMPS, [pupil X] was doing group work and was allocated [pupil Y] as her partner. They were making an informative poster. Although [pupil Y] did some work he was talking to other boys for much of the time and [pupil X] found it hard to work with him. At the end of the lesson, [pupil X] was very angry as she interpreted that DG had said that she was not working hard. [Pupil X] clearly felt that she is working hard in RMPS. She quoted to her Mum that DG had said to her that ‘she should not walk away when she is angry .... GRRR’ and something else.

SW spoke to DG who explained that he thinks [pupil X] works very hard – even too hard in RMPS but he did comment that she needs to work harder at her group work skills, an integral part of RMPS. He is *now* (agreed in evidence to be a misprint for not) concerned about the essay. He will move [pupil X] and [pupil Y] to nearer his desk next lesson.

Mrs X rang SW to say that she wishes [pupil X] to be withdrawn from RMPS with DG and she backs this decision. SW said that she would

contact SMT about this and try to resolve it by next RMPS lesson, Mon 5.”

13. Following the phone call Mrs Williams saw that as a guidance teacher the next steps were first of all to contact Mrs Smith about the timetabling to see if it would be possible for pupil X to change. She did this and he quickly came back to her to say that it was not possible. She then contacted Nigel Clarke who is the Deputy Head Teacher in charge of a number of departments in the school including the RMPS department. Mr Clarke is effectively the claimant’s line manager. Mrs Williams did this because there were two things which she felt she could not deal with. The first of these were that Mrs X had complained that Mr Goodey had acted unprofessionally. The second was that Mrs X said she did not want pupil X to continue to be in class with the claimant. Mrs Williams’ view was that both of these matters required someone higher up the school to deal with them.
14. Mrs Williams had a couple of interactions with Mr Goodey over the following few days but she did not go into any details about what Mrs X had said. She did not tell him that Mrs X had complained about what went on at lunchtime. The discussion about pupil X was about the need for group work. She told the claimant that pupil X’s issue was with the group work and not about the essay. There was a discussion about how group work was important.
15. During this time Mrs Williams spoke to Mr Clarke on the telephone about the situation. She also went to see Mr Clarke in his office. This was at some point on 16, 17 or 18 January.
16. Mr Clarke had started at the school in 2016. Prior to that he had been at the High School of Glasgow for 19 years. At the respondent school he was responsible for “wellbeing”. This is a broad term. He would liaise very closely with senior school teaching staff. He was a member of the senior management team. He has his own teaching commitment and is also involved with strategic tasks. He is responsible for various departments, one of which was RMPS. The senior management team (otherwise senior leadership team) within the High School consists of the Rector Dr Halliday, Lise Hudson the Deputy Rector,

the Head of Junior School, six Deputy Heads of which Mr Clarke was one, four of these are from the senior school and two from the junior school, the Bursar, the Director of IT and the Director of Admissions and Marketing.

17. Generally speaking Mr Clarke would have a meeting with each of his  
5 department heads on a weekly basis. This would be the opportunity for the head of department to report on what the department was doing and raise any issues. Mr Clarke had therefore been meeting with the claimant on a regular weekly basis since he came to the school. On occasions he would have contact outwith the weekly meeting generally authorising time off etc. Mr  
10 Clarke would also meet staff on an annual basis to carry out their annual review. This would involve him observing a class and then meeting to discuss development targets and plans for the forthcoming year. He had had a review meeting with the claimant in the summer of 2017.

18. On being advised of the issue by Mrs Williams Mr Clarke's view was that this  
15 was a problem which had to be resolved. Generally speaking he was aware that the school do not allow parents to dictate which classes their children attend. Mr Clarke therefore telephoned Mrs X to discuss the matter with her. Subsequent to his conversation with her he prepared a note. This was lodged (page 365). It is probably as well to set it out at length.

20 "After being appraised of the situation between [pupil X] and Mr Goodey in RE, I phoned Mrs X on Friday 19<sup>th</sup> January at 15.50.

I was sympathetic to the situation and to pupil X and her feelings but discussed with Mrs X the fact that as a school we would have difficulty in allowing pupils to dictate which classes they wished to attend.

25 In an attempt to move the situation forward (before Period 5 Monday) I suggested that we follow the following course of action.

That I would on Monday morning meet with DG and discuss the comment that he is reported to have made to [pupil X]. (The one that incensed her does not appear to be disputed). I would explore with DG that he is the  
30 teacher and adult in this situation and that whilst [pupil X's] behaviour was not perfect it would be up to him to move the situation forward. Following



this I/SW/DG and pupil X would all meet and SW/I would attempt to mediate a civil way forward.

5 Mrs X demurred from this suggestion saying that with any other subject and teacher she would support this course of action but that [pupil X] was adamant that she was not going back into a classroom with DG and that she (Mrs X) totally supported her. {In her opinion} RE is a pointless subject for pupil X and that whilst she understood the school wanted children to learn about different religions, pupil X would be better off doing a study period. She totally supports pupil X in this given 'Mr Goodey's unprofessional behaviour'.

10 I again explained the issue that HSD would have with pupils dictating their classes and did say that we were required to provide RE. Mrs X pointed out that she had the right to withdraw pupil X from RE classes and that she would do so. She stressed that she would support the school were it any other subject. She also said that pupil X did not react angrily often and hence this was why she was taking this so seriously.

15 I said that I understood her position but was not in a position to simply accede to such a request. Were this to happen (even theoretically) we would have to look at alternate provision for pupil X (staffing/rooming) and that I was still anxious for us all to find a positive way forward that didn't involve such an extreme reaction. I said that in my opinion it would not necessarily be good for pupil X to get her own way just because she was annoyed and that I felt that that might not be a good life lesson for her. Mrs X again pointed out that pupil X hadn't got her own way in other areas and had been told to 'get on with things' when she had complained about other situations. Mrs X remained of the opinion that pupil X wasn't going back into a classroom with DG.

25 I said that since pupil X wasn't involved in this current conversation, Mrs X and I were not in a position to reach any agreement this evening (Friday 19<sup>th</sup>) so asked that Mrs X talk with pupil X over the weekend and see if there was any way that we could mediate a mutually satisfactory agreement. I said that I would speak with Mrs X Monday morning and

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wouldn't force pupil X into RE period 5 (unless agreement was reached).

Mrs X agreed to do so.

I thanked Mrs X for her time.”

19. Mr Clarke's understanding was that, contrary to what Mrs X said, whilst she  
5 had the right to withdraw her child from religious instruction she did not have  
the right to withdraw from RMPS which was education about religion. Mr  
Clarke's view was that Mrs X was quite clear and uncompromising and  
essentially he wanted to buy time with a view to defusing the situation. Mr  
Clarke had planned to speak to Mrs X again on the Monday morning (22  
10 January). Unfortunately he was unable to do this because over the weekend  
he had a wisdom tooth disintegrate and he required to attend an emergency  
dental appointment on the Monday morning. He contacted Lise Hudson who  
is the Deputy Rector of the school. He advised her of the situation and asked  
her to contact Mrs X. He asked her to explain his absence and say that he  
15 would get in touch later.
20. Ms Hudson was a member of the senior management team whose role was  
immediately below that of the Rector. She had overall responsibility for the day  
to day running of the senior school. The four Deputy Heads in the senior school  
reported to her as did the Assistant Rector and Head of the Junior School. She  
20 also has overall responsibility for child protection in the school and all pastoral  
matters relating to pupils and staff are referred to her. She trains staff in child  
protection. She had been a member of the senior management team of the  
school since 2008. Up to 2008 she had worked from the same building as the  
claimant as Head of Guidance and would have many interactions with him.  
25 She was also aware of the claimant as a colleague and in fact he had taught  
her daughter and she had taught his children. She considered they had a good  
relationship. By coincidence she had been in Mr Clarke's office on Friday  
afternoon when he had been speaking to Mrs X on the telephone and had  
overheard Mr Clarke's side of this call. Once the call was over Mr Clarke had  
30 briefly explained what it had been about. Her understanding was that Mrs X  
did not want pupil X back in RMPS on the following Monday because of the  
interaction which had taken place with the claimant. Mr Clarke had told her

that his intention was to encourage Mrs X to talk to her daughter and encourage her to get back to class. Her view on Friday was that what Mr Clarke had suggested was reasonable and that since Mr Clarke was the department link for RMPS he was the best person to move things forward. She did not  
5 anticipate that she would have any role at that stage. Her hope was that Mr Clarke would be successful and that pupil X would be back in RMPS in early course.

21. Lise Hudson received a message from Mr Clarke late on Sunday to advise of his dental appointment and agreed that she would speak to Mrs X on the  
10 Monday morning since Mrs X was expecting a call from the school. She was aware that pupil X was due to be attending RMPS period 5 on Monday which would be at approximately 12:10.

22. On the Monday morning Ms Hudson telephoned Mrs X around 8:50. She explained why she was phoning and why Mr Clarke was unavailable.  
15 Ms Hudson actually knew Mrs X quite well. Mrs X was a former pupil and Ms Hudson had taught her history. She had also become aware of her when Mrs X had unsuccessfully applied for an administrative post at the school.

23. Mrs X advised Ms Hudson that pupil X was too anxious at this stage to go back into class. Mrs X was quite adamant about that. Mrs X spoke about what had  
20 happened and spoke of her right to remove pupil X from religious instruction. Ms Hudson advised Ms X that the school wanted all pupils to engage with the entire curriculum. She said that in certain circumstances parents can remove a child from RE for religious reasons but this was not the situation here. Mrs X disagreed with this and advised that she knew her rights and would pursue  
25 them. Ms Hudson said that this was really a separate issue but that Mr Clarke would be coming back to her about this. Mrs X indicated she was very angry and indignant about how she perceived her daughter had been spoken to by the claimant. She believed that pupil X had not been listened to by the claimant. She said that the matter had come to a head because pupil X had  
30 asked the claimant on a number of occasions not to have to work with a specific partner. She complained that the work had not been done. Mrs X said that

pupil X had tried to bring it up again and the claimant had not been willing to listen to her.

24. During the phone call Mrs X referred to the claimant's interaction with pupil X as being "growling at her" which Mrs X regarded as unprofessional conduct.

5 25. Ms Hudson's usual position when listening to parents complaining about a member of staff is to listen and say something along the lines that she was sure that it is a misunderstanding and that no offence was meant. She said that on this occasion. She also said that the school was keen that pupil X stay in RMPS as it was an important part of the curriculum. She advised that given  
10 the situation pupil X would not have to go to class that day. She would have to do RMPS work in a different room. She advised this was a temporary solution. Mrs X again said that she had the right to remove pupil X from the class. Matters were left that Ms Hudson told Mrs X that Mr Clarke would be in further contact with her. The call lasted around 20 minutes.

15 26. At some stage following the meeting Ms Hudson produced a note. This was lodged (page 366). This note was produced at the request of Mr Sharp who as will be seen carried out an investigation into the claimant's grievance which was lodged on 21 February 2018. It was therefore produced at least six weeks after the call by which time it was known that the claimant had raised a  
20 grievance against amongst others Ms Hudson. It is probably as well however to set out the note here. It states (page 366)

"Monday 22 January 9.00am

- LAMH explained that she was calling Mrs X as agreed in Mr Clarke's absence.
- 25 • Mrs X thanked LAMH for getting back to her. She indicated that she had spoken to pupil X over the weekend and pupil X was not comfortable to go back into class with DG. She was very anxious and worried that Mr Goodey was not listening to her concerns about working with another pupil and the impact that this would have on  
30 her work.

- Mrs X indicated that Mr Goodey interaction with her daughter when he growled and said something behind her back was unprofessional. She did not want pupil X returning to his class at this time.
- 5 • Mrs X also indicated that she wishes to withdraw her child from RE. LAMH said that if this were to happen it would be on religious grounds and the RMPS course was multi denominational. Mrs X said she just didn't want pupil X interacting with DG at this time but that if and when pupil X was comfortable to meet with DG and felt  
10 happy to return to class she would obviously be happy with that.
- Mrs X asked for clarification that the matter would be investigated and addressed.
- LAMH assured her that it would be and that Mr Clarke would revert to her in due course.
- 15 • Mrs X thanks LAMH for her time."

27. Shortly after this telephone call Ms Hudson went to see the claimant in his classroom. Her understanding at that time was that Mrs Williams had already explained the details of the complaint to the claimant. Mrs Williams had not in fact done this. The claimant was unaware of the interactions which had been  
20 going on in relation to the matter. Ms Hudson told the claimant that a complaint had been made by pupil X's mother and that the complaint related to an allegation that the claimant was not giving pupil X support. There was an allegation that the claimant had made a noise that was unprofessional. Ms Hudson asked the claimant to write a report giving his version of events. Ms  
25 Hudson's view of this interaction was that she was trying her best to put a positive slant on things. She explained that Mrs X didn't want pupil X back in class and explained her reasons. When the claimant started to explain matters to Ms Hudson she said that Mrs X believed that the claimant's actions were unprofessional. The claimant explained to Ms Hudson his understanding of the  
30 background. He felt that Mrs X was overreacting and that she was being ridiculous. His position was that pupil X had not been able to give a good reason for not wanting to work with pupil Y. He said that he had tried to

reassure pupil X about the marking situation and explained to her why she had to work with other pupils. Ms Hudson explained Mrs X's perspective again to the claimant. There was then a short discussion about how pupil X presented and how she reacted with others. The claimant took issue with the suggestion that he had been unprofessional. He said that he could have disciplined pupil X for the way that she stormed out of the room in a teenage huff. He demonstrated the noise he made to Ms Hudson. He said that it was made out of frustration that pupil X would not let the matter lie. He felt that her issues regarding pupil Y were getting in the way of her doing the work.

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10 28. The claimant was extremely concerned about the allegation of unprofessional conduct. He saw this in the context of what he understood to be an atmosphere in the school of bullying and intimidation and was particularly concerned that other senior teachers like him had left under mysterious circumstances over the previous few years. He was aware of this and some of the other teachers had confided their particular circumstances to him, often coming to him in tears. He was aware that there was a history of small things escalating into something major. His understanding was that being asked to write an incident report meant that this was part of a formal process of investigating him for unprofessional conduct. He felt this was a gross overreaction to what had occurred.

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25 29. Once again Ms Hudson prepared a note of this meeting for the grievance investigation carried out by Mr Sharp. The note was prepared after the claimant submitted his grievance and therefore some weeks after the meeting. The note was lodged (page 297). In the note Ms Hudson refers to the claimant consistently returning to the fact that he was not in the wrong in any way and would not apologise. It is my view that this part of the note is written with the benefit of hindsight given that by the time she completed this note Ms Hudson knew how matters had subsequently developed and had formed a view on it.

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30 30. Following the meeting with Ms Hudson the claimant produced a report as requested. The report was lodged (page 369-371). It was sent to Mr Clarke and on 23 January the claimant also e-mailed Ms Hudson to check that she

had received a copy of this (page 75). The report is headed "Incident Report". It was produced on a style which is contained within the respondent's complaints procedure for an incident report. (page 369). It is addressed to Mr Clarke and starts by stating

5 "This incident report is written subsequent to a meeting with Mrs L Hudson (Deputy Rector) regarding an issue which has arisen with pupil X in relation to her participation in her core *Philosophy and Religion course*."

The claimant then sets out the background in the second and third paragraphs. In the fourth paragraph the claimant provides his description of the incident. He says

15 "On Monday, 15 January 2018, pupil X came in at lunchtime to resume her overdue work and again talked about how she did not want to work with her partner. I tried to talk with her about her concerns but she was clearly angry and walked out of the room while I was trying to talk with her. Out of frustration at her refusal to listen to me and walking out while I was talking, rather than turn the event into a disciplinary matter I made a mild but audible 'grrr!' sound after she left the room as a symbolic gesture of resignation (much in the way someone might sigh when

20 dealing with a person who is not listening and perceived to be unreasonable)."

The claimant then goes on to describe his e-mail correspondence with Mrs Williams. He then states that pupil X submitted her overdue assignment and that he had not seen her since Monday 15 January. He then goes on to state

25 "Today, 22 January 2018, Ms Hudson met with me and informed me that a formal complaint had been made concerning my 'lack of professionalism' in dealing with pupil X with specific reference to me having made a 'grr' sound, and advising me that her mother wanted pupil X to be exempted from taking *Philosophy and Religion* in the future. I

30 explained my account of the events in question and insisted that I had in

no way intended to be dismissive or disrespectful to pupil X but instead had expressed frustration at her having walked out on me while I was trying to talk with her. I stated that my intent had been to diffuse the situation through a colloquial form of communication rather than a formal approach that would have seen me issuing pupil X with a referral for disrespect to a teacher. I have found this method of engagement with pupils to be far more effective than always responding in an authoritarian manner. I certainly do not recognise this action as being unprofessional and I am confused as to how it is being portrayed as such.

I do believe that pupil X will be adversely effected by any subsequent withdrawal from core *Philosophy and Religion*. The subject is approached from a rationally based perspective and develops critical thinking skills which are transferrable across all subjects.”

