



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

**Mrs M Pacitti**

**v Chesham Preparatory School Trust  
Ltd**

**Heard at:** Watford

**On:** 28-31 October, 1, 4-5 and 7 November  
& 16-17 December 2019

**Before:** Employment Judge Smail  
Mr R Eyre  
Mr A Kapur

## Appearances

**For the Claimant:** Ms S Sleeman (Counsel)

**For the Respondent:** Mr M Salter (Counsel)

## JUDGMENT

1. The Claimant was constructively unfairly dismissed by the Respondent.
2. While the Claimant made at least one protected disclosure, protected disclosure(s) were neither the reason nor the principal reason for the dismissal.
3. The Claimant was not subject to detriments on the ground that she made one or more protected disclosures.
4. A remedy hearing will be arranged in due course unless the parties can come to terms in respect of remedy.

## REASONS

1. By a claim form presented on 28 September 2017 the Claimant brought claims of detriments on the ground of having made protected disclosures. By a further claim form presented on 5 April 2018 the Claimant claimed constructive unfair dismissal in terms both of general unfair dismissal and in terms of alleged automatic unfair dismissal, the principal reason alleged was that she had made protected disclosures. She claimed further detriments on the grounds of protected disclosure.

2. The Claimant was employed by the Respondent from 1 September 2015, initially on a temporary contract as a teaching assistant. The Claimant resigned from her employment on 29 January 2018 claiming a constructive dismissal.

**Agreed list of factual and legal issues**

3. These appear at Appendix 1.

**The protected disclosures relied upon**

4. The Claimant contends that she made protected disclosures in her letter of 7 March 2017 to the Governors sent via Caroline Hughes, the school bursar. The Claimant disclosed the following information in her letter, she contends:
  - 4.1 At the end of February 2017 it had been announced that Carl Batchelder, a teacher at the school, was leaving the Respondent to join Wetherby Preparatory School. The Chair of the Respondent Board of Governors, Nick Baker, is the Head Teacher of Wetherby Prep. There was widespread concern amongst teachers and staff that Nick Baker had recruited Carl Batchelder.
  - 4.2 In December 2016 Nick Baker had told the Claimant that he was one of two staff he would recruit for Wetherby. Nick Baker was married to a member of staff and introduced a salary scheme to Chesham Prep from his own school, Wetherby Prep.
  - 4.3 The Claimant contended that staff were in abject fear of raising concerns because of the Chair's position and influence in the school to include a salary scheme and that they were frightened to speak up.
  - 4.4 The Chair of Governors had a staff meeting where he said that he could be contacted directly with staff concerns, notwithstanding procedures in the staff handbook.
  - 4.5 Parents, friends of the Chair of Governors, had told her that he had said to them that he would "get them up the waiting list" and "keep a place open for us". She expressed her concern that the Chair was running a private members club.
5. The Claimant formalised her concerns under the Respondent's whistle-blowing policy on 14 March 2017.
6. The Claimant contends that in a meeting on 23 March 2017 with Governors of the school to discuss the concerns raised in her letter of 7 March the following additional information was disclosed:

- 6.1 Two members of staff had told her how surprised they were that Carl Batchelder was going to Wetherby.
- 6.2 The Claimant referred to Stephen Blundell and that the Respondent paid for his training. She repeated that at the 2016 Christmas party the Chair had told her that he would recruit Carl Batchelder.
- 6.3 The Claimant's workplace companion, Hilary O'Connell, stated that there were four members of staff that had been poached: Henry Elstub, Stephen Blundell, Jane Balgobin and Carl Batchelder.
- 6.4 The Claimant stated that the Chair of Governor's wife got special treatment and no-one could chastise her because her husband was the Chair.

## **THE LAW**

### **Protected Disclosures and detriments**

7. The legislative framework part IVA of the Employment Rights Act 1996 states as follows:

#### **S.43A Meaning of Protected Disclosure**

In this Act a protected disclosure means a qualifying disclosure as defined by s.43B which is made by a worker in accordance with any of s.43C to s.43H.

#### **S.43B Disclosure Qualifying for Protection**

- (1) In this part a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following ...
  - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

#### **S.47B Protected Disclosures**

- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
- (1A) A worker "W" has the right not to be subjected to any detriment by any act, or any deliberate failure to act done –
  - (a) By another worker of W's employer in the course of that other worker's employment, or

(b) By an agent of W's employer with the employer's authority on the ground that W has made a protected disclosure."

8. By s.48 a complaint may be made to an employment Tribunal that a worker has been subjected to a detriment. On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act was done.

### **Constructive dismissal**

9. By s.95(1) era 1996 an employee is dismissed by his employer... (c) where 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.

### **Dismissal for the reason of protected disclosure**

#### **S.103A ERA 1996 : Protected disclosure**

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

### **Time limits: complaints of detriment by s.48(3)**

11. An employment Tribunal shall not consider a complaint under this section unless it is presented –
- (a) Before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failure, the last of them, or
  - (b) Within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (4) For the purposes of sub-section (3):
- (a) Where an act extends over a period, the date of the act means the last day of that period and
  - (b) A deliberate failure to act shall be treated as done when it was decided upon.

And, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he

has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

12. The Tribunal is going to be concerned with the application of the phrase “not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer *done on the ground that the worker has made a protected disclosure*. What does “on the ground” mean in this context? We have been referred to NHS Manchester v Fecitt CA [2012] ICR 372 which tells us that in order for a detriment to be on the ground of the protected disclosure it has to “materially influence” - that is in a sense of more than trivially - the treatment. It is not a “but for” test. The Respondent submits that the Tribunal has to examine the state of mind of the employer and discern whether there is a causal link between the disclosure and the act complained of.
13. The Claimant’s representative drew our attention to Blackbay Ventures v Gahir EAT [2014] IRLR 416. That laid down the following principles:
  - (a) Each disclosure should be separately identified by reference to date and content.
  - (b) Each alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered as the case may be, should be separately identified.
  - (c) The basis upon which each disclosure is said to be protected and qualifying should be addressed.
  - (d) Save in obvious cases, if a breach of legal obligation is asserted, the source of the obligation should be identified, capable of verification by reference, for example, to statute or regulation. It is not sufficient for the Employment Tribunal to simply lump together a number of complaints, some of which may be culpable but others of which may simply have been references to a check list of legal requirements, or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the Employment Tribunal undertakes this exercise, it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the Employment Tribunal adopts a rolled-up approach, it may not be possible to identify the date when the act or deliberate failure to act occurred, as logically that date could not be earlier than the latest act or deliberate failure to act relied upon and it will not be possible for the Appeal Tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure. It is of course proper for an employment Tribunal to have regard to the cumulative effect of a number of

complaints provided always that they have been identified as protected disclosures.

- (e) The Employment Tribunal should then determine whether or not the Claimant reasonably believed that the disclosure of information was made in the public interest and tended to show one or more of the prohibited matters.
  - (f) Where it is alleged that the Claimant has suffered a detriment short of dismissal, it is necessary to identify the detriment in question and, where relevant, the date of the act or deliberate failure to act relied upon by the Claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence, the failure of the Respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act.
14. We accept from Ms Sleeman that there is no requirement for the information disclosed to be factually correct: Babula v Waltham Forest College [2007] IRLR 346 (CA). We also accept following the Employment Appeal Tribunal in Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 that a mere allegation may fall short of communicating information. We further accept that the information disclosed need not be new to the recipient as also confirmed in Cavendish Munro.
15. We were referred to the recent decision of the Supreme Court in Royal Mail Group Ltd v Jhuti [2019] UK SC55. That dealt with the situation that the dismissing officer was unaware of the true reason the employee was referred to a disciplinary process which was that a protected disclosure was made notwithstanding that ignorance, the reason for the dismissal could nonetheless be the protected disclosure. The issue of hidden reason does not really apply to our case.
16. Chesterton Global v Nurmohamed [2018] 1 All ER 947(CA) identified four factors to be considered when identifying whether the public interest has reasonably been evoked:
- 16.1 The numbers in the group whose interest the disclosure serves.
  - 16.2 The nature of the interest affected and extent to which they are affected by the wrongdoing disclosed – the disclosure of wrongdoing directly affecting the very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect.
  - 16.3 The nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than disclosure of inadvertent wrongdoing affecting the same number of people.

- 16.4 The identity of the alleged wrongdoer – the larger or more prominent the wrongdoer in terms of the size of its relevant community, ie staff, suppliers and clients, the more obviously should a disclosure about its activities engage the public interest.
17. 'Detriment' does not require the Claimant to show physical or an economic consequence; simply that a reasonable worker would or might take the view that she had thereby been disadvantaged in the circumstances in which she had thereafter to work.
18. As to causation and burden of proof, bearing in mind it is for the Respondent to show the ground on which the act or deliberate failure to act was done: in Fecitt v NHS Manchester & others [2012] RLR 64 the Court of Appeal drew attention to the need for Tribunals in whistle blowing cases to look with a critical – indeed sceptical – eye to see whether the innocent explanation given by the employer is indeed the genuine explanation. If the employer does not provide a permissible reason for the treatment, the Tribunal is entitled to infer that the detriment was on the ground that the worker made a protected disclosure: Ibekwe v Sussex Partnership NHS Foundation Trust UK EAT/0072/2014.

**Civil obligations relied upon.**

19. These are described in the agreed list of legal and factual issues as follows:
- 19.1 The Claimant contends that the disclosures within her letter of 7 March were qualifying disclosures because they contain information tending to show that the Respondent had failed or was failing or was likely to fail to comply with a legal obligation to which they were subject. The Respondent is a registered charity subject to the Charity Commissions Code and the company limited by guarantee. The Board of Governors of the Respondent are both trustees and directors of the same and fiduciary duties of common law and duties under statute under the Companies Act 2006.
- 19.2 The Claimant further contends that the Chairman, Nick Baker, was in breach of his legal duties under the Companies Act as a director and trustee to (i) promote the success of the Respondent; (ii) exercise independent judgment and (iii) avoid conflicts of interest.
- 19.3 The way in which the Respondent interpreted the effect of the Claimant's position was as an assertion that Mr Baker had poached Carl Batchelder as an employee from Chesham to Wetherby, that is to say by actively seeking to persuade Mr Batchelder to leave Chesham and join Wetherby.