31. On the afternoon of 22 January the claimant attended the usual departmental meeting with Mr Clarke. The meeting was attended by the claimant, Mr Clarke and Ashley Cummings who was the other teacher of RMSD. The issue around pupil X was raised by Mr Clarke and the whole of the meeting was spent discussing it. Mr Clarke told the claimant that pupil X would be removed from his class and the claimant asked if it was now school policy that pupils could opt out of doing RMSD. He believed that as Mr Clarke was relatively new to the school he may not have been aware of previous discussions which had taken place which had resulted in RMSD being compulsory for third year pupils such as pupil X. The discussion branched out into a discussion as to whether a parent had an absolute right to remove a child from religious education. The claimant’s understanding of the legal position was that whilst this was the case in publicly funded schools it was not the case in private schools such as Dundee High School. The claimant’s view was that it was part of the contract entered into by the parent and that was essentially the end of the matter. There was no actual argument but the claimant was trying to clarify the legality of the position with Mr Clarke. The claimant said that school policy would have been for him to issue pupil X with a disciplinary referral but he had not done that as he didn’t think it would be appropriate. The claimant raised the issue because he was enquiring as to whether he would be under investigation for



professional misconduct if he had issued a disciplinary referral to Pupil X. Mr Clarke felt that the claimant was wanting Mr Clarke to support his position and asking for back-up. Mr Clarke's principal concern at that stage was to try to achieve a mediated conclusion with pupil X and Mrs X. He did not seek to re-assure the Claimant or tell him how the complaint was going to be handled. The discussion ended because the time allocated for the meeting ran out. There was no real discussion as to how to move matters forward nor did Mr Clarke say how the allegation against the claimant was going to be dealt with.

32. The respondent has a policy regarding parental concerns or complaints. This was lodged (page 345-346). They also have staff guidelines with regard to complaints which were lodged (page 343-344). The guidelines date from September 2007 and the complaints' policy from October 2005. This refers to the use of a complaints form a copy of which is lodged at page 344. It also sets out a process. At this stage no such form had been completed.

33. The following day the claimant sent the e-mail previously mentioned (page 75) to Ms Hudson. The e-mail stated

"I hope that you received my official response to the formal complaint that has been issued regarding my alleged unprofessional conduct. Please advise me how things are progressing, since this has now raised my anxiety levels and concerns for management of the department."

As mentioned previously the claimant's anxiety levels at this stage were fairly high since he had in mind what had happened the previous year to other members of staff including the Head of Maths. In the claimant's view this individual had been "pushed out" although he was unaware of any details. The claimant had been in touch with this individual prior to his resignation and was aware that he felt under unfair pressure from management, the claimant's view was that this was unjustified although the claimant did not know the full details. This individual had been anxious about his situation. One issue which had caused that teacher concern was that he had been called in to see the Rector about an allegation of unprofessional conduct. The claimant's understanding was that a minor incident had been blown out of proportion and the claimant

was concerned that the same thing appeared to be happening to him. He was extremely anxious and stressed as a result.

34. Ms Hudson responded to the claimant's e-mail within a few minutes on 23 January stating

5 "Many thanks for forwarding your response so quickly. That is much appreciated. I am processing things as quickly as possible with pupil X and her mother and will revert to you as soon as I can.

I am sorry that you feel anxious. I am trying to deal with the matter as swiftly and directly as possible." (p218)

10 35. The claimant did not hear anything more that week. Although the claimant was unaware of this at the time Mr Clarke met with Mrs Williams who was pupil X's guidance teacher. He did so in order to get some idea of what pupil X was like. He then met with pupil X in the company of Mrs Williams on 23 January. At some stage subsequent to this Mr Clarke produced a note of this meeting  
15 which was lodged (page 372). Again, it is probably as well to set this out in full.

"NRC opened the meeting by explaining that pupil X was not in any form of trouble and that we empathised with pupil X's current upset with the position in RE. NRC also explained that we would like to move forward  
20 to a position where everyone felt positive and that pupil X could continue her studies with a positive mind-set feeling comfortable in all of her classes.

SW explored what had upset pupil X regarding the current situation and pupil X was clear that it was the fact that she felt that Mr Goodey had  
25 stated that she did not work hard at her RE. SW explained that she had spoken with DG and that he felt that he had not completed his explanation. DG's full explanation is that he believes that pupil X works very hard at her RE but that she perhaps had not worked as hard as she could at working with others (specifically her partner for the last task). SW  
30 did expand on the initial piece of work that seemed to have caused some

issues and how DG had managed all those who had not completed it to time.

We tried to explore how pupil X saw the situation moving forward given that she had spent Monday's RE period in the Library. Did she view that as a longer term solution or could we find a way in which she might be happy to return to the RE class. Specifically NRC/SW suggested that DG might explain the situation more clearly (With SW or NRC present) to pupil X and also that if her partner was the issue then we would agree that she would work with different youngsters for future tasks.

SW explained that the RE classes were very useful as they did help youngsters to explore areas that would be useful to them in their wider studies such as personal interactions with others, research, problem solving and the ability to discuss/debate rationally. As such we would be keen to see a way forward where pupil X felt comfortable in returning to the RE class. Pupil X was non-committal and clearly a little nervous when discussing the possibility of some interactions.

We have asked pupil X to discuss the possible outcomes at home and to return to speak with NRC/SW on Thursday so that we can try to resolve the issue before the next RE class."

During the course of the meeting pupil X had said that she was going to Guides that evening and would not have time to discuss matters with her mother so that it might be Thursday before she would revert to them. In order to keep Mrs X updated Mr Clarke sent Mrs X an e-mail on the afternoon of 23 January (page 373). He referred to his meeting and stated

"I'm still of the opinion that it wouldn't necessarily be the right option for pupil X to opt out of RE as there are many useful skills to be gained from this course other than a knowledge of religion.

Mr Goodey has told me and Mrs Williams that he didn't mean to cause offence by his 'grrr' comment but was merely expressing his frustration.

He is also clear that he wasn't questioning pupil X's work at her RE assignments, he wanted her to work a little more at interacting with others. To that end we talked about the possibility of Mr Goodey

explaining that to pupil X herself and also the possibility of her working with others in the future. I also asked pupil X to consider what alternative arrangements she could foresee as being helpful to herself and her studies.

5 I did stress (and do so now) that we are not putting pupil X under any pressure to make one decision or another and I suggested that she chat her thoughts through with you. Pupil X said she was out this evening so I'm mailing just so that you are up to date with what has been said.

10 I'll look to catch up with pupil X on Thursday to see how she is feeling then. I hope that's of some help."

36. Mrs X responded by e-mail that evening (page 374). She stated

"Thank you for the email.

I have spoken briefly with [pupil X] today regarding the meeting that she had with yourself and Mrs Williams today.

15 I know [pupil X] still feels very angry at both the comments made and the way she was treated when asking for help. She has said that she does not yet feel able to go back into class with Mr Goodey currently – I think angry and scared were the words she used when discussing that possibility.

20 I appreciate that there are skills that will be learnt in RE other than the religious aspect and [pupil X] is open to the idea of returning to RE at a later date, however, in the short term, I can see no other solution other than for [pupil X] to be removed from the class.

25 Whilst I appreciate Mr Goodey's take on the conversation it is obvious that his comments did not come across to [pupil X] as he intended – in fact [pupil X] still feels that his comments did not only refer to the groupwork. With regards to the comment he made as she left the room I can see absolutely no excuse for this – as we have already agreed he was the adult in the situation and this was not an acceptable comment to  
30 make to a pupil even if he was frustrated."

37. On the Wednesday morning pupil X came to see Mr Clarke and said that she had spoken to her mother and offered to provide him with a document saying here are my thoughts. Mr Clarke asked her to send them in by e-mail and she sent the e-mail on the following morning Pupil X herself e-mailed Mr Clarke the following day (24 January 2018). She stated (p375)

“I don’t want to talk to Mr Goody at the moment. I understand that he apologised and didn’t mean what he said but it’s still upsetting.

[Pupil Y] isn’t really the problem. I get that I have to work with people I don’t like I was just asking if it was possible to swap because I don’t do that well in R.M.E.

I don’t mind going to the Library for the rest of the year. There is always homework or books. Also there is the option of learning skills. Although I have no idea what happens there.

I would go to R.M.E next if it was the other teacher. Maybe even if it was Mr Goody but right now I don’t want to go back.”

38. On 25 January Mr Clarke e-mailed Ms Hudson and Mrs Williams stating

“Dear both,

I believe that we are in agreement that [pupil X] go to Learning Skills on Monday for the immediate future?

We need to confirm the situation with [pupil X/Mrs X]/Jo D/Daniel. I’m happy to do so if you are both happy with that.” (p376)

(JD is Head of Learning Skills and was copied into the e-mail for this reason.)

39. Mr Clarke also had a discussion with Ms Hudson at around this time. On or about 24 January he prepared a document setting out his understanding of the current position. This was lodged (page 377). Although it is not dated I accepted that it was probably written around 24 January. It states

“Mrs X has made a complaint regarding DG’s interactions with pupil X. As a result of these interactions Mrs X and pupil X are adamant that pupil X withdraw from RE. They are citing statutory right to do so.

Daniel acknowledges that the interactions took place as described by pupil X but says that they have been misunderstood or that his meaning has been misinterpreted.

5 NRC/SW/LAMH have all spoken and emailed to/with Mrs X in an attempt to mediate and to get pupil X back into DG's F3 core class but with no success.

DG is of the opinion that he did nothing wrong, was certainly not unprofessional and has issued (via NRC/LAMH/SW) apologies that his comments seem to have been misunderstood.

10 He also believes that as an independent school we can force pupil X to take core RE as that's part of their contract with the school. He is somewhat defensive regarding the situation. NRC can find no evidence that independent schools are exempt from the statutory obligation and has told DG that we wouldn't be risking headlines or a court case on such an argument.

15 Current solution

Pupil X should join a learning skills class (at least for now) which means that the time is used productively and this is not just seen as an opt out. This would satisfy Mrs X and pupil X. Outstanding would be managing the situation with DG."

20 It is not clear what happened to this note after Mr Clarke produced it.

40. Ms Hudson and Mr Clarke would have met during the week ending 26 January since they usually met on a weekly basis. Ms Hudson had also received the  
25 e-mail setting out the proposed resolution. At some point that week Ms Hudson also had a conversation with the school Rector. The Rector's understanding of the position was that there was a dispute that still needed to be resolved. He understood that Mrs X was so angry with her perception of the claimant's behaviour that she wanted to withdraw pupil X from the claimant's class and  
30 never return. Dr Halliday understood that the reason the matter was being referred to him was that the claimant had said that Mrs X had no right to

withdraw pupil X from the class. On this issue the Rector's position was that he agreed with the claimant that a child could not be withdrawn from the RMPS class as a matter of principle. The Rector then became aware, presumably through subsequent discussion with Ms Hudson, that there was more to it than that and that it was all to do with the interaction between the claimant and pupil X and that effectively the issue of it being an RMPS class was a red herring since this could have happened in any class. His understanding was that when pressed the parent had said that it was not about religious instruction but it was about the interaction with pupil X. It would appear that the Rector then indicated that he would deal with the matter. On 26 January at 15:07 Ms Hudson wrote an e-mail to the claimant. It was lodged (page 75). It stated

"Dear Daniel,

I wanted to update you as I indicated I would do earlier this week.

The matter has now been explored fully and it has been decided (and agreed with Mrs X and pupil X that pupil X will not attend RMPS classes for the time being. She will attend Learning Skills instead up to the end of this term, when this arrangement will be reviewed.

This remains a pastoral issue for pupil X where it appears that the relationship between you and her has broken down.

I have discussed the matter with Dr Halliday and he will now address this with you himself."

41. The claimant was extremely alarmed to receive this e-mail. He thought it was unfair to send it at 3 o'clock on a Friday when he would not be able to take any advice on it but would require to "stew on it" over the weekend. He had not been kept in the loop about what was being discussed with Mrs X or what Mr Clark and Ms Hudson had been doing. At this stage the information he had was that a complaint of unprofessional conduct had been made against him. He had been asked to provide a report and had done so on the basis that it was a formal complaint. He had referred to it as such in his formal incident report and had not been contradicted. He had not been given any details of the complaint by Ms Hudson as she incorrectly believed Mrs Williams had told him. He had then had a discussion with Mr Clark which had focussed on the policy

issue of whether Mrs X could withdraw her daughter from RMPS. He had told Mr. Clark that the fact he had a formal complaint against him was causing him stress and anxiety and Mr Clark had not sought to address the issue. He had also told Ms Hudson he was stressed and she had not done anything to allay his fears. He was now told the matter had been escalated to the Rector who was the most powerful person in the school. The claimant wrote a further letter to Ms Hudson on Sunday 28 January from home. This was lodged (page 76). He said

“Thank you for the update. I appreciate that you will have been working to get this resolved as soon as possible and felt that you needed to get back to me, but to get an email last thing on a Friday afternoon (telling me that a relationship with a pupil has broken down because she did not want to follow instructions and because I expressed frustration at her walking out of my room when I was talking to her) is quite stressful. Not to be able to talk to someone about this until Monday morning has meant that this has been preying on my mind all weekend.

I will look forward to clarification from Dr Halliday as I am concerned about what this means for the reputation a school such as ours has for high standards and expectations of our pupils and worried about where I now stand as a professional who has always had the best interests, academic and personal success of each pupil in mind. Despite my best efforts, to be accused of being unprofessional is very upsetting and confusing.”

Ms Hudson did not respond to this e-mail. Her view was that the matter was now being dealt with by the Rector and it would be up to the Rector to communicate with the claimant.

42. On 29 January the claimant received an e-mail from Karen Traynor who is the Rector’s PA. The e-mail was lodged (page 76). It stated that Dr Halliday had asked her to set up a meeting with the claimant and suggested the claimant meet Dr Halliday at period 8 that day. The claimant agreed to this and met with the Rector at around 15:15 that afternoon. Both parties found the meeting to be unsatisfactory. The only individuals present were the claimant and the



Rector Dr Halliday. The meeting lasted approximately 45 minutes. Dr Halliday began the meeting by indicating to the claimant that there appeared to be a problem. The claimant said that he did not feel supported and had not been allowed to discuss the issue with the parent or the pupil. The claimant said  
5 that his line manager had not been able to deal with it and that Liz Hudson would not talk to him about it. He said he felt unsupported. At this point the Rector said to the claimant:

“this is your support. If it was not support then you would be here under different conditions.”

10 Whilst saying this the Rector sat up and raised his voice. The claimant considered that he was being put in his place and that essentially the Rector was saying “do as you are told”. The Rector then indicated to the claimant that he understood the claimant had been told to apologise. The claimant asked the Rector what he was to apologise for. The Rector said that  
15 sometimes there is a need to just apologise so that things can go away. At that stage the claimant was aware that he had already said in his incident report that he did not intend to cause the pupil any distress. He was not sure what further was required from him by way of apology or what he was meant to be apologising for. He considered there were implications as to how he  
20 would deal with pupils in the future if he apologised in the current circumstances. His position was that he was genuinely trying to understand what it was that he was supposed to have done wrong in this case. His understanding was that he had acted in accordance with his professional obligations. He asked the Rector what he did wrong. The Rector’s response  
25 was

“that is what I am investigating”.

The Rector said to the claimant that the alternative to this meeting was a formal reprimand. The claimant asked the Rector what he would be reprimanded for and the Rector said again that this was what he was investigating. As noted  
30 above the claimant had served on a GTCS committee for five years which dealt with professional conduct and professional recognition. He had had specialist

training within GTCS for this role. His understanding was that nothing in the case could be categorised as unprofessional conduct. The discussion proceeded in an unsatisfactory way for both parties. On the one hand the claimant was becoming frustrated that he was being asked to apologise but not told what he was supposed to apologise for. On the other hand, the Rector's position was that there was a situation between a parent and the Head of Department that needed to be resolved. The Rector characterised this as an impasse and he believed Mr Goodey was the cause. He did not appear to know that the Claimant had not been involved in any of the discussions with Mrs x, that the Claimant had not been told the detail of the complaint, that the claimant had expressed his regret in the incident report in the way he had and that Pupil X had said in her email that she understood the claimant had already apologised. The Rector's position was that he wanted to find out from Mr Goodey why Mr Goodey was obstructing a resolution of the issue. His view was that although the parent had used the word unprofessional this was not something he considered to be relevant. The main issue from his point of view was that there was a situation which needed to be resolved and on the basis of the information he had it was the claimant who was getting in the way of the resolution.

43. It would appear that at this stage the Rector had received some documentation from Dr Hudson although at the tribunal hearing he was not in a position to say exactly what he had received from her. The Rector's position at tribunal was that the meeting was not an investigation in any formal sense but that it was meant to be information gathering. At the end of the meeting there was a discussion regarding pupil X and the standard she was working to. The claimant indicated that pupil X was working to a B level despite being behind and that the main issue was that she had insufficient confidence. The claimant repeated his belief that she was trying to produce a perfect essay when he would have been perfectly happy with the essay she handed in. The meeting ended on the basis that the claimant would provide some additional information regarding pupil X's work. The claimant found the meeting extremely confusing and stressful. He felt that the matter had been escalated to the level of the Rector. He could not understand what it was he was supposed to have done

wrong. On the other hand, the Rector felt frustrated that the position was still unresolved and blamed the claimant for this. The Rector's position was extremely unfair to the claimant.