## FINDINGS OF FACT RELATING TO THE ISSUES

### Relationship of alleged disclosures with the Head Teacher issue

20. It is appropriate to mention the context of these alleged disclosures in relation to the problems the school was having with its former Head Teacher at the time. The Governors chose to dismiss the former Head Teacher, Mr Michael Davies. The Governors had been approached by a significant number of members of staff complaining about the conduct of Mr Davies. Anonymous posters had been put up on notice boards around the school to the effect that Mr Davies was abusing his authority. There was a significant breakdown in relations between Mr Davies and a sizeable number of staff. The Governors decided to act by way of dismissing Mr Davies.
21. Mr and Mrs Pacitti were good friends with Mr and Mrs Davies. They had been on holiday together. Mr and Mrs Davies had rented property belonging to Mr and Mrs Pacitti around this period. There is nothing wrong with any of that but it is a feature of the evidence that the Claimant and her husband were close to the Davies. We are given relevant information about this by Mrs Rudol who was also known by her maiden name, Ms O'Connell, during the history of this matter. Mrs Rudol tells us that the Claimant was very close friends with Mr and Mrs Davies. They socialise a great deal and were supportive of each other. Mr Davies and his wife sometimes babysat for the Pacittis and the Davies' were often at the Claimant's house. We are told that Mrs Pacitti also helped Mrs Davies through difficult times. Mrs Rudol tells us that over time her own relationship with the Claimant had changed. Prior to the issues in this case being raised she would describe their relationship as very close friends. They were part of a social group which included the Davies family and another family from the school. Mrs Rudol had also been friendly with Mr Davies.
22. She tells us that many staff were very unhappy about how Mr Davies ran certain aspects of the school, including catering, recruitment and the treatment of some staff members. She tells us that several staff left because of Mr Davies treatment of them. Mr Baker, the Chair of Governors, had told her himself that he received complaints about Mr Davies and he was duty bound to investigate the situation. As a result, Mrs Rudol tells us, Mr Baker, who had always been very hands-off up to then, had to investigate and then take a more active role in the school about which Mr Davies was extremely unhappy. Mr Davies did not like being challenged, the problem started in 2015.
23. Mr Davies attempted to raise complaints about Mr Baker and sought to remove him from the Board of Governors. Mr Davies alleged that Mr Baker had conflicts of interest. Mr Davies said that Mr Baker did not have the school's best interests at heart as he had actively sought to encourage members of Chesham staff to move to Wetherby. It was alleged that he granted favours to his friends amongst the parents, bumping them up waiting lists or holding places open, thus abusing his position as Chair of Governors.

Mr Davies had suggested that the owners of Wetherby, Alpha Plus, might want to acquire Chesham.

24. Initially Mrs Rudol was in total support of Mr Davies. She believed everything he was telling her. She believed he was being treated unfairly.
25. She first became aware of Mrs Pacitti's complaints against the school in or around March 2017. The Davies, the Pacittis and Mrs Rudol often talked openly about the situation. Mr Davies claimed Mr Baker and the Governors wanted to dismiss him. Mrs Pacitti and she felt that was very unjust. They believed Mr Davies was doing a good job and did not deserve to be sacked. She, Mrs Rudol, did not realise she was unaware of all the facts. Mrs Pacitti did not want Mr Davies to lose his job. She decided to bring Mike Davies' concerns out into the open by raising a concern herself.
26. Mr Davies was encouraging the senior management team at the school, of which Mrs Rudol was part, to sign a vote of no confidence in Mr Baker, the Chair of Governors. Mr Davies was saying that it was illegal to have Mr Baker as Chair of Governors and that they had a moral and legal obligation to remove him.
27. Mrs Rudol was aware that Mrs Pacitti was going to make a complaint. They were in a friendship group together and often discussed it with Mr Davies and his wife, Isobel. Mr Davies even telephoned Mrs Rudol to discuss the situation while she was in holiday in the USA. He phoned here twice.
28. Mrs Rudol accompanied the Claimant at her meeting with the Governors on 23 March 2017 with Susie Peck and Paul Johnson. The key points at that meeting were an allegation that Mr Baker had a conflict of interest; he had poached staff; and he had given out his personal number at a staff meeting thus encouraging staff who wished to complain to by-pass procedures and go directly to him.
29. Mrs Rudol also decided to raise an allegation of conflict of interest held by Mr Baker. She did so on 27 March 2017. She sent a letter to the Governors, Mr Johnson and Mrs Peck with a copy to Mr Davies.
30. In the fullness of time Mrs Rudol completely changed her position about this. She accepted that Mr Baker did not poach or actively encourage staff to move to Wetherby. She accepted that he had only given out his personal number to encourage staff to talk to him as many staff were very anxious about repercussions if they criticised the head. The school was in crisis and Nick Baker needed to support the staff. She tells us that the school has since continued to develop and grow and the staff are now happy and settled working under the leadership of the new head.
31. Mrs Rudol confirms the, as it were, political context of the Claimant's disclosures.
32. Mrs Rudol came to realise that she had misunderstood the situation when she learned from Alison Bush, also a member of the senior management team,