- 5 44. Following the meeting on 29 January the claimant sent the Rector various documents relating to pupil X's school work.
- 10 45. On 31 January the Rector's PA again e-mailed the claimant asking if he could meet with Dr Halliday at 12:15. The claimant confirmed he would be there. The claimant felt extremely stressed that he was being asked to a second meeting with the Rector. In advance of meeting the Rector he requested a meeting with Mr Clarke as his line manager. He wanted to put to Mr Clarke his frustration at being treated as if he had done something wrong even although no-one had identified how his actions were inappropriate or unprofessional. The claimant duly had had a short meeting with Mr Clarke. During the meeting Mr Clarke indicated that the claimant ought to simply say sorry so that the pupil and parent could be satisfied he had acted inappropriately. Mr Clarke described the matter as a storm in a teacup. The claimant expressed the view that he had simply asked pupil X to do the same work that all Form 3 pupils were doing. If he was expected to say sorry for not having done anything wrong and the pupils were allowed to use this as an excuse for not doing the assigned work such action would clearly undermine his authority in his class and ability to set class assignments with the expectation that pupils would engage with them. He referred Mr Clarke to the rationale for group work in terms of the Curriculum for Excellence and SQA guidelines. He also told Mr Clarke that he was feeling extremely stressed. He felt that it was unfair that he was being expected to apologise to a pupil when he had not done anything wrong. He said that he was looking to Mr Clarke as his line manager and the person responsible for staff wellbeing to provide him with support. Mr Clarke's position was that the matter was being handled by the Rector. He would provide support in terms of being someone the claimant could speak to but the management of the issue had been escalated to the Rector.
- 15
- 20
- 25
- 30

46. The claimant met with the Rector at lunchtime on 31 January. The claimant prepared notes of the meeting on the evening of 31 January which were lodged (page 80). I accepted this as an accurate record of the meeting. The Rector once again indicated that the best way forward was for him to write an official apology to the pupil for his conduct. The claimant said that as he had not done anything wrong he thought it was unfair and unreasonable. The claimant again indicated that he did not feel he was being supported. The meeting ended with the Rector indicating that he would give the matter more thought but that he wanted the claimant to reflect on how he might apologise to the pupil.

47. Some weeks after the meeting Mr Halliday produced a note. This note was lodged (page 308). He states

“... I went through the issues as outlined in the documentation. DG refused to acknowledge or accept he could have handed the situation any differently. He did not recognise that a pupil had felt humiliated and unsupported by his interaction. The meeting lasted 35 minutes but kept going round in circles.

He kept saying that he wanted a clear plan and he would do what he was told to do. I said I would consider his comments and I would get back to him the next day.

I then reflected on the conversation, trying to find a balanced way forward through the obstinate and intransigent attitude expressed throughout. A very frustrating meeting.

I wrote the e-mail to him summarising my views and providing a clear way forward. I sent it on Thursday, asking for a response to this by end of Friday. I received his response on Friday afternoon (see e-mail), which in effect was refusing to follow my clear request.”

48. Following the meeting the Rector as noted above did indeed write to the claimant. The e-mail was lodged (page 311). It stated

“I plan to write more fully in due course but I should contact you today to give you a summary of where I am in this and what I think you should do.

This is a situation which could and should have been resolved immediately as it has now dragged on far too long. The reason I am dealing with it is because, in all honesty, my colleagues have been unable to make progress with you to resolve the situation.

5 We have a situation where a F3 pupil was very upset by the interaction she had with you. Rightly or wrongly she felt and feels that you did not respond to her requests for help in moving work partners. She feels that you indicated she was not working hard enough in her classes with you. She also felt you were being very dismissive of her. She became upset and walked out of the room. You made a remark as she left and made  
10 some sort of noise after her which she felt was demeaning and undermining.

You have verbally assured me that you did not mean anything derogatory or dismissive by your interactions. I accept that in good faith.

15 However, the fact is that hurt was caused, and, from my understanding of what happened, there is some justification in that.

This situation would have been nipped in the bud at the outset had you engaged with pupil X in a different way. In order to move forwards we now need some sort of proposal from you.

20 Given what ensued (upset pupil, angry parent) the best way of resolving the situation immediately would have been to say you were very sorry that you had come across in the way you did. You did not mean that. You felt she does in fact work hard and has really tried to do her best at all times. In my experience – and I deal with parental concerns on a fairly  
25 regular basis – when people make a complaint they first want to be listened to and taken seriously and then be given an honest and sincere response. And they deserve that. A positive plan of action for the future can then follow. This has not happened as you have not recognised that you may not have been entirely correct, and so the situation has festered.

30 Usually the best way to resolve the situation is to apologise sincerely, concede that you may have got some things wrong and find a way forward so things can be better than they were before. By doing that concerns are answered and the relationship between the complainer and

the person being complained about almost always improves markedly. Things can move on to a new, more open and collaborative level.

Had you done that you (we) would not be still in this situation.

In conclusion, I am therefore asking to give your response to this to me please. I would like to hear from you how you propose to communicate with pupil X to resolve this situation. Given where we have got to I do not think a meeting is the correct first step, though I hope it may follow. Can you therefore please send me your draft written communication to pupil X so I can give further guidance if required before it is sent? I would be grateful if you could let me have this by the end of the school day on Friday 2 February. I hope that this will then begin to move things towards a resolution which ideally would mean pupil X returning to your class. In the meantime she will stay in Learning Skills and do other work. Please do not give her any more RE work until this has been resolved.

Please let me know if you have any problems with this. I appreciate I am writing frankly. However, it is in everyone's best interest that this reaches a positive outcome."

49. The claimant was extremely concerned to receive the letter from the Rector. He felt that his job and professional reputation were under threat. At 23:12 on the evening of 1 February he wrote to Mr Clarke. The letter was lodged (page 383, page 82). He said

"I am writing to you as my line-manager and the Senior Management member responsible for staff welfare and morale.

You may already be aware that I received the message below from the Rector this evening. I was stunned and dismayed by both the tone and the direction of the message, and it is clear that I am expected to take responsibility for this pupil's poor attitude and creation of an intractable position. This certainly raises concerns regarding the standards we profess to hold as an institution. I am extremely concerned by this progression and, as I have already mentioned to you, I am finding the way this whole incident has been handled to be extremely stressful. I will need time to take professional and legal advice regarding my position. I

am of the impression that this will ultimately lead to the termination of my employment at the High School of Dundee, either through direct or constructive dismissal.”

5 The following day the claimant sought a meeting with Christine O'Ready who is the respondent's HR Director. The claimant e-mailed her seeking a meeting at around 10:30. She responded indicating that she had just received his message and was about to go into another meeting. The claimant eventually met with Mrs O'Ready around 11:10 on 2 February. The claimant described the situation briefly to her and confirmed his extreme anxiety that his  
10 employment might be terminated when he didn't see that he had done anything wrong. Ms O'Ready indicated that she was there to support both management and staff. The claimant came away with the impression that her belief was that the Rector was free to conduct matters in his own way and that Ms O'Ready was unable to give the claimant any clear guidance as to how he could address  
15 concerns. The claimant left this meeting feeling further demoralised and anxious.

50. Mr Clarke responded to the claimant's e-mail of 1 February stating

“Dear Daniel

20 Thank you for your email. I am, of course, sorry that the current situation is causing you such anxiety. This is not what any of us would wish for in our professional lives. As the matter is now with Dr Halliday and yourself for discussion, I am sure that you and he will reach an appropriate solution for all concerned.” (p85)

51. The claimant responded to Dr Halliday's e-mail on 2 February. This was  
25 lodged (page 85). He stated

30 “.... I am quite taken aback by this email. The issue is not that I was not dealing with the situation, as you repeatedly state in your message. I was. As I discussed at length with you, and stated in my official incident report (dated 22/01/18), the event in question occurred on Monday, 15/01/18, when [pupil X] had come to my classroom and complained

about being assigned to work with another pupil in the class. I again told her that unless there was a specific reason that she should not work with the pupil then I would not change the arrangements. I began to explain why it was important to develop skills in working with others and [pupil X] angrily stormed out of the room. Rather than being offended by the rude and disrespectful way that she left the room while I was talking with her I sighed in frustration. [Pupil X] had already exited the room by this time. I was out of school the next day, Tuesday, 16/01/18, and first thing Wednesday morning, 17/01/18, Mrs L Hudson came to my classroom to inform me that a formal complaint had been made against me for 'unprofessional' conduct'. The reason given was that I had made an audible sigh after pupil X left the room. (Subsequent discussions with Mrs S Williams – pupil X's Guidance teacher – revealed that pupil X had admitted to leaving the room while I was talking with her and that she was out of the room when I sighed.) Ms Hudson informed me that [pupil X] would be withdrawn from my class with immediate effect and that she and Mr N Clarke would be meeting with [pupil X] in due course. You have stated that 'This is a situation which could and should have been resolved immediately ... my colleagues have been unable to make progress with you to resolve this situation.' And, while I agree that this situation should have been resolved early on, the matter was taken out of my hands and unfounded accusations levelled at me before I had the opportunity to deal with it as I would normally do in such a situation. As many other teachers in the school, and in others, would say, such situations are a routine element in our work. It is extremely concerning that you have continued to blame me and to call into question my professionalism. If this had been dealt with in a way that reflected the standards of the school, it may not have escalated to this level at all.

I have never told [pupil X] that she 'did not work hard enough in her classes with me', and I have provided you with my gradebook for her class to demonstrate that I have been attentive to her performance. I deny being dismissive of her in any way and when 'she became upset and walked out of the room' I was in the process of trying to discuss the



matter with her. As such, I do not understand your comment that ‘the fact is that hurt was caused, and, from my understanding of what happened, there is some justification in that’.

5 You further stated that ‘This situation would have been nipped in the bud at the outset had you engaged with [pupil X] in a different way.’ But I am unclear how I should have engaged differently or when I was given the opportunity to do so. You have asked for a proposal from me as to how we should move forward and, as I stated during our meeting, I believe the way forward is for [pupil X] to meet with Mrs Williams to discuss the matter  
10 fully, for Mrs Williams to then meet with me to clarify any concerns [pupil X] has, and then Mrs Williams to serve as a mediator to resolve the situation.

You again raise the view that I should issue an apology and that ‘this has not happened as you have not recognised that you may not have been  
15 entirely correct, and so the situation has festered.’ I believe that your statement that ‘Had you done that you (we) would not be still in this situation’ to be incorrect, because it is still unclear what I have done that was wrong. You have asked for my proposal for communicating with [pupil X] and I reiterate that I believe it should be through her Guidance  
20 teacher, as it should have been all along. Therefore, I do think that a direct communication between myself to [pupil X] would be inappropriate until the meetings with Mrs Williams have taken place.

I will look forward to hearing from you at your earliest opportunity to clarify the path you are choosing in moving forward towards a resolution of this  
25 very unfortunate situation. I am feeling very anxious and upset by the tone and direction of these events and I am concerned for the future of my position at the High School of Dundee. I hope you are able to offer me some assurances that I am not be considered to be unprofessional, nor that there are any thoughts of sanctioning me or terminating my  
30 employment.”

52. The Rector felt this response demonstrated the claimant’s intransigence When he received it he put his head in his hands saying “Daniel why are you

doing this? Why are you not listening? Why are not seeing a straightforward resolution, why are you so intransigent?”

53. The Rector responded to the claimant on 5 February stating

5 “Thank you for your email below. At our meeting we had last week you stated more than once that you were keen to be given a clear way forward and just be told what you needed to do. My email was an attempt to provide that clarity for you. I explained why this was a positive way forward and that we need to resolve this as soon as possible. I am sorry that you now seem to disagree with this.

10 I have various meetings for the rest of today. I will reflect on your response and revert to you tomorrow.

Feel free to contact me before then if you have further thoughts.” (page 87)

15 54. The claimant also contacted Ms Hudson by e-mail early in the morning of 6 February. He said

20 “Since the whole controversy that has seemed to consume me started with a discussion with you three weeks ago, and since we have not had an opportunity to discuss the matter further, I am wondering if you have any time this morning to meet. Would you be available either period 2 or 3 to discuss things?

Thank you.”

Ms Hudson responded 50 minutes later stating

25 “Thank you for your email and I am sorry that this matter continues to be so difficult for you.

I am always happy to speak to staff as you know. However, given that Dr Halliday has been working to resolve the matter with you directly, in this instance I feel it would be unhelpful for us to discuss things further.

30 I have always known you to be someone who understands the pastoral needs of your pupils. I hope that this issue can be resolved positively.” (page 87)

The claimant responded at 12:03. By this time he had received a further e-mail from the Rector's PA asking him to meet the Rector in the afternoon. The claimant's e-mailed stated

"Hello Lise,

5 You are correct that I do always try to be attentive to the pastoral needs of my pupils and this is why I am so confused about how this has all progressed. I am genuinely unclear how [pupil X]'s pastoral needs are being met by me being pushed to make an apology when I have not done anything wrong. You said at the very beginning that this was a pastoral  
10 issue and involved a medical issue that caused pupil X to have mood swings, yet this was never clarified for me. If this was a pastoral issue, then I really do not see why it did not progress through her Guidance teacher rather than as a formal complaint.

15 Nevertheless, I have a meeting with the Rector period 6 and I would appreciate any further clarification you can provide regarding the medical issue that you said was causing her anger management issues. It is unfair that I am expected to respond without knowing the full story.

Thank you in anticipation."

Ms Hudson then responded stating

20 "I did not share any specific medical issue regarding [pupil X], rather my observations about her social interactions in class having taught her. My comments were not specific or based on any 'diagnosis'. There is no pastoral matter of which you should have been made aware.

25 I said that it appeared to me that [pupil X] could become frustrated at times and perhaps there might be issues that would be worth exploring in the future but that she was a pupil who was conscientious and always motivated by the desire to do well. You agreed with me if I remember correctly.

There is no medical issue and therefore no pastoral impact.

30 I came to see you on Monday 22nd January to inform you that I had received a complaint from [pupil X]'s mother. The matter was dealt with

via the most appropriate route to find a resolution and involved her Guidance teacher directly.”

55. The claimant met again with the Rector on 6 February at around 13:50. The claimant produced a note of this meeting that evening which was lodged  
5 (pages 89/90). I considered this to be an accurate record of what took place. The claimant was kept waiting for 20 minutes before the meeting proceeded. At the Tribunal hearing the Rector could not recall the precise reason for this but indicated that he was extremely busy and often meetings started late due to telephone calls coming in or other matters arising which required to be dealt  
10 with urgently. The claimant with his experience in law enforcement considered that this may be an interrogation technique to “soften him up”. In any event the claimant felt the delay increased his anxiety levels. The meeting was as unsatisfactory to both parties as the previous two meetings. For the claimant’s part he considered that the Rector was again trying to push him to writing a formal apology. He made the point again that he did not know what he was  
15 supposed to apologise for. The Rector’s position was that he was surprised when the claimant said he did not know what the problem was since in the Rector’s view the claimant did. The Rector’s view was that he had outlined it at the previous meeting and summarised it in the e-mail. He did not feel that the claimant was correct in saying that he was seeking a formal apology. What  
20 the Rector had in mind was that the claimant put together a form of words which could be discussed in advance of a meeting. He would not describe it as a formal apology. The Rector felt frustrated that the claimant spoke about his professional authority and reputation. He felt that the claimant was saying that matters had got to the situation where the claimant’s professional reputation depended on the school telling the parent and the pupil to “put up or  
25 shut up”. The Rector felt that this was unrealistic and tried to provide guidance from his own experience. It was his view that the claimant should step back and start looking at matters in a different way and that this would completely diffuse the situation. During the discussion the Rector raised a past instance  
30 where there had been a complaint. The claimant was upset by this since to his knowledge there had never been a professional complaint against him. The Rector was referring to a previous incident where in 2016 the claimant had had

a dispute at a parents' evening with a different parent which had been acrimonious. At the time the claimant had been removed from having any further interaction with that parent. The Rector's view of the incident was that if the interaction with that particular parent had not been taken over by an Assistant Rector then there would have been, in his words at the Tribunal, "a train crash". Despite being pressed by the claimant the Rector would not give this information to the claimant and did not tell him what he was referring to. The Rector stated that it would be good to resolve the matter without having to consider previous instances of the claimant's unspecified poor conduct. The claimant considered that this was a deliberate attempt to make him feel uneasy and shake his confidence. He was aware that he had not previously faced an accusation of unprofessional or poor conduct.

56. The Rector became frustrated during the meeting. The claimant felt that the Rector's frustration was showing in his voice.

57. The meeting ended with no clear resolution. The Rector decided to sleep on matters and then discussed the matter with Lise Hudson the next day. He decided that the appropriate course was to set up a meeting. He saw this as the alternative which favoured the claimant. His view was that he had given the claimant a reasonable instruction at the meetings and in the e-mail and that the claimant was refusing to comply with a reasonable instruction and that it would have been open to him to institute disciplinary proceedings against the claimant. He decided on reflection not to do this but to attempt to de-escalate matters by arranging a meeting in order to discuss a way forward.

58. On 7 February Dr Halliday wrote to the claimant at 15:40. The letter stated

"Further to our meeting yesterday I am very sorry that we did not move any further forward. My clear understanding from yesterday's meeting was that you felt in hindsight you would not have behaved any differently. Your view is that pupil X is in the wrong and that there is nothing that you would wish to acknowledge that you might have handled differently. My major concern is that as outlined in my previous emails you are not even willing to acknowledge the impact of your interactions on pupil X. You

appear to think – from your comments to me – that she is playing up in order to avoid doing the work.

Your suggestion that there should be mediation through the guidance teacher is understood. However, we have already been through this process at some length. Susan Williams has spoken to pupil X, and both  
5 Nigel and Lise have spoken to you at length to try to achieve mediation. I understand you also consulted Christine O'Ready. The fact that resolution was not reached meant it reached my desk. My meeting with you last Thursday and subsequent email to you were designed to give you a clear steer as to what to do to get this situation resolved positively.  
10 I regret that you chose to reject this.