that Mr Davies was not right when he had told her that the Governors and the senior management team wanted her out because they did not rate her as a teacher. Mrs Rudol put that to Alison Bush who denied it all in full. Mrs Rudol asked for a meeting with the rest of the senior management team one weekend. Mr Baker also turned up. The meeting was in a pub one Sunday afternoon, her colleagues and Mr Baker were supportive. As a result of this, Mrs Rudol decided she could not continue to act as a support for the Claimant. It was entirely her own decision. She tells us she had made the decision no longer to support Mrs Pacitti because she had been lied to by Mr and Mrs Davies.

33. The Tribunal has a very clear impression that this preparatory school is a close-knit community where it is not unusual for families to be friends with one another and indeed families' friends with the staff. Indeed, a number of staff have children at the school. Caroline Hughes, the bursar of the school, tells us in her evidence that even prior to this situation she was aware that the Pacitti and Davies family were close. Mrs Pacitti was often in the Head's house, she had been to their holiday home in France whilst the Davies's were there, the Davies's went to the Pacittis house for meals. Mrs Pacitti and Mrs Davies were often seen together, and Mrs Davies was given time off to be with Mrs Pacitti, apparently. Following Mr Davies dismissal he lived in a property owned by the Pacitti's which was next door to them, apparently.
34. The matters raised by Mrs Pacitti repeated matters raised by Mr Davies. There is a clear correlation between the two. There is no doubt that Mrs Pacitti's intervention was made on behalf of Mr Davies.
35. On 13 February 2017 Mr Davies had emailed the CEO of the Association of Preparatory Schools alleging that Mr Baker had a conflict of interest and representing that the Senior Management Team had lost confidence in him as the Chair of Governors. A fuller email was sent, we believe, in March 2017 to the Board of Governors in which Mr Davies represented that Mr Baker had a serious conflict of interest and loyalty.
36. Seven points were listed by Mr Davies. First, Mr Baker was a current parent of two children at the school. Secondly, he is married to a Year 3 Teacher. Thirdly, he paid reduced fees, 50 percent for both of his children as a result of his wife's employment. Fourthly, he was himself a teacher at the school in the past and maintains personal friendships with certain members of staff. Fifthly, he has made his contact details available to all staff and parents in order that they may have direct contact with him without having to go through the Clerk to the Governors or Head Teacher. Sixthly, he is Head Teacher of a preparatory school to which he had recently recruited three teachers from Chesham Preparatory. Seventhly, he is a close friend of the Deputy Chair of Governors who, like him, is a current parent at the school and Head of a local grammar school where many pupils move to after leaving Chesham Prep. That was a reference to Ann-Marie McNaney who also gave evidence to us. So, there was a clear commonality between what Mrs Pacitti was saying and the position of Mr Davies.

### Recruitment of staff to Wetherby

37. We noted that there was a certain amount of fluidity in the movement of teachers between schools in this sector. This is by no means abnormal, it seems. Chesham teachers are of course free to apply for vacancies in Wetherby. The mere fact that a teacher comes from Chesham and goes to Wetherby does not mean there is necessarily any conflict of interest involved in the fact that Mr Baker is Chair of Chesham and Head Teacher of Wetherby. The issue is whether he actively recruited any of these teachers by putting any kind of pressure or inducement on them to leave Chesham. This is the way the Chesham Governors investigated the matter. The issue was defined as to whether Mr Baker poached any members of staff, in particular Mr Batchelder.
38. Mr Baker told us in his evidence about staff movements. Mr Baker has worked at Wetherby since September 2004, becoming Head in 2007. He was a Governor of Chesham since 2009 and became Chair of Governors in December 2013, a role in which he remains. Before moving to Wetherby, he, himself, worked at Chesham Prep. So, over the course of time, he tells us the following:
- (a) Before Mr Baker became a Governor of Chesham, Mr HE left his post as Senior Master to take on the role at Wetherby as Deputy Head on the recommendation of the then Head at Chesham. He is now Head of Pembridge Hall School.
  - (b) Mr WH taught History and English at Chesham in 2009 on a two-term supply contract. When that came to an end Mr Baker was asked by the Head of Chesham if he had any openings for WH at Wetherby. WH taught English at Wetherby for nine years until his retirement.
  - (c) Mrs JB returned to Chesham Prep in September 2013. She was asked to teach Information and Computer Technology but wanted to teach Maths. So, she applied to teach Maths at Wetherby and was appointed in January 2014.
  - (d) Mr SB applied for the Head of History role at Wetherby in November 2013. They were moving to London in any event. His wife had been appointed to the Wetherby Pre-Prep School as a Reception Teacher. Mr SB was appointed at Wetherby.
  - (e) Brigid Baker, Mr Baker's wife, worked on a supply basis at Wetherby Prep before being formally appointed to a Year 3 post at Chesham Prep in 2013.
  - (f) Mrs JB had been reappointed to Chesham Prep (incidentally for the fourth time) in 2018 to the role of Assistant Head Teaching and Learning.

So, the movement of teaching staff between preparatory schools in this sector of education seems typical.

39. On 17 January 2017 Mr Batchelder emailed Mr Baker. He said:

“Hi Nick, hope you are well. I was wondering if there is a time we could meet to discuss the role that is currently advertised on the TES”.

He said he would be happy to travel in to meet and discuss it at Wetherby or an evening if easier. The role was a PE Games Teacher at Wetherby.

40. Mr Baker emailed back. He said:

“Hi Carl, Sure thing. Do you want to meet up this weekend? If you did decide to apply formally, you would have to inform the Senior Management Team but let’s cross that bridge. Nick”

41. Following an exchange of emails, they agreed to meet at 4pm on a Sunday in the George Pub in Berkhamsted. In fact, they met at 5.30pm that day. Following that meeting, Mr Batchelder asked whether it would be possible to visit the school and a visit was arranged. Mr Batchelder then applied, formally, on 26 January 2017.

42. Mr Baker emailed Mr Davies on 31 January 2017. He said that as he had alluded to the previous week they were now looking through the applications and Mr Batchelder had applied for a job at Wetherby. Obviously, he said, he knew Mr Batchelder through Chesham Prep but he thought the main draw for Mr Batchelder was to move into London following the break-up of his marriage. Mr Batchelder had, as we know, taught Mr Baker’s children. Mr Baker observed that knowing Mr Batchelder as he did, and having gone through something pretty similar himself when he left Chesham Prep, he understood why he was making the application. Wetherby would look to interview him and observe him teaching a lesson the following Friday and make a decision. Mr Baker made the point that the Wetherby sports ground is 20 minutes down the road by bus. Mr Batchelder would need to look at that and make a decision if he was for him. The difference being that Chesham Prep has good sports facilities at the school. Mr Baker, in evidence, emphasised this point to us that in the conversation in the pub he wanted to make the point that the facilities were different and involved bussing both teachers and pupils to the sports ground.

43. Mr Davies responded on 1 February 2017 thanking Mr Baker for the email and noting that Mr Batchelder did pop in to let him know that he was hoping to come to Wetherby on interview. Mr Davies observed that:

“Mr Baker was of course right but it might well be a good time for him to move on and take another challenge especially as it would be moving on personally as much as professionally. Mr Batchelder had spent five years at this prep school and five years at one prep school was a good run. He has had the chance to develop with the promotion to Head of History as well as doing wonders in the Games Department”

He observed that:

“It wouldn’t surprise Mr Baker that at Chesham they would be terribly sad to see Mr Batchelder leave as he is terrific with the children, parents and colleagues. He would get a glowing reference and whilst they would encourage him to stay at Chesham, Mr Batchelder would have Mr Davies’ complete support in whatever direction he took”

44. On 3 February Mr Baker emailed Mr Davies to give an update on Mr Batchelder’s situation. He reported that obviously Mr Batchelder had come across well, taught a great lesson over at the sports ground, as we would expect him to. They would love to have him at Wetherby. Mr Baker had told him to think about it over the weekend and come to chat to Mr Davies the following Monday. Wetherby was a completely different school to Chesham in terms of its location/facilities/the fact that it is all boys amongst other things. The appointment was with view to September so there was no pressure, this being still February.
45. On 5 February 2017, Mr Davies acknowledged the email. He would have a chat with Mr Batchelder at an appropriate time.
46. When the Claimant raised the allegations that she did, Mr Baker volunteered the emails. These were examined by Mr Hurd and other Governors. Mr Hurd spoke to Mr Baker. Mr Hurd concluded that there had been no poaching.
47. The Tribunal finds that in so far as Mrs Pacitti was alleging poaching, she was mistaken. The Tribunal is confident that Mr Baker behaved in no way inappropriately in dealing with Mr Batchelder. Criticism has been made of him for meeting Mr Batchelder in the pub. The Tribunal sees no problem with informal meetings designed to allow a potential applicant explore whether a formal application should be made.
48. In so far as there was any reason for Mrs Pacitti to be concerned about anything said at a Christmas drinks party, then the evidence we have seen displaces any cause for concern whatsoever. That said, the Tribunal has some reservations that anything that is said at a Christmas party can be reliably relied upon for any reason.