In order to, I hope, at last move forwards I have arranged for a meeting to take place with you and those who have been involved in this process to date, namely Lise Hudson, Nigel Clarke and Susan Williams. The  
15 situation can therefore be discussed in full once again with a view to approaching a resolution. This will be held in Lise Hudson's office tomorrow morning (Thursday 8 February) at 9.10am. In order that there are no misunderstandings notes will be taken at this meeting, though it is not a formal meeting. Please let me know if there is any reason why you  
20 cannot attend this meeting." (page 90)

59. The claimant responded to Dr Halliday a few minutes later stating

"I write to acknowledge receipt of your instruction to attend the meeting tomorrow morning at 9:10am.

I would like to request that I have a written copy of the formal complaint that has been issued against me so that I may more closely examine the  
25 precise nature and scope of the original complaint." (page 91)

60. A meeting took place at 9:10 on 8 February. It was attended by the claimant, Lise Hudson, Nigel Clarke and Susan Williams. At the beginning of the meeting the claimant took out a recorder and indicated that he wished to record  
30 the meeting. He asked if Ms Traynor the Rector's PA would be there to take notes. There was a discussion about whether the meeting was formal or

informal. The claimant's understanding was that although Ms Hudson was not happy that the meeting was to be recorded she had raised no further objections when the claimant switched the machine on and put it on his knee. The recorder showed a light when in recording mode. The others present understood that following the discussion at the start of the hearing the claimant would not be recording the meeting but made no objection to the claimant having the machine on his knee with the red light on it showing it was recording. In any event the meeting was recorded digitally by the claimant. The recording was made available to the Tribunal and played in full during the course of the Tribunal hearing. The claimant also produced a transcript of the hearing which was lodged (page 127-163). The transcript is a reasonably accurate rendition of what was said at the meeting. The claimant begins by setting out his position and stressing the fact that the matter had gone on for three weeks and in his view he had been harassed and bullied and not supported at all by the school. The claimant then raised the issue of why matters had gone directly to the Rector and not through Guidance according to normal school procedure. Ms Hudson responded to the effect that a parental complaint had come in to the guidance teacher and that because it was a complaint about a member of staff the policy was that these were not dealt with by teaching staff. The claimant then indicated that school policy was that the guidance teacher would deal with it unless they felt there was a serious case of misconduct. He then asked Ms Hudson "Do you feel there is a serious case of misconduct." Ms Hudson felt intimidated by this question and refused to answer it. She stated that Mrs X had been very clear that "it was completely unprofessional behaviour in terms of how you interacted with her daughter when she left the room." The claimant asked to see the complaint and pointed out that in terms of school policy a written complaint is required. Ms Hudson's answer was that "I don't have that to hand at the moment but of course I'll give you access to all that documentation ...." In actual fact there was no written complaint at any stage from Mrs X or pupil X. Ms Hudson then went on to say "What I'm hoping for Daniel is that we don't get to a point where this has to go down a route where we are looking at formal procedures and letters attached and all of that. Of course that can follow but what –" the claimant then cut off Ms Hudson and

repeated the point that the matter had gone on for three weeks and he had no clear idea of what he was being accused of. Ms Hudson then responded

“Well it’s unprofessional behaviour in terms of how you reacted to [pupil X] when she left the room.”

5 The claimant challenged this as to whether him sighing in frustration was unprofessional. Ms Hudson then went on to say that is not how Mrs X described it nor how pupil X described it. The claimant asked to hear the description. Ms Hudson then said she’d have to go and find the exact words. Ms Hudson then stated

10 “I can hear how stressed you are. We want to sort that out before it – where it could go is to a disciplinary which none of us want.”

The claimant then indicated

“It could go to a law suit.”

15 The remainder of the meeting proceeded in a similar vein. At one point Mrs Williams indicated that she could see how stressed the claimant was. She stated that she believed that there was a huge issue in that senior management needed to acknowledge that the last three weeks have had a huge effect on the claimant on his mental wellbeing. The eventual outcome of the meeting was that Ms Hudson would provide the claimant with a document setting out  
20 the nature of the complaint which had been made against him by Mrs X. The claimant would then indicate what he would propose to say to Mrs X and pupil X should a meeting be arranged. Ms Hudson indicated that what the Rector had asked for was that the claimant give him a plan of what the claimant would say in such a meeting. Ms Williams noted that what was required was simply  
25 the outline or gist of what the claimant wished to convey.

61. During the course of the meeting Ms Hudson felt that the claimant was being intimidating by trying to make the process formal and legalistic. For his part the claimant felt that the outcome of the meeting was an acceptance of what he had been proposing all along. Namely that the pupil and her mother would



5 speak to the guidance teacher Mrs Williams and Mrs Williams would speak to the claimant. The claimant was also happy that at last he would be receiving a note of what the actual complaint was about. He was anxious to see this since he felt there was a mismatch between what he understood the claim to be about which would appear to be a relatively minor matter and the way the matter was being dealt with by senior management at the school. He did not know whether the actual complaint was more serious than what he understood. At that point the claimant had not received the notes of any of the meetings which had taken place between pupil X and Mr Clarke and Ms Williams nor notes of any of the telephone calls or e-mails between Mrs X and the school.

10  
62. The following day, 9 February, Ms Hudson e-mailed the claimant (page 94). She stated

“Thank you for coming to the meeting with me, Nigel and Susan yesterday.

15 Although it was a long meeting, I hope it was helpful in providing clarification in moving towards the ultimate aim of pupil X feeling able to return to your class.

Although no note was taken as we agreed. The outcome and agreed actions from the meeting were that I would provide you with a written note of the details of the complaint and an indication of pupil X’s feelings in response to your interactions with her. It was also agreed that this would allow you to respond to Dr Halliday outlining what you would plan to say to pupil X in a meeting.

20  
25 Therefore please find attached a document which outlines the details of the complaint and provides pupil X’s perspective and feelings.”

There was attached to this a document which appeared to be based on a template taken from the school’s complaints procedure (pages 339-342). The first page contains the claimant’s name, the date of the complaint and describes the nature of complaint as “Unprofessional response to [pupil X]”. It then goes on to say notes attached. The notes go on for three pages and essentially outline the various interactions which had taken place between

members of the school staff and Mrs X and pupil X starting with the original telephone call on 16 January to Mrs Williams, Mrs Williams' meeting with pupil X, Mr Clarke's telephone call with Mrs X on 19 January, Ms Hudson's telephone call with Mrs X on 22 January, Ms Hudson's meeting with the claimant on 22 January where she says "she shared the complaint verbally with him", the meeting between Ms Williams, Mr Clarke and pupil X on 23 January, the e-mails between Mrs X and Mr Clarke on 23 January and the e-mail from pupil X to Mr Clarke on 24 January. This was the first time the claimant had received all this information.

63. The notes had been written up by Ms Hudson after the meeting. No steps had been taken prior to the meeting to collate all the information in one place.

64. The claimant felt that the information was important because to him it demonstrated that the real problem was not the fact that the claimant was trying to get pupil X to work with pupil Y. It was to do with her insecurities in class. It was clear to him that no simple apology from the claimant would resolve that. Any response from him would have to also address these insecurities. The claimant sent a response to Ms Hudson on 13 February, the e-mail was lodged (page 95-96). It is as well to set it out in full:-

"Dear Lise,

Thank you for finally providing me with the details of the complaint. I still can't quite believe that it has taken this long to get this information. It has been an extremely stressful, confusing and upsetting time trying to deal with this when I have not had the information I needed. Without understanding pupil X's perspective, it has been extremely difficult to provide the response that I have been pressured to provide. Now that I, finally, have the information that everyone else has had access to, in what follows I outline what I would say to [pupil X].

I would express how regrettable it is that [pupil X] is feeling anxious and angry. I would tell her that I have recently learned about how she has been feeling and, knowing this, I would like to explain my actions and reasons and, hopefully, to reassure her.

5 First, I would explain why I got frustrated when she walked away while we were talking. She had said that she didn't want to work with (Y). I was taking that seriously and was concerned to know if there was any particular reason for that. She told me that it was because he didn't do his work. I wanted to try to help with this so I suggested that she split the work and that way it would be clear who didn't do the work. I felt that this would be a good solution and one that took into account her worries. I would explain that it is my job to make sure that she receives the well-rounded education that she deserves and is capable of and that I feel it is important that I find ways to make sure that she can access all the opportunities available. I would let her know that since we had the discussion about working in pairs a few times, and since I believed that there was no other reason not to work with (Y), I felt that I had to be clear what the expectations were around this assignment. I would tell her that when she walked away when I was trying to explain my reasons for this, I was frustrated and so I sighed in exasperation as she heard. I would explain that as a teacher, it can be upsetting to know that a pupil is not happy and not to be able to communicate the reasons for my decisions and the importance of the assignments for their development.

10  
15  
20  
25  
30 Second, I would reassure her that I think it is very useful and helpful that she has been able to talk to Mrs Williams about this and this helps me to see other ways to try to resolve the issue. I would tell her that it is very good that she recognises that Y isn't the problem and that she understood the importance of working with other people. I would tell her that from what I've now been told, I see that her reason for not working with (Y) was because she felt she doesn't do well in the class. I would express understanding about how she might not want to work with someone if she is not feeling confident and I would let her know that it is very helpful to know this. I would tell her that this is something we could talk about more when she was ready to return to the class.

I would reassure her that her work in the class has been of a good standard and her contributions to discussions are a valuable part of our class. I would emphasise that I am always looking to make sure that

5 everyone does their best work and that I believe that what we do in my classes will serve her well in other classes and in her future. I would explain that this is why I encourage her to keep improving and working hard and that it is not because I think she is not doing well or that she doesn't do her work. I could show her my detailed records of her achievements so it is clear that I know that she works consistently in the class.

10 As I indicated from the very beginning, this could have all been addressed immediately if I had been fully and accurately informed of pupil X's true feelings and the actual comments that she made, and that it had all been taken out of my hands from the start."

65. 9 February was a Friday and the school was on holiday on 12 and 13 February. The claimant's e-mail of 13 February was therefore sent in the evening before he was due to return to work on 14 February. In the event the claimant did not  
15 in fact return to work on 14 February and in fact did not ever return to work at the school.

66. Over the course of the weekend 10-13 February the claimant began to feel unwell. He felt very shaken after the meeting on 8 January. He had considered Mr Clarke and Ms Hudson and Mrs Williams to be friends as well as colleagues.  
20 He felt that his employment was under threat and for the first time began to question whether he had a long term future at the school. The claimant went to see his doctor on 13 February and complained about feeling stressed and that his sleep was disturbed. His GP suggested that he self-certify as unfit for work. On 14 February he felt unable to attend work. On 14 February at 8:02  
25 he e-mailed Mr Clarke to advise that he would not be coming in. He stated

"I am writing to let you know that I am feeling quite unwell, which I associate with having been extremely tense all weekend due to the way I have been treated in school for the last three weeks. As such, I am letting you know that I will not be in school today.

30 I am absolutely amazed now that I have access to the actual original complaint to see that pupil X acknowledged from the very beginning that

5 she was aware that I had not intended to make her feel undervalued. Yet, for three weeks I have been emphatically told that she believed the exact opposite. The fact that school policy was blatantly disregarded in recording and responding to this complaint, which directly led to the immense stresses that I have been subjected to for three weeks, while at the same time being accused of being unprofessional in my conduct makes me question what the real motive was behind this entire chain of events. At present, I feel completely demotivated, unappreciated, and extremely tense. For fourteen years I have taught at this school and felt as though I was making a valuable contribution to the education and experiences of the pupils and fellow staff. Now, however, I find myself questioning what future I have at the school.

10 I am trying to come to terms with the way I have been treated and work through the feelings that have caused me interrupted sleep, headaches, physical tension and emotional upset.

15 I hope the in-service day is a success and the discussions on *core vision* and *values* and *active reflection* are productive for all.”

67. The claimant did not receive a response to this e-mail (page 96). He sent a further e-mail late on the 15<sup>th</sup> and then on the 16<sup>th</sup> advising he was still off unwell. Mr Clarke responded on 16<sup>th</sup> thanking the claimant for letting him know and hoping that he would have a relaxing weekend.

68. At around lunchtime on Friday 16 February Ms Hudson wrote an e-mail to the claimant which the claimant received at home. This was lodged (pages 97-98). It states

25 “Thank you for your email of Tuesday 13<sup>th</sup> February on the situation relating to the above pupil. I am sorry to hear that you are feeling upset and have felt too unwell to come into school since the mid-term break. That is very unfortunate. I therefore sincerely hope you will feel able to return soon.

30 From your email you have now finally given some thought as to how you might approach a discussion with pupil X, with a view, we hope, to her

returning to your class. The next step would now be for me to meet with you as soon as possible after your return to school to confirm the steps needed to achieve this. Please contact me on your return to work and we can take this forward.

5 From the outset, our intention has always been to resolve the matter as quickly as possible whilst giving careful consideration to all those involved. It is important that every effort is now made to bring this to a conclusion.

10 Finally, in your meeting with me, Nigel Clarke and Susan Williams and in your last email you also referred to a number of concerns you had, and you made a number of allegations against SLT and other colleagues. You were very unhappy about the way the complaint from Mrs X had been handled by colleagues, and you also alleged that you were being bullied, intimidated and harassed by senior staff. You will understand that these  
15 serious allegations need to be investigated and addressed and so I am passing them on to the Rector. He will be in touch with you to outline the process for investigating these concerns and allegations.

In the meantime, I hope you feel better soon and look forward to moving this forward in a positive way for the interests of all concerned.”

20 69. The claimant was extremely concerned at the terms of paragraph 4 of this letter. He felt that at the meeting he had explained where his anxiety and stress was coming from. He had done so in order that those present could reflect on the way they had conducted the investigation. It was not his intention to lodge any formal grievance. He felt extremely concerned that what appeared to be  
25 happening was that the matter was being referred to the Rector for investigation without the claimant having lodged any grievance. He felt this was particularly inappropriate since the Rector was one of the people that he considered was bullying and intimidating him. He considered that it should have been his call as to whether to proceed with a formal grievance or not.

30 70. The claimant was concerned to have received the letter from Ms Hudson on a Friday evening where he would have to stew on it over the weekend. He had been optimistic about returning to work on the following Monday 19 February.

In the event he did not return to work but went to see his GP again on that day where he was signed off for two weeks with stress.

5 71. In the meantime on 16 February the claimant had written to Mr Clarke stating that he was doing so with regard to Mr Clarke's role as a Senior Manager responsible for staff wellbeing. He complained about the way matters had been handled and receiving the further letter from Ms Hudson. The letter was lodged (page 98-99).

10 72. Mr Clarke responded on 16 February at 5:23. His e-mail was lodged (page 99-100). He stated that both he and Ms Hudson were trying to be supportive. He stated that in his view Ms Hudson had to raise his concerns with the Rector as part of her duty of care to the claimant. He stated

15 "Any investigation into this will be carried out by a neutral party (someone who has the seniority to carry out such an investigation but has not been involved in the process up to now) so that they can come at the issue with a fresh and unbiased point of view. An investigation does not necessarily lead to a formal grievance process but should identify any problems with the process and how we can learn from this for the future. I fully understand the point that employees may not feel confident about a formal grievance involving senior personnel but the neutrality of the investigation is designed to allow this to happen in a non-emotional way. Any initial meeting with the Rector is not confrontational but rather informational. As Lise states, he will outline how the process is carried out. After that you will have the opportunity to express your concerns to the neutral body and also your wishes as to how this could be moved forward. If you are uncomfortable with the idea of this then you can certainly expand your thoughts regarding grievance in reply to Lise.

25 I am always available for a coffee and a chat but, given that I am already involved in this situation, I cannot express any direct views on an ongoing matter. We really do all wish for pupil X to return to your classroom and for the situation to resolved and moved beyond.

30 I hope that you can manage a relaxing weekend."

73. The claimant wrote in response to Mr Clarke later on on 16 February and the letter was lodged (page 100). He set out his concerns, particularly he said that it was inappropriate to have the grievance initiated by Ms Hudson who was a focus of the grievance and be outlined by the Rector another focus of the grievance. He said that he had tried to de-escalate matters but that Ms Hudson had progressed things to the top of the school. He stated that his anxiety about the situation he would face on Monday had increased exponentially. He also wrote to Ms Hudson. This letter was lodged (page 101). He took exception to her portrayal of him having “finally given some thought” to the issue. He repeated his position they had not previously had full details of the complaint. He had set out his concerns about her e-mail and asked that if what he said at the meeting was to be taken as a grievance school policy was followed and that it not be dealt with by the Rector but by the Bursar and the Board of Directors. Finally he indicated that yet again he was concerned that Ms Hudson had chosen a Friday to send a stressful and confrontational e-mail which he would now be brooding on over the weekend.

74. Having gone back to see his GP on 19 February and been signed off for two weeks he advised the respondent of this on Monday. Ms Hudson wrote to the claimant again on the Monday (page 102) setting out her position. She stated that the claimant’s comments were not being taken forward as a grievance but that the respondent had a duty of care to all our staff to pass on any matters such as this to the Rector for his attention so that they can be fully and properly investigated. She indicated that the Rector would be in contact with him to outline what the procedure would be. Mr Clarke also wrote to the claimant on 19 February (page 103). The claimant wrote to the Bursar at around 5pm on 19 February advising that he remained signed off work by his GP. He went on to say

“I recognise that school policy states that in such instances you are to contact the Rector to arrange a meeting with me to address the problem.”