### **Salary Scheme**

49. There was nothing in any concern relating to the fact that Mr Baker, as Chair of Governors, wanted to introduce a salary scheme similar to that employed at Wetherby. In so far as it was floated that his wife might benefit from that scheme, we have had no detail whatsoever that the scheme would have increased his wife’s earnings over and above any other teacher or in any way whatsoever. It was also clear to us that the implementation of the scheme would be down to the Head Teacher and the Bursar of the school and not the Governors.

## Waiting Lists

50. There is no evidence at all that Mr Baker favoured anyone in terms of waiting list position. Mr Baker has no input into the waiting list. We accept that he has never attempted to encourage the school to encourage one family to attend over another. He has actively encouraged friends to consider the school as a destination for their children as he considers this school to be an excellent one. There is no evidence that he has attempted or purported to manipulate any question of waiting list positions. We have seen no cogency at all to this allegation. But, of course, for disclosure to be protected it does not have to be factually accurate.

## Staff complaints about Mr Davies

51. Many of the witnesses that appeared before us detailed their concerns about Mr Davies' management style. Mrs Hughes, the Bursar, described Mr Davies' style as "intimidating and overly aggressive". She tells us that on one occasion she had to ask Mr Davies to leave her office as he had come in during the holidays when she was on her own, accusing her of not taking health and safety seriously, as she had failed to inform him of clipping a wing mirror whilst on the minibus. It seems that it clipped Mrs Pacitti's car. She describes him as having come in aggressively when she was alone, standing over her and shouting at her. On another occasion Mr Davies told her that they were appointing a new Governor to oversee the Early Years who happen to be a friend of both the Davies and Pacitti family. When Mrs Hughes asked about the lady's qualifications, Mr Davies is said to have shouted at her.
52. Mrs Hughes also had concerns about Mrs Davies around circumstances of the management of the school shop.
53. We have recorded above Mrs Rudol's observations. Alison Bush was the Deputy Head and a member of the Senior Management Team. She observes that the start of his tenure as Chair of Governors Mr Baker had a hands-off approach. This changed when members of staff started to complain about Mr Davies' conduct. This escalated after Mr Davies had numerous run-ins with members of staff and pieces of A4 paper appeared on the staffroom notice board with things like "Absolute power corrupts absolutely" and "Evil prevails when good men do nothing". The Senior Management Team had to remove these notices when they saw them but were concerned at the tension that was building in the school between members of staff and the Head. She observes that it was after that when Mr Davies started to turn against Mr Baker. Mr Davies raised allegations to the Senior Management Team at February half-term and these were broadly similar to those that Mrs Pacitti subsequently alleged. In particular, that Mr Davies had a large number of conflicts of interest.
54. Whilst Mrs Bush felt she had a reasonably good working relationship with Mr Davies and appreciated his kindness to her on a couple of occasions, it became more and more challenging for her to perform her role on the

Senior Management Team because she became aware of what she saw as Mr Davies' lack of concern for the feelings of other members of staff and the heavy-handed approach that he adopted in order to get his own way. She thought he told mistruths.

### **The handling of the complaint**

55. Mrs Pacitti's complaint was received on 7 March 2017. That was one day after Mr Pacitti had made a similar complaint in his capacity of parent. Both complaints raised allegations about the Chair of Governors, Mr Baker.
56. Mrs Hughes was asked by Mrs Pacitti to pass on the complaints to the Governors with the exception of Ann-Marie McNaney and Nick Baker. This is what she did. At this time a decision had already been made by the Governors that they would dismiss Mr Davies. Mrs Hughes provided Mrs Pacitti with copies of the grievance procedure and provided policies relating to Governor's duties and behaviours. She also sent the Staff Handbook relating to Grievance Policy.
57. Mrs Hughes discussed the approach with Mr Hurd the Governor. Mr Hurd was of the view that the grievance should go down a staff-line because Mrs Pacitti was a member of staff. Advice was taken by Mr Hurd as to the correct course.
58. Following speaking about the matter with Mr Davies and Mrs Bush on 14 March, Mrs Pacitti came to Mrs Hughes stating she wished the matter to be dealt with as a whistle blowing complaint. Mr Davies was dismissed on 15 March 2017 with notice.
59. Emails passed between Mrs Pacitti and Mr Hurd. Mrs Hughes booked a room for Mrs Pacitti to meet with Mrs Peck and Mr Johnson, two Governors, on 23 March 2017. Mrs Hughes attended as notetaker.
60. Mr Hurd, a Governor of the school and a retired Solicitor had been a Governor since 2009. He was one of the primary contact points between the school's solicitors during the dispute with Mr Davies, the Head Teacher. They were dealing with a number of disciplinary incidents including the Head Teacher's attempts to pressurise a number of staff on the Senior Management Team into signing a letter complaining about alleged conflicts of interest by Mr Baker.
61. When Mr Hurd received Mrs Pacitti's complaint he was concerned, given the nature of her complaints and their timing, that it was too coincidental that they could not be linked to the concerns raised by the Head Teacher. Her complaint came a day after Mr Pacitti's complaint and Mr Hurd had alarm bells ringing about collusion. Mr Hurd noted the request that Mr Baker and Mrs McNaney were not told about the complaints. Some members of the Board thought it might not be appropriate to accede to those wishes. Personally, he thought they could at least until such time they got further down the line.