The claimant went on to say that he did not wish such a meeting to be arranged. Later that evening, the Rector, Dr Halliday, e-mailed the claimant. The e-mail was lodged (pages 104-105). It stated

“Dear Daniel

5 I am very sorry to hear that you continue to be unwell and have now been signed off work for two weeks. I wish you a speedy recovery. I understand you have been in touch with both Lise Hudson and Nigel Clarke recently and that you continue to maintain contact with Nigel in relation to your absence. I do hope your doctor’s visit today was helpful.  
10 Nigel Clarke has passed your concerns to me about the proposal of an investigation which you perceive as the initiation of a grievance procedure without your consultation. I appreciate that you may not be reading this immediately but I thought I would reassure you about the process at an early stage. I would like to clarify the school’s procedures in these  
15 circumstances. On more than one occasion in recent weeks, including in a meeting with Lise Hudson, Nigel Clarke and Susan Williams, you have raised concerns and complaints about the way the whole matter relating to pupil X has been handled by staff. More seriously, you also have also complained of bullying, intimidation and harassment by senior staff,  
20 including me, and feel that we have been unprofessional.

Where claims of bullying and harassment have been made by any member of staff about any member of staff regardless of seniority, we have an obligation and duty of care to investigate such claims. Lise Hudson was correct to pass your complaints and comments to me. Given  
25 the allegations appear also to relate to me, I have now instructed the Bursar, Jill Henderson, to undertake a full investigation. This investigation will look at two distinct strands:

- The handling of the entire matter by all involved which includes me, Lise Hudson, Nigel Clarke, Susan Williams, Christine O’Ready and you.
- To investigate the events leading to and the incident on 15/01/18 with pupil X and how that incident was dealt with by you.

I appreciate you are not in a fit state at this point to take part in the investigation but on your return to work, you will be contacted by Jill Henderson to arrange for a meeting to allow you a full opportunity to detail your concerns and complaints. Whilst I acknowledge this may create some anxiety, you will I hope understand that, as an employer, we simply cannot ignore such serious concerns and allegations from one of our staff. Dependent upon the outcomes in Jill's report, we would then need to consider any learning outcomes and/or recommendations. Please be assured that any upheld allegations about bullying and harassment by me or Lise Hudson would be passed to the Board.

Clearly, this is a very sensitive and confidential matter which we take very seriously and, as such, I would remind you that aside from communication with me, Lise, Nigel and Christine, you do not discuss the matter with any other members of staff.

In the meantime, if you have any questions about the process, please do not hesitate to contact me or Christine O'Ready, who I am copying in to this email."

75. The claimant was concerned that the investigation would be investigating how he dealt with the incident on 15 January with pupil X. He did not see how this could have any connection with the concerns he had expressed about the senior management team. The claimant saw this as further intimidation. He did not consider that it was appropriate for the investigation to be carried out by the Bursar who was a member of the senior management team and reported to the Rector. The claimant decided over the course of the weekend that he ought to lodge a grievance so that the issue was dealt with firmly within the terms of the respondent's grievance policy.

76. The claimant therefore wrote to Mr Bett who was the Chairman of the Board of Directors on 20 February setting out the terms of his grievance. The letter was lodged (pages 106-108). When setting out the background he said

".... The actions of those in senior management do not make sense other than to see their behaviour as either extremely incompetent at all stages

or as malicious, intending to intimidate and isolate me. Since I believed them to be experienced and well-trained professionals, I suspect it is the latter. However, why they would want to treat me in such a way, given my service and loyalty to the school, I am at a loss to comprehend.

5 For instance:

- I cannot understand why the original complaint was not handled in the first instance through discussions between me and the pupil's guidance teacher rather than, as it has been, by the Deputy Rector and the Rector.
- 10 • I cannot understand why, after I submitted my written report on the same day as I heard of the complaint, it took the Deputy Rector three weeks to give me the full details along with subsequent conversations and emails that I needed to properly understand the pupil's issue.
- 15 • I cannot understand why, after submitting the report, that the next thing I heard from the Deputy Rector was that the issue had been passed on to the Rector to deal with it with me.
- I cannot understand why the Rector, then, could not clarify how the school believed that I had acted unprofessionally. I asked this
- 20 repeatedly and was told that was what he was investigating.
- I cannot understand why, when this had been taken out of my hands from the first moment I heard about it, that the Rector and Deputy Rector continue to seek to blame me for the way it has progressed.
- 25 • I cannot understand why the Rector says he is dealing with it because "my colleagues have been unable to make progress with you to resolve the situation" when his colleagues never attempted to do so. This was sent to the Rector without me having any opportunity to resolve anything.
- 30 • I cannot understand why the Deputy Rector used the word 'finally' to describe my actions of providing a response by first thing the following school day after she had finally (4 weeks after the original

complaint) provided me with the information I needed to supply this response.

- I cannot understand why both my line manager and the Deputy rector refused my requests for support or to meet to discuss the matter, saying each time that the Rector was dealing with it.
- I cannot understand why I – who have always strived to work to the high standards I believe the High School of Dundee should offer, have sought to work with pupils to help them work to their potential and have always attended to the pastoral needs of the young people – am being treated in this manner

....”

77. The claimant then goes on to complain about the fact that he has now been told that the matter is to be subject of a further investigation. He confirms that he wishes to have this dealt with as a formal grievance. The claimant also included with his e-mail a timeline setting out what had occurred. The letter and timeline are lodged at pages 252-265. The claimant then sent a copy of this to Jill Henderson the Bursar (page 108-110).

78. A decision was made by the respondent that the grievance investigation be carried out by Mr Charles Sharp who was the respondent’s former Bursar having retired the previous year. Mr Sharp had joined the school in April 1998 and had been Bursar. He had initially worked with the previous Rector Michael Duncan and when Mr Duncan had retired after 10 years he had then worked with the Rector Mr Halliday. As Bursar he was part of the senior management team. When Mr Sharp had worked with Mr Halliday Mr Sharp had simply been left to get on with matters in respect of much of his role. During Dr Halliday’s time Mr Sharp would only attend meetings of the senior management team when where was something specific for which would affect his sphere of responsibility. Following his retiral as Bursar Mr Sharp had continued to attend board meetings in the role as Board Clerk. Mr Sharp was contacted by Mr Bett and Ms Henderson and asked if he would do the investigation. This happened around 23 February. Mr Sharp was passed the claimant’s letter of grievance together with the attached timeline. At some

point Mr Bett provided Mr Sharp with a letter giving terms of reference of the appointment which was to investigate the complaint and the handling of the process as well. This letter was not lodged.

5 79. Mr Sharp's previous experience in relation to grievances had been restricted to hearing them rather than carrying out a grievance investigation. He therefore decided to check the ACAS website to find out what he should be doing. Having done this he wrote to the claimant setting out how he intended to approach matters. The letter was lodged (page 250-251). He suggested meeting with the claimant on 9 March. Mr Sharp produced an investigation plan which was lodged (pages 270-274). He did not consider it necessary to interview people but considered that it was acceptable that individuals provide their own statements. He sets out his rationale for this on page 274 stating

15 "As the investigation is not an investigation into the resolution of the complaint itself but purely on the approach and handling of the complaint, it is not felt necessary or appropriate to interview the pupil or parents but correspondence relating to the complaint is sufficient. There does not appear to be any dispute about the nature of the parental complaint itself. At this point it is not felt necessary to obtain any personal statements but this may change in the course of the investigation."

20 80. Mr Sharp asked the claimant to provide a summary of his grievance in one sentence. The claimant responded to Mr Sharp in a letter in which he stated

25 "My grievance is about the mishandling of a complaint by a parent the lack of information and support provided to me in the weeks that followed and the aggressive way in which I was isolated in school and blamed for the mishandling of the complaint despite doing all that I was in a position to do at all stages with the information I had – writing reports, attending meetings and responding to emails."

30 81. Mr Sharp decided that he wanted some background before he met with Mr Goodey. He arranged to meet with Nigel Clarke on 7 March 2018. He met with Susan Williams on 7 March. He met with Mr Goodey in Perth on 9 March.

Following meeting with Mr Goodey he decided he wished to meet again with Mr Clarke and Ms Williams. He therefore met with them again on 12 March. Mr Sharpe produced a note based on the two meetings he had with Mr Clarke which was lodged (pages 277-281). The notes were produced by Mr Sharp who then sent them on to the individual with whom he had the meeting for approval. Generally speaking all the individuals that were interviewed by Mr Sharp made some alterations to the notes, sometimes twice. Mr Sharp made notes of his two meetings with Ms Williams which were lodged (pages 282-284). She made a note of his meeting with Mr Goodey which were lodged (pages 285-290). He set out on page 285 that these were not a comprehensive minute of the meeting. Mr Sharp then met with Sam Watson, the Head of Guidance on 12 March 2018. On page 291 he notes that the purpose was to seek her views of Mr Goodey and the manner in which he had approached the situation. He noted that Mrs Watson was not directly involved in any aspect of the situation and therefore her comments were provided on the basis of the information Mr Sharp gave her about the incident in question and her personal knowledge and experience of working with Mr Goodey as his SLT link for a period. Mrs Watson indicated to Mr Sharp that she was aware that there was a sense of insecurity amongst some staff and that this probably included the claimant. She said "Such concerns tend to be amongst the longer serving members of staff rather than those who had joined the school more recently who tended to have a very positive view about the school and its leadership. The school was going through an ongoing period of development and cultural change with which some members of staff felt uncomfortable and potentially threatened." Mr Sharp also met with Ashley Cummins the other teacher of RMPS on 12 March. The note of this meeting was lodged (pages 293-293A). Mr Sharp met with Lise Hudson on 12 March. A note of this meeting was produced (page 294-296). Mr Sharp met with Christine O'Ready the HR manager on 14 March 2018. A note of this meeting was produced (pages 300-301). Finally Mr Sharp met with the Rector Dr Halliday on 20 March. A note of this meeting was lodged (pages 305-307). When Mr Sharp met with these individuals he invited them to provide any documents they had which they considered to be relevant. Many of them produced statements or notes of

meetings to Mr Sharp particularly Ms Hudson. Many of these notes were produced long after the meeting or incident to which they related. Mr Sharp also received from these individuals e-mails and other documents which were relevant. There was a considerable amount of duplication in the documents he received. One of the documents provided by Lise Hudson was her note of the meeting of 8 February 2018 (pages 298-299). In this note Ms Hudson set out her understanding of the position regarding recording of the meeting. She confirmed that the claimant had come in with a recording device. She stated that he was confrontational and agitated and said that up until now there had been no proper record and he wanted to record what was said. He indicated that Mr Halliday had said in his e-mail that notes were to be taken. Ms Hudson said that she had said she was not willing for the meeting to be recorded. She said it was an informal meeting. She noted that Mr Goodey had indicated that the meeting was not informal if Mr Halliday had said that notes were going to be taken. Ms Hudson then said that she stated that no notes would be taken so that the meeting could progress. She says that the claimant did not acknowledge this but then proceeded to talk for 10 minutes setting out his unhappiness at the situation.

82. Once he had taken the statements and obtained the various documents from individuals Mr. Sharp felt the next stage was to pull it all together.

83. Having considered the matters Mr Sharp then drafted a report. This was divided into a number of areas. He set out his understanding of the original incident at pages 322-324. To this report he then attaches the various documents he considers relevant to this. He then set out his understanding as to the sequence of events from the complaint to the grievance which he divides over a period of weeks. This was lodged (pages 348-358). He then summarises the process and how the grievance arose (pages 359-360). He then set out his understanding of the grievance in part 3, section 4 (pages 418-425). He then sets out his conclusions on page 426-436. He set out his final conclusions on page 436. He stated

“Having undertaken a full investigation of the situation, and considered the evidence and the outcome of meetings with various members of staff, I do not believe the issues raised in Mr Goodey’s letter are sufficiently substantiated and supported to form a reasonable basis for raising a formal grievance against the Deputy Record and the Rector.

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However, I accept and acknowledge there are issues that have contributed to Mr Goodey feeling a need to make such a grievance, and that these should be considered and, if appropriate, addressed. I have endeavoured to highlight these within my report.

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In addition, the situation has clearly resulted in Mr Goodey suffering considerable anxiety and stress. I believe this has, in part, resulted from his forming perceptions of a situation which I do not believe exists and therefore are unjustified. However, for these reasons, I suggest Mr Goodey should be afforded the opportunity to share his concerns through a Grievance Hearing whereupon a grievance panel can determine if the views I have formed in the course of the investigation are reasonable and fair.

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Finally, I wish to express my appreciation to those who assisted in my investigation who have done so in a manner that has been open and frank.”

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84. On 11 April the Chairman of the Board wrote to the claimant. The letter was lodged (page 437-438). He stated

“Further to my last correspondence with you on 20 March, I can now confirm that I am in receipt of the investigation report as prepared by Investigating Officer, Mr Charles Sharp. As you are aware, this has been a significant task with a great deal of time invested in the process by both Mr Sharp and the staff involved. I am grateful for this and the full cooperation of witnesses. I am also very satisfied with the extremely thorough, objective and professional approach taken by Mr Sharp throughout this sensitive matter.

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Mr Sharp’s conclusions can be found in the enclosed document titled ‘Part 4: Conclusion’. This section adequately and succinctly summarises



Mr Sharp's findings along with recommendations in the closing comments. I refer you in particular to the 'Concluding View of the Investigation' on the final page.

5 In summary, Mr Sharp does not find the issues raised by you in your grievance letter to be sufficiently substantiated and supported to form a reasonable basis for raising a formal grievance against the Deputy Rector and Rector. However, he proceeds to acknowledge that there are certain issues that have contributed to you feeling a need to make such a grievance. In addition, he recognises the stress and anxiety that you  
10 have suffered due to (as Mr Sharp quotes) you '*forming perceptions of a situation which [I] do not believe exists and are therefore unjustified*'.

Despite his findings pointing to a lack of supporting evidence, Mr Sharp recommends that you should be provided with the opportunity to share your concerns in a formal Grievance Hearing. I support this  
15 recommendation. To this end, I am requesting your attendance to a formal Grievance Hearing to take place next Thursday 19 March at 12.30pm. The Hearing will take place in the Balgay Room of the Dundee Voluntary Action premises at 10 Constitution Road, Dundee .....

I have convened a panel of three Directors including me as Chairman to  
20 the Board and joined by Mr Adrian Stewart and Mr Kish Srinivasan. In addition, Mr Sharp will be present to take notes so there will be no need for the meeting to be recorded with any devices."

The claimant was advised of his right to be accompanied.

85. The claimant contacted Mr Bett in response to this seeking an electronic copy  
25 of Mr Sharp's full report. Mr Bett wrote to the claimant on 16 April 2018 indicating that the respondent was not prepared to provide a copy of the report electronically because of the sensitive and confidential nature of the matter. He did offer a "further" hard copy of the report.

86. The claimant duly attended the grievance hearing on 19 April. It was convened  
30 by Mr Bett as one of the directors together with Mr Srinivasan and Mr A Stewart. The claimant was accompanied by Mr A Wilson. Mr Sharp was in

attendance and took notes. His notes were lodged (pages 440-443). During the course of the hearing the claimant read out a prepared statement which was lodged at pages 444-449. The claimant clearly set out his dissatisfaction with the report. He indicated that he had been hurt by a number of comments and the language that had been used and inaccurate assertions with regard to his conduct. He believed the report focused on his failings rather than the shortcomings of the members of the senior leadership team.

87. In his prepared statement the claimant set out six specific issues he had. These were

1. The repeated and inaccurate assertion that I refused to apologise or express regret.
2. The failure of SMT to follow policy which unnecessarily delayed a solution by making it impossible for me to respond in any meaningful way.
3. The discussions I had with Nigel Clarke about the pupil being withdrawn from Philosophy and Religion contrary to school policy. This, as I pointed out, was not my decision to make and so I am at a loss to understand why this 'impasse' is attributed to me.
4. Contrary to the statement in the investigation report that 'inevitably, no progress was made' in the final meeting, this was the only meeting at which progress was made. It was at this meeting that Lise Hudson finally agreed to follow school policy and to produce the information I had been seeking for weeks.
5. The language used in the investigation report.
6. Inaccurate assertions made about my behaviour and beliefs."

88. Mr Sharp had himself produced what he termed an "aide memoire" in response to the claimant's statement. This document was lodged (page 450-451). Mr Sharp sent this to the three members of the grievance panel. Mr Clarke also decided that he would have a further meeting with Mr Clarke. It is unclear whether this was Mr Sharp's initiative or whether he was instructed to do this

by members of the grievance panel. In any event he had a further meeting with Mr Clarke on 2 May and a note of this was lodged (page 452).

89. On 3 May Mr Bett wrote to the claimant (page 453). He stated

5 “Thank you for attending the Grievance Hearing on 19 April 2018. I trust you felt you were provided with adequate opportunity to air your grievances in full to the panel. You will recall that at the end of the Hearing, we outlined the panel’s commitment to respond in writing within a reasonable timeframe. However, we also noted and you acknowledged that due to the complex nature of the case a full response might take

10 longer than the preferred timeframe of ten working days as stated in the School’s Grievance Policy and Procedure.

I can now confirm that the panel had an extensive meeting yesterday to discuss the case in detail. I am now at the point of seeking final professional advice and preparing a full response to your grievance.

15 Whilst I am not prepared to commit to a date, I can assure you this has been given priority for the sake of all concerned.”