62. On 8 March, Mr Jordan, the Governor, had broken the confidentiality of the process by copying Mr Baker into correspondence about the complaint.
63. On 8 March, Mr Hurd proposed that the Governors obtain information from Mr Baker about the transparency of Mr Batchelder's recruitment.
64. Mr Hurd was concerned that the Pacittis were raising complaints otherwise than in good faith given their close relationship with Mr Davies. Nevertheless, it was the Governor's duty and responsibility to treat them as bona fide and investigate the matter although they felt a strong possibility of an ulterior agenda
65. He communicated to Mrs Pacitti his original position that the matter being raised in an employment context, it should go through her line management structure in the first instance. Mr Hurd had been responsible for handling Mr Pacitti's parental complaint, it seemed natural then for him to pull together the responses in respect of Mrs Pacitti also.
66. In an email to Mr Pacitti on 13 March 2017, Mr Hurd suggested that it would not be appropriate to keep the matter confidential from Ms McNaney. He did say they would investigate the matters against Mr Baker and would need to discuss them with him. Mr Hurd did not disclose that Mr Jordan had breached the confidentiality of Mrs Pacitti's complaints. To that extent Mr Hurd acknowledged that this email of his was misleading. In response to that email Mr Hurd received two further emails requesting a guarantee that he had not disclosed Mr Pacitti's name to Mr Baker or Ms McNaney. He responded to confirm that he had not disclosed the name of Mr Pacitti to Mr Baker or Ms McNaney. Again, he did not disclose the fact that Mr Jordan had. Again, Mr Hurd accepts that was misleading. He says in his statement that he felt a delay was necessary because of the broader issue of the collusion between the parties and the impact that that could have on dealings with the Head Teacher. The Governors' primary concern was their dispute with the Head Teacher and they were extremely concerned to ensure that no ammunition was given to the Head Teacher in what was becoming a very acrimonious dispute. They were concerned that the Pacittis complaints were being raised primarily as a support to the Head Teacher in the dispute.
67. Mr Hurd spoke with Mr Baker about the circumstances of the recruitment of Mr Batchelder. Mr Baker emphatically denied that he had attempted to poach Mr Batchelder from Wetherby. Having seen the emails Mr Hurd concluded that there had been no poaching. On 16 March 2017, Mr Hurd informed colleague Governors that they would have to reveal the facts of the breach of confidentiality. On 17 March Mr Hurd emailed Mr Pacitti to the effect there had been a breach of confidentiality. The details had been provided to both Mr Baker and Ms McNaney. A meeting was proposed for 23 March 2017. Mr Johnson and Ms Peck would be the Governors at the meeting. On 21 March 2017, Mr Hurd provided Mr Johnson and Ms Peck with a summary of the emails between Mr Baker and Mr Batchelder.

68. Mr Hurd also confirmed to Mrs Pacitti that her confidentiality had also been breached and that Mr Baker and Ms McNaney knew of her identity as a complainant. Mr Hurd accepts that he delayed in revealing the breach. His explanation is that they did not want to provide ammunition to the Head Teacher in the context of their dispute with him. Mr Hurd did not see that the breach of confidentiality was that significant bearing in mind the professionalism of both Mr Baker and Ms McNaney, both Headteachers of a school, and the fact that it was not difficult to guess who the authors of the complaint were. Mr Baker and Ms McNaney confirmed that they had not told their children about the problem and Mr Baker confirmed that he had not mentioned anything to his wife.
69. The Pacitti's were asking for the identity of the Governor and for a copy of the email Mr Hurd, by email dated 21 March 2017 declined to provide a copy of the email and he wrote:

“I have again spoken to each of Nick and Ann-Marie and they have confirmed that they have not told their children anything nor would there be any intention on their part to do so. It is a professional matter very separate to family life. Nick has asked me to confirm to you that he has not mentioned it to Brigid. Each of them will be happy to phone you to reassure you directly, if you feel that it would help put your mind at rest. Equally, they are more than happy if you would like to call them. Obviously, they could not discuss the substantive conflict of interest issue which you have raised.”

### **Mr Jordan's breach**

70. There were email exchanges between the Governors discussing the proposal to dismiss the Head Teacher on Wednesday 15 March 2017. In that context Mr Jordan wrote that there were two issues: Mike Davies and the parent letter. Mr Jordan wrote later in the email exchanges but copying in Mr Baker and Ann-Marie McNaney “Just a thought, Mrs Pacitti's concerns should properly have first been addressed to her line manager, Mike Davies? not the Governors. Why not give him the problem of reporting them to the Governors? Let's talk before Wednesday.”
71. This was at 1.45 in the morning on Wednesday 8 March. Three minutes later Mr Jordan sent a further email. “I may have by mistake copied Nick in on my reply but I am sure he will soon be aware of the parties in this case”.