90. It is unclear why this letter was written since the grievance panel had in fact met on 2 May. Mr Sharp attended the meeting on 2 May. It would appear that at the meeting the panel discussed Mr Sharp’s report and essentially decided

20 to uphold his findings. On 11 May Mr Bett wrote again to the claimant providing a final grievance outcome. This was lodged (pages 454-455). Attached to this was a grievance outcome report which was lodged (pages 456-460). This was prepared by Mr Sharp. It was signed by all three members of the grievance panel. The final outcome was summarised in the letter on the second page

25 (page 455). It stated

“For information, the decisions on each point are either ‘Upheld’ (supportive of grievance), ‘Partially Upheld’ (partially supportive) or ‘Not Upheld’ (unsupportive of grievance). The Grievance Panel’s decisions are as follows:

30 a) The mishandling of the complaint made by a parent. Decision: Partially Upheld.

Whilst the manner in which the complaint was handled with the parent and the pupil was appropriate and satisfactory, the process in dealing with communicating the complaint with you and failure to follow recording procedures was unsatisfactory.

- 5 b) The lack of information provided to you following the complaint.  
Decision: Partially Upheld.

The panel acknowledged that while information had been communicated to you verbally, there was an absence of written details of the complaint, which was unsatisfactory.

- 10 c) The lack of support you received when dealing with the complaint giving rise to a sense of isolation. Decision: Not Upheld.

The panel felt considerable efforts had been made by Nigel Clarke, Lise Hudson, Christine O'Ready and the Rector to offer and provide support and advice/guidance on how the situation of the complaint made against you could be resolved.

- 15 d) The aggressive manner in which you were dealt. Decision: Not Upheld.

The panel did not feel there was any evidence to support your allegation that the manner in which you were dealt with by the Rector or Deputy Rector was aggressive.

- 20 e) The blame attached to you for the mishandling of the complaint.  
Decision: Not upheld.

The panel feels that the Rector, Lise Hudson and other managers involved endeavoured to work with you informally in seeking a solution to the pupil matter. However, evidence showed a lack of cooperation in your own approach in seeking a resolution. The panel supports the Rector's original decision to investigate how the matter was handled by all concerned.

- 25  
30 The panel will consider any learning outcomes for both parties with a view to agreeing any possible recommendations going forward. In addition, I hope you will enter a positive conversation with the School and Rector in seeking a return to work and how this can be managed. ....”

The claimant was advised of his right of appeal. The claimant wrote to Jill Henderson the School Bursar on 17 May providing his response in confirming that he wished to appeal. This letter was lodged (pages 461-462).

91. Mr Bett wrote to the claimant on 23 May acknowledging receipt. He understood  
5 that the claimant's grounds of appeal to be

“1. You believe the original grievance was not considered impartially by the panel

2. You believe the nature of your original concern was never the actual focus of the investigation

10 3. You believe the Investigation Report prepared by Investigating Officer, Mr Sharp was biased and an attempt to blame you for your own feelings of isolation, intimidation and bullying.”

92. Mr Bett indicated that he was proposing an appeal panel that would not solely  
15 comprise of Board Directors but proposing one or two external professional individuals unconnected with the school in terms of being existing staff, parents or board members. The letter was lodged (page 463).

93. The claimant responded on 25 May. He asked the Board follow the standard grievance process and pointed out that as matters dragged on the process was increasingly damaging his health.

20 94. The claimant went on to state

“I still cannot believe that this is the outcome of a pupil walking away as I was talking to her. It is incomprehensible that a school such as the High School of Dundee which seeks to attract families based on its standards and values should behave in this way to its teachers and pupils.  
25 Nevertheless, as incredible as it might be, this is the situation I now find myself in, to the detriment to me, my family and my career.

I do not take any pleasure in pursuing this. And, while it may be somewhat reassuring to know that I am not alone in this, I do not enjoy being contacted by different journalists hoping that I will be the one to go  
30 on the record. It has been made very clear that there is a complete loss

of faith and confidence in me as a person and a professional and this, I have been told, would constitute constructive dismissal.”

- 5 95. Mr Bett responded on 25 May indicating that he was to be absent over the next two weeks and had instructed the Deputy Chairman Mr Srinivasan to make the appropriate arrangements in terms of convening an appeal panel.
- 10 96. On 5 June Mr Srinivasan wrote to the claimant requesting his attendance at an appeal hearing to take place on 14 June (page 466-467). The appeal hearing took place on 14 June 2018. The appeal panel comprised Mr Lothian, Mr Cram, Mrs Paterson and Mrs L Henderson. Mr Lothian and Mrs Henderson were all members of the board. Mrs Paterson was a former pupil. A minute of the hearing was lodged (page 469-477). It is not clear who chose the members of the panel. Mr Lothian was the Chairman of the appeal panel and considered that the primary purpose of the appeal was to look at the three grounds of appeal listed. They were given copies of the various documents which had been considered by Mr Sharp including the claimant’s timeline. Prior to the hearing the appeal panel had met with Ms O’Ready on 8 June to be briefed by her on the process to date and look at the results of the process and the format of the investigation. The meeting was around one hour. Mr Srinivasan who had been on the original grievance panel attended the meeting in order to do a handover. He left before the appeal panel started discussing the case. The panel then met with Mr Goodey as mentioned on 14 June. Notes were taken by Sonya Locherty of the respondent. The notes were lodged (p469-497). At some point after the meeting Mr Lothian telephoned Mr Bett, asking him what he had meant by a comment made towards the end of the grievance meeting where Mr Bett had said in response to the claimant’s comments about the Rector and Depute Rector that:
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- 25

“do you realise the board made these appointments”.

No note of the conversation was provided and it is not clear what Mr Bett said.

- 30 97. The claimant made the general point that he believed the grievance panel had shown bias towards the senior management team. He felt the language

referring to him was aggressive and judgemental whereas the references to the senior management team were softer. The appeal panel felt there was a difference in perception between how the claimant saw events and how they were perceived by the senior management team.

5 98. Following this the appeal panel decided to meet with the Rector Mr Halliday and the Deputy Rector Ms Hudson on 15 June. They decided to meet with both of them together. No notes were taken of this meeting. The panel asked them about their perception of events. During this conversation their frustration with Mr Goodey was discussed.

10 99. An appeal panel report was then prepared. The report was lodged (pages 480-493). The outcome was that the original grievance outcome was confirmed. They went on to make various recommendations at page 493. They recommended that the school offer counselling support to the claimant. They suggested an attempt at mediation with an external mediator but they did not  
15 hold out much hope for an easy conclusion they also suggested the grievance panel and appeal panel should meet to discuss and agree possible learning and recommendations for the school.

100. In the meantime whilst these processes had been going on the claimant had been involved in three further matters with the school where he had been in  
20 correspondence with them. In or about March the claimant applied to the GTCS to be registered as a teacher of Modern Studies as well as his existing registrations. He gave Mr Clarke as his referee since Mr. Clarke was his line manager. Mr Clark received the request and sought advice from the school HR manager Ms O'Ready in an email on 22 March (p521). On 2 April  
25 Ms Henderson, the bursar, contacted the claimant and indicated that Mr Clarke had mentioned to her he had received a GTCS reference request for the claimant to add an additional subject.

101. The claimant responded on 2 April indicating that he would be happy for Mr Clarke to contact him regarding the GTCS reference. He said he would be  
30 happy to provide whatever information was needed to complete the reference over the holidays (page 172-173). Mr Clark did not contact the claimant about

the reference nor did he provide a reference to GTCS. The claimant contacted GTCS again in May (p203) and they confirmed they had received no response from Mr Clark. On 3 May the GTCS said that the claimant's application could proceed without a reference from Mr. Clark but they would still need a document signed off by Jill Henderson, the Bursar. On 23 May they confirmed they had not received either reference back. (p206). They then wrote on 24 May to say that the application would proceed but that without a reference the best the claimant could hope for would be provisional registration. (p207). The claimant responded to the effect that this would be satisfactory. (p207)

10 102. On 4 June the Rector e-mailed the claimant advising that he had received a reference request from Perth & Kinross Council for supply work. The Rector did not provide a reference. He pointed out the claimant could not work as a supply teacher whilst still employed with the respondent. He asked for clarification. The claimant responded indicating that he had applied for supply teacher but had understood no reference request would go out until he was offered a job. The claimant's reason for doing this had been to provide himself with income in the event of him finding himself unable to continue with his job with the respondent. He responded to the Rector on 4 June (page 190).

15 103. On 5 June the claimant wrote to Mr Clarke regarding his professional update. This is a form of continuous professional development which has been introduced by the GTCS for all teachers. Basically, teachers have to re-register every five years. The teacher is required to keep a professional learning record which is updated and shared with the school on an annual basis. A reference is also required. Generally this requires a senior teacher to sit in on a lesson. The claimant's letter to Mr Clarke indicated that his professional update was required by the end of June 2018. The claimant indicated that in the normal course he would expect the necessary reviews to be completed in April/May. He noted that since he had been off work during this time that there had been no opportunity to complete it. He asked Mr Clarke if he could complete the professional update as his line manager using the reflections attached to the letter and his professional learning record. The professional learning record is something which would be kept within the school. The claimant wrote to GTCS



on 1 June making an application for direct submission. He stated that he had been off work due to work related stress since mid-February. He referred to the atmosphere of bullying and intimidation within the school. He said that he had not had an opportunity to complete his professional update in the school and senior management had demonstrated an unwillingness to provide him with references. He believed it was necessary to complete it as a direct submission (pages 208-209). The GTCS responded to the claimant stating that direct submission was only for someone who did not have access to a GTCS validated professional review and development scheme. They pointed out that since the claimant was still employed by the school then it was the route he had to use. The claimant wrote again to Mr Clarke on 7 June asking if the request to complete his GTCS professional update. Mr Clarke responded on 7 June stating

“Thank you for your email regarding GTCS Professional Update. Your absence this year makes it impossible for us to complete the internal SPRIP (Staff Professional Review and Improvement Programme) review that is part of our validated GTCS process. This is recognised by the GTCS in its Deferral Process. Accordingly I would ask that you ‘request deferral’ via the GTCS Professional Update portal thus allowing Dr Halliday to complete this year’s process.”

The claimant thereafter corresponded with the GTCS and obtained a deferral. The claimant’s position was that the appraisal process was meant to reflect a teacher’s performance and development over a five year period and that would have been perfectly possible for Mr Clarke to complete the necessary paperwork to allow his registration to continue without seeking deferral.

104. Following his resignation from the school the claimant was able to make a direct submission to the GTCS which they accepted on the basis that he was no longer employed by the school. This application was then put before the GTCS panel which considered such matters and the claimant’s registration was renewed without the necessity for the deferral having to take place.

105. The claimant was disappointed by the result of the appeal. He felt that at the appeal meeting all four members had appeared to be sympathetic and listened to his views. He therefore felt surprised that the outcome essentially upheld Mr Sharp's original report. He noted Mr Lothian's suggestion that he join a committee to look into how matters could be improved going forward but felt that he would be returning to a very difficult working environment. He did not consider that he was likely to be treated fairly by the Rector in future when it was clear that the Rector could treat him badly with complete impunity. He took time to think about matters. He decided to resign. He wrote a letter of resignation dated 17 July 2018. This was lodged (page 501-502). He stated

"I am writing to inform you that I am resigning from my position as Head of Philosophy and Religion with the High School of Dundee with immediate effect. Please accept this as my formal letter of resignation and a termination of our contract. I feel that I am left with no choice but to resign given the clear breach of trust and confidence in me as a professional and the persistent unwillingness on behalf of senior management and the board to address the situation.

Despite the fact that both senior management and the board agree that I did nothing wrong, you chose to subject me to weeks of extremely stressful and completely unnecessary proceedings following a complaint from a parent. Rather than trust me, as a professional, to talk with the pupil to try to understand the matter, you insisted that I script what I would say to the pupil before I would be allowed to talk with her. Despite the humiliation of such a position, you did this while withholding information that was essential to allow me to do this meaningfully.

Without any reasons for doing so, the matter was escalated to you to deal with. You then sought, unjustly, to blame me for that escalation when I had complied with all requests made to me.

Despite the fact that the pupil expressed recognition that I had apologised and that I did not meant to upset her, you repeatedly and unreasonably pressed me to make another apology. You did not clarify why I should do this but only that it would smooth things over. This did not make sense.

It was also completely unfair to expect a teacher to accept that they are unprofessional when they have not been.

5 During the weeks following the complaint, I received no support from anyone in the school. Approaches to my line manager and the deputy rector were met with refusals to talk to me, stating that since you were dealing with it, they could no longer be involved in the matter. Meetings with you were intimidating and unhelpful.

10 When I thought that the matter would finally be coming to a close, following the deputy rector's agreement to furnish me with the documentation required to understand the situation, I expressed my feelings of isolation and intimidation throughout the matter. Your response was not only to investigate my claims but also to launch an investigation into my conduct in the events leading up to the complaint. That you would do this only after I alleged bullying. Five weeks after the  
15 incident, and not as I had suggested, immediately after it happened, added to the feelings of intimidation and isolation.

This launched the grievance proceedings which have highlighted the disregard and disrespect that senior management have towards me. Despite having worked here for 14 years, having an excellent record and  
20 reputation in the school, you have chosen in response to my grievance to repeatedly portray me as 'intransigent' and as 'failing' in this matter, even though it is agreed that I have done nothing wrong. Accusations have included describing me as 'trawling' documents simply to find a reason to cause trouble. This is all completely unfair and is extremely damaging to  
25 my reputation as a professional.

Finally, the school has refused to engage with the GTCS on my behalf on several occasions. First, the GTCS received no response to two requests for a reference. Second, you refused to validate my professional update while I have been off work because of the stress at work. This is  
30 damaging to my career prospects and unfair given my unblemished record at the school over 14 years.

It is now at a stage when I have no option but to resign. The environment has become so hostile and the relationships so negative that it is no

longer possible for me to imagine returning to the classroom. The lack of clarity following the complaint is also very concerning. To anyone else hearing of this incident, it is clear that this should have been treated differently. Instead, you chose to submit me to weeks of confusing and humiliating treatment and then to blame me for the mishandling of a situation over which I had no control.

It is clear that the school currently acts to avoid possible suits from parents rather than to ensure a quality education of a high standard and to tend to the wellbeing of its teachers. This, as I have experienced, created an environment that makes it impossible for teachers to work in the best interests of the young people in the school. There are serious implications for the future standards of the school when teachers become afraid of expecting pupils to do work set and concerned that they may have to apologise for doing their job if a pupil is not happy.”

106. The Rector responded to the claimant on 19 July accepting his resignation and setting out the respondent's position. He referred to the GTCS issue and indicated that he had in the past provided a reference to the claimant (in 2012). He also indicated that the correct way to proceed would have been for the claimant to seek a deferral he indicated that he did not accept the claimant's assertions.

107. The claimant had commenced applying for other jobs during his period of illness. He was unsuccessful. These were jobs in Stirling and Falkirk. He applied for Deputy Head Teacher jobs in various locations. He did not get an interview for any posts. He applied to Perth College and had an interview but did not get the job. He was eventually successful in getting on the supply teaching register for Perth & Kinross Council. He worked four days for them in August 2018. He considered that his inability to obtain a good reference from the respondent would be a hindrance in getting other jobs within teaching. He applied to Robert Gordon University to do a full time MSc course in educational psychology. He felt this would build on his teaching qualifications and experience and open up new career pathways for him. When he was accepted to the course he considered it was sensible to take this up since he felt that it

would be difficult for him to obtain a job at another school. The claimant provided a rationale for his decision in a document which was lodged with the Tribunal (pages 518-520). This also consists a list of jobs which were applied for both before and after his resignation which I accepted as accurate.

5 **Observations on the evidence**

108. I would agree with the position of the claimant's representative that although there is a substantial difference between the parties in their conclusions on some of the facts in this case there is in the end little difference on the bare facts of what occurred.

10 109. In general terms I found the claimant to be an impressive witness. He had a clear grasp of events which was consistent with the contemporary documentary evidence and also with the various notes which I accepted had been made by him virtually contemporaneously. Having given evidence in chief for just over a day he was then subject to 3 days of extremely  
15 comprehensive cross examination. The claimant answered all the questions put to him in a clear and helpful way. The answers given were entirely consistent with his evidence in chief and indeed with the documentary evidence. It appeared to me that not only did the claimant have a good recollection of what had occurred he had also at some point been trained in  
20 the giving of evidence and I took into account that for this reason his evidence might give the appearance of being more reliable than it actually was. Even with this caveat in mind however I found that whilst he answered all of the questions put to him thoroughly and correctly, at the end of the day the cross examination did not make any dents in his recollection or interpretation of the  
25 events.

110. I found Mr Wilson and Mr Blackburn also to be credible and reliable witnesses albeit in each case their evidence was to some extent limited by their partial view of the events which they were referring to. I accepted Mr Wilson's evidence regarding the appeal hearing which he attended. With regard to  
30 Mr Blackburn's evidence I accepted that he was giving an honest account of his understanding of the historic position regarding previous teachers who had

left the school albeit it appeared that he may not have had full information on this. I did accept his evidence about the way some of the teachers, including the claimant, felt about the atmosphere at the school although it has to be said I also accepted the evidence of other witnesses to the effect that some of the other teachers did not feel this atmosphere within the school.

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111. I found Mrs Williams to be an honest witness who was simply telling matters as best as she could recollect. There were some matters she couldn't remember and she, like most of the respondent's witnesses was unclear as to precisely when various notes which had appeared in relation to matters had been completed. I accepted, however, that it was difficult for her and the other witnesses given that they are busy people and the events to which the hearing related had occurred some time previously. In the meantime the witnesses had all given statements to Mr Sharp's investigation and indeed it would appear that a number of documents and file notes were created for the purposes of that investigation. It was only natural that, other than the claimant who had a personal involvement, other witnesses would tend to remember what they had told Mr Sharp rather than have a first hand recollection of events. In general terms, however, I would agree with the claimant's representative that Mrs Williams evidence was consistent with that of the claimant and I generally found it to be both credible and, subject to what I previously said, reliable.

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112. I was less impressed with the evidence of Mr Clarke. It appeared to me that he had little recollection of what meetings had actually occurred other than what he had put in statements to Mr Sharp. It became obvious to me during the course of the hearing that there had been considerable discussion about the matter between Mr Clarke, Ms Hudson and the Rector Mr Halliday. These discussions had led to each of them having a particular view of what had happened and that the claimant was being "intransigent". Mr Clarke appeared to have little recollection of these meetings or what had been said in particular to Ms Hudson and the Rector. When asked about this he indicated he could not remember. During cross examination he was not prepared to make any concessions even to the extent of accepting that the claimant might have been concerned about deferring his GTCS validation because he might lose his job

or that the claimant might be concerned at the matter being escalated to the Deputy Rector and Rector. It appeared to me that Mr Clarke had formed a “corporate view” of the matter which was that the claimant was being intransigent and difficult and that this coloured much of his evidence. In relation to the request for a reference over the Modern Studies accreditation Mr Clarke’s evidence was frankly dismissive. When asked if he had received the email from the claimant indicating that the claimant was happy to contact him over GTCS matters his response was:

“Pass. I imagine I was sent it at some stage”.

He could not explain why he had done neither what the claimant asked him to do nor what the GTCS asked him to do. He said that his response to the GTCS was along the lines of “Why would I give him a general reference. He is already a teacher”. He indicated in his evidence that in retrospect he believed the claimant going off with stress was a cynical move on his part. He denied that that was his view at the time. He also believed that the claimant’s concern over pupil X being allowed to decide not to do RMPS was a “red herring”. When asked whether he agreed that someone should apologise for something when one didn’t believe one had done anything wrong he said:

“When multiple other people are saying your view is incorrect then yes.”

He was then asked if it was sufficient to say what the claimant had said in his eventual response to Ms Hudson after he had received the written summary of the complaint (pages 370/371). He said no. When he was asked the same question later in cross examination he stated that he believed that this was adequate. At the end of the day I agreed with the claimant’s representative’s assessment that Mr Clarke had allowed his espousal of the corporate view to colour his evidence and in respect of those few matters where it did not coincide with that of the claimant I preferred the evidence of the claimant.

113. Ms Hudson gave evidence next. Once again I was not entirely satisfied that she was a credible and reliable witness albeit there was little actual dispute in respect of most of the factual matters she referred to. Once again it was clear

that there had been a number of conversations involving Mr Clarke, Ms Hudson and the Rector which she was not prepared to acknowledge. Despite this she had little difficulty in expressing in evidence the corporate view as to what had occurred based on what either the Rector or Mr Clarke “must have told”  
5 Mr Goodey. With regard to the issue of recording of the meeting her evidence started off strongly but at the end of the day it appeared to me that matters were correctly set out in the statement she had eventually given Mr Sharp. The claimant had indicated that he intended to record the meeting. Ms Hudson had objected to this giving as a reason that the meeting was supposed to be  
10 informal. The claimant had then logically pointed out that this was not what the Rector had said in his email. Ms Hudson had said that she would not herself take notes (albeit this did not prevent her from providing a summary of what she says happened at the meeting). At no stage did the claimant accept or acknowledge the instruction not to record the meeting. His position was that  
15 the recording device was clearly visible with a red light on it. There is nothing in the recording after the device was turned on to indicate that anyone made any objection to it at the time.

114. Much of Ms Hudson’s evidence was defensive and designed to support the corporate position. When she was asked questions which were not specifically  
20 covered by her earlier statement to Mr Sharp the evidence she gave was confused and inconsistent with that of other respondent’s witnesses. It was her position that she had passed the matter to the Rector initially since it involved the point of principle as to whether or not a pupil should be allowed to decide not to do RMPS. This did not accord with the Rector’s evidence. Her  
25 evidence about when she put together her notes was even more confused than that of the general run of the respondent’s witnesses. Although she started off indicating that these were contemporaneous she subsequently moderated her position and I am in absolutely no doubt that many of these notes were put together some time after the events which they described. With regard to the  
30 meeting on 8 February like Mr Clarke she felt that the claimant had an agenda and she felt threatened by this. It was her position that the claimant was acting inappropriately by asking her whether, in her view, he had behaved unprofessionally. She saw this is an attempt by the claimant to trap her rather



than an expression of genuine concern on his part. In her evidence she did accept that she had initially understood that Mrs Williams had told the claimant about the complaint but she now accepted she was mistaken about that and that they had not spoken. She was vague as to whether she told the claimant  
5 it was a formal complaint or not. She accepted that the claimant refers to this in his incident report. Like Mr Clarke she was extremely vague about the interactions that must have occurred prior to the matter being sent to the Rector. She accepted that she had had no direct contact with the claimant over this period but, like Mr Clarke, had formed the view that the claimant was  
10 being intransigent. In cross examination when it was suggested to her that the Rector's letter to Mr Goodey sent after the first meeting makes absolutely no reference to the "policy issue" which she believed was being discussed she essentially backtracked on what she had said before and indicated that this because the rector was trying to 'address the matter in an informal and direct  
15 way'. It was her view that the letter the Rector sent to the claimant on page 81 was an attempt to de-escalate matters. This despite the Rector saying that it had been written by him in a state of extreme frustration after sitting with his head in his hands for a time. At the end of the day I did not find the evidence of Ms Hudson of any particular assistance apart from where it coincided with  
20 the contemporary documents.

115. The Rector, Mr Halliday, gave evidence next and I found his evidence to be equally unreliable. A great deal of his evidence was about what he believed to have happened rather than matters which he had direct experience of. His evidence in respect of the meetings he had with the claimant was difficult to  
25 reconcile with the emails which he sent immediately afterwards. I would agree with the claimant's representative that much of his evidence was based on supposition as to what the claimant had been told by others such as Mrs Williams, Mr Clarke or Ms Hudson. In cross examination he actually agreed with most of the propositions put to him where he did not accept that  
30 there was anything wrong with the approach this demonstrated. His evidence made it clear that he had early on formed the view that the claimant was intransigent and indeed it appeared to me that his view of the purpose of his first meeting with the claimant was to apply additional pressure to the claimant

to bow to the inevitable and proceed in the way being suggested. He also spoke of having received a copy of all of the documents in the case at a time when it was clear from other evidence that practically nothing existed. When challenged over what discussions he had had with Ms Hudson and Mr Clarke and how he had reached the view which he clearly had he was unable to be specific. I agree with the observation of the claimant's representative that whilst the Rector initially denied having raised his voice at the meeting by the end of his evidence he had accepted that he had indeed raised his voice although this was out of frustration with the claimant rather than in an attempt to intimidate. It was also his own evidence as to having been crestfallen when he received the claimant's reply of 2 February (document 85). He said that when he received this document he was crestfallen and remembered putting his head in his hands and saying "Daniel why are you doing this? Why are you not listening? Why are you not seeing the straightforward solution? Why are you being so intransigent?" His evidence was that he did not threaten the claimant with a reprimand at any meeting although this would appear to contrast with what he has said in evidence in relation to the meeting on 8 April which he saw as a direct alternative to taking disciplinary proceedings against the claimant on the basis that the claimant was refusing a reasonable instruction.

116. I did not have any particular issues with the evidence given by Mr Lothian and Mr Srinivasan. Mr Srinivasan was the only member of the original panel to give evidence. His evidence about what the purpose of the panel was was fairly vague. He accepted that they had decided to endorse Mr Sharp's report after giving the claimant the opportunity of meeting with them. He accepted that they had not themselves carried out any additional enquiry. He could not give any evidence as to why this was the case. Mr Lothian's evidence was in fairly short compass regarding the appeal process. I generally found him to be credible and reliable. He accepted that he was not sure whether or not it had been in the remit of the appeal panel to make recommendations as they did. When asked in cross examination whether by the time of the appeal it was fairly clear that there had been an irretrievable breakdown in relations between the claimant and the Rector and Ms Hudson. He indicated that he was certain

there had been a breakdown in the relationship but that he and the appeal panel had hoped to be able to retrieve it. It appeared to me that from his evidence the Appeal panel, having identified the differing perception of events between the claimant and the senior management team had not seen it as in any way part of their remit to actually investigate what had actually happened and who was correct. Their aim from the start appears to have been to try and get the claimant to put matters behind him and move on. His evidence in relation to the reasons why the panel had met with Ms Hudson and the Rector in the absence of the claimant on 15 June was vague. He was unable to say precisely what had occurred other than that he wanted to check things in relation to understanding a number of matters.

117. I considered that Dr Sharp was giving truthful evidence to the Tribunal. He somewhat overlaboured the point of his neutrality in his evidence and it appeared to me that with the benefit of hindsight he recognised that although no longer Bursar he was not quite as removed from the day to day running of the Board as he made out. It did appear to me that whilst he had set out to produce a comprehensive report and had indeed done so his report lacked focus in that obvious questions which ought to have been asked had not been asked. In particular he appeared to be completely non-judgmental about the senior management team. To some extent the criticisms of his report are better set out in the discussion in relation to the evidence and the decision below.

### **Issues**

118. The sole issue to be determined by the Tribunal was whether or not the claimant had been unfairly constructively dismissed. In the event of success the claimant sought compensation. It was the respondent's position that if the claimant did succeed then any compensation ought to be reduced because the claimant had failed to take steps to mitigate his loss.

### **Discussion and Decision**

119. Both parties submitted written submissions together with brief further submissions which commented on the written submissions made by the other

party in the first instance. I found both of these submissions extremely helpful and indeed I found the comprehensive list of authorities lodged by the respondent to be of considerable assistance. There was little dispute between the parties as to the law and the relevant authorities although obviously they differed as to how they should be applied in the current case.

120. The claimant claims that he was unfairly dismissed. The right not to be unfairly dismissed is contained in Part X Chapter 1 of the Employment Rights Act 1996. In this case the claimant resigned but it is his position that he resigned in circumstances which amounted to a dismissal in terms of section 95. It is as well to set out the relevant parts of section 95. It states:

“(1) For the purposes of this part an employee is dismissed by his employer if (and subject to sub- section (2) ....., only if) ....

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

121. In the event that I decided that the claimant had been dismissed the Tribunal then has to go on to consider the terms of section 98 as to whether or not such a dismissal was fair.

122. The concept of constructive dismissal is one which has received considerable attention from the higher courts and in her submissions the respondent’s representative comprehensively sets out the relevant law on the subject. The claimant’s representative helpfully indicated in his further submissions that he adopted her explanation of the relevant law albeit not its application to the facts of the case.

123. The well-known case of ***Western Excavating (ECC) Limited v Sharp*** [1978] IRLR 27 confirms that the test is whether the employer acted in fundamental breach of his Contract of Employment with the employee. The case goes on to note that the breach must be fundamental and go to the root of the Contract, that the employee must resign in response to that breach and that the

employee must not delay too long after the breach before doing so lest the employee be considered to have affirmed the Contract.

124. In this case the claimant's position is that the contractual term which was breached by the respondent was the implied term of trust and confidence. This was defined in the *Malik v BCCI* [1997] IRLR 462 as requiring that the employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence and trust between employer and employee. Over the years the applicable law in this type of case has been refined and one of the aspects of this refinement which has been of considerable importance is that of the last straw doctrine. The respondent's representations make reference to the cases of *J V Strong and Company v Hamill* [2001] All ER, *London Borough of Waltham Forest v Omilaju* [2005] IRLR 35 CA and *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] EWCA Civ 9. Both the claimant and the respondent relied on the extensive review of the authorities set out by Lord Justice Underhill in the *Kaur* case. In the *Kaur* case the approach to be taken by a Tribunal is summed up fairly succinctly to the effect that the Tribunal should ask itself the following questions:

1. What was the most recent act (or omission) on the part of the employer which the employee says caused or triggered his or her resignation?
2. Has he or she affirmed the contract since that act?
3. If not was that act (or omission) by itself a repudiatory breach of contract?
4. If not was it nevertheless a part (applying the approach explained in *Omilaju*) of a course of conduct comprising several acts and omissions which viewed cumulatively amounted to a repudiatory breach of the *Malik* term. (If it was there was no need for any separate consideration of a possible previous affirmation for the reasons given at the end of paragraph 45 in *Kaur*).
5. Did the employee resign in response or partly in response to that breach?

125. As can be seen, the Kaur case assists the tribunal in dealing with cases such as the present one where it may be thought that there is an apparent conflict between the last straw doctrine and the concept of a cumulative breach on the one hand and the doctrine that an employee must not delay too long before resigning after a repudiatory breach lest they be deemed to have affirmed the contract. It is probably as well to quote from paragraph 45:

“Thirdly, even when correctly used in the context of a cumulative breach, there are two theoretically distinct legal effects to which the ‘last straw’ label can be applied. The first is where the legal significance of the final act in the series is that the employer's conduct had not previously crossed the *Malik* threshold: in such a case the breaking of the camel's back<sup>[4]</sup> consists in the repudiation of the contract. In the second situation, the employer's conduct has already crossed that threshold at an earlier stage, but the employee has soldiered on until the later act which triggers his resignation: in this case, by contrast, the breaking of the camel's back consists in the employee's decision to accept, the legal significance of the last straw being that it revives his or her right to do so. I have thought it right to spell out this theoretical distinction because Lewis J does so in his judgment in *Addenbrooke* which I discuss below; but I am bound to say that I do not think that it is of practical significance in the usual case. If the tribunal considers the employer's conduct as a whole to have been repudiatory and the final act to have been part of that conduct (applying the *Omilaju* test), it should not normally matter whether it had crossed the *Malik* threshold at some earlier stage: even if it had, and the employee affirmed the contract by not resigning at that point, the effect of the final act is to revive his or her right to do so.”

126. The claimant's representative set out the claimant's position in his submissions as being that the breakdown of trust and confidence essentially developed over 4 stages. The first stage related to the way that the claimant was treated by his senior managers in relation to the complaint of unprofessional conduct against him. It was his position that he was not supported but that each sought to take the side of the parent and pupil against him. The second stage was the

way the claimant was treated at the meeting on 8 February and its aftermath and in particular the way the respondent through Ms Hudson and the Rector continued to blame the claimant for the failure to resolve the matter and their subsequent decision to instigate an investigation outwith the respondent's formal grievance processes which was to include an investigation of the events leading to the incident on 15 January with pupil X and how that incident was dealt with by the claimant. The third stage was the way that the formal grievance itself was dealt with culminating in the decision communicated to the claimant that his appeal was not upheld. The grievance appeal outcome was conveyed to the claimant in a letter dated 25 June 2018 and is the last event in the timeline before the claimant's resignation on 17 July. Whilst the appeal process was ongoing, however, it is the claimant's position that there was a further stage in the destruction of his trust and confidence in the respondent which was in relation to the way the respondent dealt with (1) his application for a reference to allow him to add teaching Modern Studies to his registration, (2) the way they dealt with the application for a reference from Perth and Kinross School for supply work and (3) the way they dealt with his application for the completion of the appropriate paperwork to enable him to complete the 5 yearly validation of his teaching certification. Having noted the terms of the respondent's submissions the claimant refined this in his further submissions to 3 aspects of the conduct of his senior managers in relation to the complaint and thereafter insisting on an internal investigation in January or February, the outcome of the investigation by Mr Sharp and the way the grievance hearing and appeal hearing were thereafter conducted. Of the 2 instances where the claimant sought assistance from the respondent in connection with his professional certification. I understand from this that the claimant was referring purely to the instance of the alleged refusal by Mr Clarke to provide a reference in respect of Modern Studies registration by Mr Clarke and the Rector to provide the appropriate documents in connection with the 5 yearly validation of his GTCS certification.

127. Having considered the evidence and applied the law as stated in *Kaur* then it does appear to me to be clear that the respondent did act in a way which was likely to destroy or seriously damage the relationship of confidence and trust

between employer and employee. I also consider that their behaviour was calculated to do this.

128. The initial incidents between pupil X and the claimant was a fairly minor one. The evidence was that being told to work with other pupils outwith a pupil's immediate friendship group is something which many pupils do not enjoy. Many pupils complain about it. It is something which is often not popular. Those responsible for determining educational policy in Scotland have decided that it is something which should be done and the claimant as a professional teacher was simply carrying out his job when he behaved as he did. The complaint which was made by Mrs X was in relation to him telling her daughter not to leave the room when he was speaking to her which could not in any way be regarded as unprofessional and that the claimant had made some sort of noise. The noise was repeated by the claimant several times during the hearing. I accept he was trying honestly to repeat the sound and it would appear to lie somewhere between a sigh of resignation and a growl of frustration.

129. In evidence Ms Hudson confirmed that the term "unprofessional conduct" is the term used by the GTCS for conduct which can lead to the deregistration of a teacher. Ms Hudson's evidence was that the claimant would have 'known fine' that Mrs X was not using the term in this way. However although Ms Hudson said this at the Tribunal hearing it is clear that, at the meeting on 8 February, when the claimant specifically asked Ms Hudson whether or not she thought he was guilty of unprofessional behaviour, clearly a matter of considerable concern to him, she did not say this. She refused to answer the question and at the Tribunal hearing her position was that she felt threatened by the claimant asking this question. Other comments made both by her and the Rector showed that they wished to leave the claimant under the impression that if he did not toe the line then he could be facing further proceedings over the incident.

130. Mr Clarke was said by the claimant to have referred to the matter as a storm in a teacup. In evidence Mr Clarke did not accept he said this but then later on



in his evidence accepted that this is something he may well have said since it was a phrase he used.

131. I have absolutely no doubt that the way the matter was thereafter handled by the respondent amounted to a breach of the implied term on its own.

5 132. The respondent has a written policy as to how complaints are dealt with which they comprehensively ignored. The policy is not contractual and I do not suggest that it was a breach of contract *per se* for them to do this. What they did however, on any reading of the facts, was to behave in a way which would destroy trust and confidence in any professional employee. The claimant was initially told by Ms Hudson that he is facing a formal complaint. He had been made aware that pupil X and her mother were complaining about the incident before this by Mrs Williams and Mr Clarke. His position at that stage was no doubt that he could not believe that what had occurred merited him being formally investigated for unprofessional conduct. Nevertheless I have no doubt on the basis of the evidence that this was what he was told by Ms Hudson. He makes specific reference to this in the letter he wrote immediately afterwards. He then decides that despite the respondent's failure to follow procedure he will produce a response in accordance with their procedure. He sends in his incident report which sets out his position in the matter, expresses his regret at how matters have been perceived by the pupil and suggests a way forward. He also expresses concern that apparently a longstanding school policy that RMPS is a compulsory subject is being abandoned in the case of pupil X.

133. He then effectively hears nothing else until he is told that the matter is being escalated to the Rector, the most senior person in the school. He then had a series of meetings with the Rector where it is clear that he is being blamed for the fact that the matter has not been resolved despite not having had any opportunity to resolve it nor indeed been specifically told what the problem is.

134. In many cases where an employer's behaviour is said to be in breach of the implied term the employer is able to say that they were unaware of this at the time. That is most certainly not the case here. What strikes one in this case is that throughout the whole process the only person to be accurately setting

out the correct position and accurately setting out the effect matters were having on him was the claimant. Had the respondent's management team, Ms Hudson or Mr Halliday or indeed Mr Clarke stopped for a moment to consider matters and to actually read the emails which were being sent to them by the claimant then they would have realised that their position in terms of employment law was completely untenable.

135. The claimant had been told that he faced an allegation of professional misconduct. He was clearly treating this seriously and it was absolutely clear from his emails that this was something which was of considerable concern to him and indeed causing him stress. His position was that he considered the issue with pupil X should be dealt with at a pastoral level involving the pupil's Guidance Teacher. It would appear from the evidence that the position of the senior management team was to treat the claimant's perfectly legitimate concerns as amounting to insubordination. The clear view being expressed was that the reason for the impasse between Mrs X and the school was the claimant's intransigence. The claimant was told that he should apologise and that it was his unreasonable failure to do this that was causing the problem. This is despite the claimant clearly stating in his report that he had not intended to be dismissive or disrespectful to pupil X and indeed in spite of the fact that by this time pupil X appears to have been told that the claimant had apologised (see her email of 24 January 2018 (page 375)); such apparent apology not having the result which the management team believed it would have. I consider that the tone of the Rector's emails to the claimant are obvious. The claimant has set out his concerns in a reasoned logical manner which has regard to the actual facts of the case. Whilst I appreciate that the Rector is no doubt an extremely busy person it was clear to me that he had formed a view on the matter based on his discussions with Ms Hudson and Mr Clarke which was not justified. He clearly believed that the difficulty was that the claimant was being intransigent and refusing to engage with the matter. This is at a time when on the basis of the evidence of the respondent's own witnesses, it is clear that no-one had actually sat down and told the claimant what the actual complaint was.

136. The claimant logically and politely sets out his position in his emails. It would appear from the evidence that he was met with an authoritarian response that he should do as he was told.

5 137. What the claimant was being told to do was to apologise for unprofessional conduct which he had not committed in a context where a finding of unprofessional conduct could damage or even end his career. The respondent as employers were not entitled to demand this apology and my finding is that quite clearly they did. It was clear to me from the Rector's evidence that, even many months after the event, he felt considerable frustration at the fact that the  
10 claimant was not doing what he was told. I am in absolutely no doubt that the claimant found the meetings between himself and the Rector extremely threatening and unpleasant.

138. The outcome of the series of meetings is that there is to be a final meeting to sort matters out. I listened to the recording of this meeting and there is a  
15 transcript. Once again it is clear that the claimant's position was logical, well ordered and based on the facts. The position of the respondent's management however was that the claimant was being insubordinate and indeed they found the fact that he referred them to their legal obligations to be threatening.

139. Nevertheless, at the end of the meeting, largely through the claimant's  
20 positivity, a way forward was found. The senior management team would finally provide the claimant with a copy of the complaint or indeed produce a statement of the complaint since at that point the complaint had not been reduced to writing by anyone. The claimant would then produce a response in which he would set out what he would say at a putative meeting would take  
25 place between himself and pupil X or Mrs X.

140. I would pause at this stage to say that on the basis of the evidence this was an extremely high handed and demeaning way to treat a teacher and Head of Department of the claimant's experience. The clear suggestion was that he could not be trusted to speak to pupil X without clearing what he was going to  
30 say in advance with the senior management team. The claimant himself makes passing reference to this fact in his further correspondence. I do think

that that in itself marks the degree to which trust and confidence had been removed in this case.

141. Since the respondent has raised the issue of acquiescence I should record that I entirely agree with the claimant's position that there was no acquiescence by the claimant during this period. His position is that he has been treated badly and he does not understand there to be any possible legitimate reason for this. I have no doubt he genuinely believed that the history he narrated of previous senior teachers being "vanished" from the school did prey on his mind at this time. I did not consider that it was necessary that I make any specific findings regarding this but I do note that the claimant makes reference to this at the time and that during the whole process there was little or no attempt by any of the managers involved to assuage his concerns.

142. Having agreed a way forward at the meeting on 8 February the claimant is then faced with Ms Hudson's email in which she advises that the Rector has decided to set up an investigation. The claimant was aware that he had not lodged a formal grievance. Such investigation would therefore not provide him with any of the protections involved in the respondent's formal grievance procedure. Furthermore, the management team then made it clear that the terms of reference of the investigation would not simply be into his allegations about bullying and harassment, which was the original pretext, but would also be into the claimant's own behaviour in response to the complaint. The claimant was also concerned that it was to be carried out by the Bursar who was a member of the management team reporting to the Rector who was the person he was complaining about. I consider that all of these matters would be calculated and likely to destroy mutual trust and confidence between employee and employer.

143. The claimant then lodges a formal grievance. Mr Sharp is asked to conduct a grievance investigation and produce a report. As well as investigating the matter it is clear that Mr Sharp actually reaches conclusions which are to the effect that the grievance should not be upheld.

144. As noted above I consider that Mr Sharp did carry out a considerable amount of work in obtaining statements from the various witnesses. I do however feel

that he allowed the witnesses to dictate the agenda to a quite extraordinary extent. He did not ask a number of questions which ought to have been asked. It appeared to me that he did not apply his critical faculties whatsoever to what he was being told. Those findings he made which upheld the claimant's position were the bare minimum which could be made in the circumstances given the undoubted facts of the matter. The claimant, by this time was off with stress. He hoped that the outcome of the grievance would allow him to continue with the job he had enjoyed for 12 years. What is clear however is that the respondent was not dealing with this as a normal grievance but were also seeking to use the grievance process to investigate the maker of the grievance i.e. the claimant. Mr Sharp as a former Bursar of the school was not in any way independent given that he had had a strong prior working relationship with the Rector and Deputy Rector against whom the grievance had been made. The grievance investigation was skewed. I agree with the claimant's representative that it was extremely odd that Mr Sharp sought to interview Mrs Watson as Head of Guidance who had had absolutely no involvement in the matter. The reason given by Mr Sharp was that he wanted to seek her views of the claimant and the manner in which he had approached the situation. This does not seem an appropriate way of conducting a grievance investigation into the actings of the Rector and Deputy Rector.

145. Whilst there was a grievance meeting it is clear that the panel simply wished to rubber stamp Mr Sharp's report. Mr Bett, who did not give evidence, specifically refers, in his letter of 11 April to the claimant (p437), to Mr Sharp having not upheld the grievance but the panel wishing to give the claimant an opportunity to discuss matters. He takes the opportunity to praise what he refers to as:

“the extremely thorough, professional and objective approach taken by Mr Sharp”.

He said this prior to the claimant's grievance meeting. In his letter to the claimant subsequent to the grievance meeting it is noteworthy that the panel

made absolutely no alterations or comments adverse to Mr Sharp's report. This is particularly the case given the very clear and obvious problems with it.

146. Whilst the grievance process is going on the claimant has occasion to contact the school in relation to references. In both cases he was met with a formalistic  
5 unhelpful response. Mr Clarke's position in evidence was that he couldn't give a reference because the claimant had not taught Modern Studies at the school. When the GTCS suggested he could provide a standard reference for the claimant to confirm he shot down this idea saying why should he provide a reference saying that he was a teacher. It was clear from the evidence of the  
10 senior management team given at the Tribunal hearing that they all felt a degree of animus towards the claimant and it was clear to me that this animus was quite correctly detected by the claimant when he received the responses to the requests he made.

147. With regard to the GTCS reaccreditation this related to a 5 year period ending  
15 in June 2018. The claimant had been at the school during the whole period up to February 2018. The school were well aware of his skills. During this period he met on a regular basis with Mr Clarke. He met twice yearly with the Rector. He had also spoken at foreign conferences and was a member of a GTCS Committee. It appeared to me that the claimant's interpretation that the Rector  
20 and Mr Clarke were being obstructive was one which he was perfectly entitled to take on the basis of the evidence.

148. The claimant then attended the appeal hearing and I accepted the evidence of the claimant and his companion that this hearing had apparently gone well. He had some hopes that the issues which he had raised would be addressed.

25 149. Following the appeal meeting however the appeal panel decided to have a private meeting with the Rector and Deputy Rector to which the claimant was not invited and where no notes were taken. Whilst it is not clear whether the claimant was aware of this at the time he resigned I considered the claimant's representative to be correct in pointing this out as a potential reason for the  
30 apparent change in attitude of the appeal panel between the hearing and the promulgation of their decision.

150. In my view there is absolutely no doubt in this case that cumulatively all of the above facts comprising many different acts and omissions amount to a repudiatory breach of the implied term of trust and confidence. I also consider that the issuing of the appeal judgment was part of that course of conduct and  
5 that the claimant was entitled to treat this as a last straw. After this it would be clear to the claimant that those responsible for governing the school had absolutely no intention of interfering with the Rector's conduct. There was absolutely no prospect of him being treated fairly in the future if the senior management team could proceed as they had with complete impunity.

10 151. I believe that the situation here was similar to the second situation envisaged by the court in paragraph 45 of Kaur as set out above. The employer's previous behaviour had already crossed the threshold of amounting to repudiatory conduct. The claimant's situation was precisely that of an employee who  
15 soldiers on after that for a time before finally resigning in response to the last straw. Looking at matters in the round, as mentioned above, I am not of the view that the claimant could be held to have affirmed the contract following the initial breaches of the implied term but if I am wrong the last straw had the effect of reviving the claimant's right to accept the repudiatory breaches and resign. The claimant delayed between 28 June and 17 July before resigning.  
20 His evidence was to the effect that he was considering matters over this period. He had worked for the respondent over a number of years and held a promoted post. By this time he had also been seeking other employment and knew that it was not going to be at all easy to obtain a post at his previous level. It was entirely reasonable for him to spend some time considering matters in the  
25 round. On the basis of the evidence I had absolutely no doubt that he resigned in response to the various breaches of the implied term by the respondent, the last straw being the outcome of the appeal. It is my view that he did not delay in resigning. I do not consider that the fact that he was presumably still in receipt of sick pay over this period amounted in any way to an affirmation of  
30 the contract.

152. It is my view that the claimant was entitled to treat himself as dismissed. I then have to consider whether or not the claimant was unfairly dismissed in terms

of section 98. I was referred by the respondent to the case of ***Alders International Limited v Parkins*** [1981] IRLR 68. The respondent's position was that if I found, as I have, that the claimant was dismissed, that the reason for dismissal was some other substantial reason, namely that the claimant had formed a belief that there was a breakdown in his relationship with the Rector and Deputy Rector and the claimant was unwilling to try and address this through mediation or involvement in the group suggested by the appeal panel to address perceived concerns about culture within the school. I do not accept that this was a reason for dismissal. The reason for dismissal was that the respondent's management team for some reason adopted a fixed view at the outset of the matter that the claimant was in the wrong. They were not prepared to engage properly with the claimant in any way in trying to resolve matters and instead wished to bully the claimant into submission. This is not a reason falling within section 98(2).

15 153. Nevertheless, even if I am wrong in this, applying section 98(4) and looking at overall fairness clearly demonstrates, in my view, that the dismissal was unfair and outwith the band of reasonable responses.

154. The respondent was faced with a situation which must occur many times a week up and down the country. A parent is unhappy about the way a teacher has interacted with their child. Instead of dealing with the matter properly the respondent's management sought to bully the teacher into apologising. When the teacher remonstrated about this it was seen as a further sign of insubordination. When the teacher complained about bullying and harassment he was faced with the threat of a bespoke investigation into his own behaviour. When he raised a grievance the grievance investigation was not carried out correctly. A grievance panel was set up which simply rubber stamped the grievance. A grievance appeal was then set up which despite initially appearing to be supportive of the claimant's concerns thereafter met privately with the senior management team and decided to completely uphold the decision of the original investigation. There is no doubt in my mind that the dismissal was unfair.



## Remedy

155. The remedy sought by the claimant is that of compensation. The claimant produced a Schedule of Loss at page 507-509.

5 156. The claimant was employed for 13 full years during all of which he was above the age of 41 years. The claimant's gross weekly pay as at the date of termination was £839.12. His net pay was £563.28. The claimant's position was that had he remained in employment he would have received an increase in his pay from 1 August 2018 to £864.29 gross, £578.08 net.

10 157. The claimant was entitled to a basic award of 19.5 weeks' pay. His gross pay as at the date of termination is above the statutory maximum and his basic award is therefore calculated at the applicable statutory maximum of £508 giving a basic award of £9906.

15 158. With regard to past losses the claimant claimed at the rate of £563.28 per week from the date of termination to 31 July 2018 (£1126.56) and at the rate of £578.08 from 1 August 2018 to 29 October 2018 (12.86 weeks (amounting to £7434.11)). His total wage loss to the date of the start of the Tribunal was therefore £8560.67.

20 159. The claimant received the benefit of pension contributions paid by the employer of 17.2% of salary. This amounts to £144.33 per week to 31 July 2018 and £148.66 per week to 1 August 2018 onwards. Adding the value of pension contributions to the date of the tribunal (£2200.43) to the wage loss gives total wage loss including pension contributions up to the start of the Tribunal of £10,761.10

25 160. It was the respondent's position that the claimant had failed to mitigate his loss by applying for suitable jobs. It was also their position that apart from the Perth College job he had not applied for any teaching jobs following his dismissal but had instead chosen to start on a full time university course.

161. The claimant set out his rationale for his decisions in a document lodged at page 518 to 520. It is clear to me that the claimant's initial position faced with

the respondent's behaviour the claimant's was that his job at the respondent's school was in jeopardy. He therefore took steps to apply for jobs whilst still employed. He did not however obtain any interviews at all for jobs at his level. The claimant was faced therefore with how to provide for himself going forward.

5 The course of study which he has embarked on will provide him with an opportunity to obtain employment at around the same level of remuneration he would have received from the respondent. Albeit some years in the future once his course is completed. I believe he is correct in his assumption that the alternative would have been for him to carry on as a supply teacher until he

10 was able to obtain other employment but this would be at the level of an ordinary teacher rather than in the promoted post which he held. I also accepted his position stated in evidence that whilst there is a shortage of some types of teacher, other areas, including his own areas of speciality, do not have such shortages.

15 162. At the end of the day the claimant is under a duty to take reasonable steps to mitigate his losses. One way of looking at that is to look at what a reasonable person who was not going to be obtaining compensation would do in order to maximise their income and professional prospects going forward. It appears to me that although it is more finely balanced in this case than in many cases

20 the claimant was indeed acting properly to mitigate his losses in deciding to obtain a further qualification in a different area of study rather than proceed down the alternative route of taking on supply work until he could obtain a full-time job as a teacher which might well be some time in the future and in any event would not result in him ever returning to his previous rate of pay in the

25 foreseeable future. In those circumstances I consider that the claimant's calculation of future loss of earnings of £115,945 and £29,816.74 in respect of pension contributions is correct. I also agree with the claimant's assessment of the value of loss of statutory rights at £500. The total award (before applying the statutory cap) is therefore as follows:

30	Basic award	£9606
	Total wage loss	£124,506.17

Total pension loss	£32,017.17
Loss of statutory rights	£500
Less earnings	£781.45

5 Total compensatory award is therefore £156,241.89. The compensatory award is subject to the statutory cap. In this case the statutory cap of 52 times a week's pay is the relevant figure. That having been said it appears to me that the week's pay of £839.12 requires to have added to it the pension contribution per week of £144.33 and the total figure of £983.45 used in calculating the statutory cap. This is in line with the judgment in the case of  
10 ***University of Sunderland v Drossou*** UKEAT/0341/16/RN. The statutory cap is therefore £51,139.40. (52 x 983.45). The compensatory award in this case is therefore £51,139.40. The basic award is £9606. The total monetary award is therefore £60,745.40. There were no recoupable benefits paid in this case and there is therefore no prescribed element.

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Employment Judge: Ian McFatridge  
Date of Judgment: 30 July 2019  
Date sent to parties: 30 July 2019

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