72. Mr Baker then has a suggestion as to the process saying:

“Quite possibly but the whole thing is so completely irregular and as far as I'm concerned all it does is make me want to speed up the larger process. Personally, I would park both letters – they are not “complaints” therefore don't require formal action. Once we get through next week I propose we “including me and Ann-Marie” agree to meet them both and go through each one of their allegations.”

73. What is clear from this is that Mr Baker was in no way surprised about the Pacittis' intervention here.

74. Mr Jordan is a practising barrister, specialising, he tells us, in regulatory work. He told us he had not heard of whistleblowing and its legal connotations. We were surprised at that answer.
75. In his witness statement Mr Jordan does not expressly deal with whether or not the breach of confidentiality was deliberate. Under cross examination he claimed it was inadvertent, in keeping with the initial email. He was questioned about this in the internal appeal. He had an interview with Lynn Cleaver, on 31 October 2017. Ms Cleaver asked him how it had come about that he had copied in Mr Baker and Ann-Marie McNaney into the email trail on the Pacittis' complaints. Mr Jordan said that he could not recall if he had copied them in deliberately or not. He believed that it was most likely inadvertent; however, what he could recall was that he was not happy about such allegations being discussed behind the Chairman's back. Ms Cleaver asked if the Governors had discussed the option of advising Mr Baker and Ms McNaney of the complaint without disclosing the identity of the Pacittis. Mr Jordan said that was indeed a possible option that could have been considered, however it was not. He had copied MB and AM into the email chain before any such discussion could take place.
76. Part of those answers opens up the possibility for the Tribunal to find that he deliberately breached confidentiality. However, notwithstanding the elements of Mr Jordan's evidence which were unsatisfactory, we find, on the balance of probability, that he did not deliberately breach confidentiality by way, for example, of some sort of victimisation for the fact that Mrs Pacitti was making a protected disclosure. We find, on the balance of probability, that he inadvertently revealed their identity as he acknowledged by a second email sent three minutes after the first one, notably at 1.48am. Accordingly, whilst Mr Jordan did breach confidentiality, he did not do so on the ground that the Claimant made any disclosure.

### **Handling the grievance continued**

77. On 13 March 2017, Mr Hurd emailed the Governors saying that he had just heard from Mrs Hughes that Mrs Pacitti had spoken to the Deputy Head, Alison Bush, who then went to see Mrs Hughes. Apparently, Mrs Pacitti told Alison Bush about the Pacittis' letters and that as she had not yet had a reply, and if no reply was forthcoming, they would be taking it further. Mr Hurd suggested an email response to be sent to the Pacittis that night.
78. Mr Johnson replied to that email by saying "I'd love to know what "taking it further" means. I don't know who this couple think they are but they are not in a position to threaten us and I remain of the opinion that we will reply to his letter at our convenience."
79. These were matters that Mrs Pacitti only discovered following a subject access request.

80. At the meeting with Ms Peck and Mr Johnson on 23 March, Mr Johnson expressed the view that Mrs Pacitti had only generalisations and hearsay to offer. They were not provided with any information that would counteract the detail of the emails that had been provided by Mr Baker. Mr Johnson and Ms Peck also had a meeting with Mr Pacitti that same day in the evening.

81. Mrs Hughes provided draft minutes of the meetings.

82. Mrs Pacitti positively alleged that Mr Baker had poached - and it is significant that she used that word - three or four members of staff. She alleged he was cherry-picking. She said it was a common feeling among staff that is what he did. There was a major conflict of loyalty and he was not acting in the best interests of Chesham Prep. Mr Johnson asked what evidence did Mrs Pacitti have that Mr Baker had been poaching. She pointed to the fact that Mr Batchelder had gone there. She referred to the Christmas party where she alleges that Mr Baker said:

“The two best teachers in the school were Carl and his wife and he would recruit them”.

83. It seemed to Mrs Pacitti that:

“If you look after Mr Baker’s son Patrick, Nick will look after you”.

She continued -

“These young boys and young girls come here, get their training and they are off to the holy grail that is Wetherby Prep, into London and Nick is the ticket. It’s like Nick’s thank you. He obviously went after Carl”.

84. So, it is quite clear to the Tribunal that Mrs Pacitti was positively alleging poaching. It is further clear to the Tribunal that she was wrong. Mrs Pacitti referred to the Governors’ Code of Conduct which stated that the Governors must act in the best interests of the pupils, the charity, maximise the school’s potential and safeguard the assets. “Teachers are our biggest asset. Everyone loves working here. Let’s not steal from it” she suggested. She positively represented that there were four members of staff being poached: HE, SB, JB and Mr Batchelder. Mr Johnson asked whether they were planning to leave anyway. Mrs Rudol interjected at that point that it did not matter.

85. Mrs Pacitti raised the matter of the salary structure. Mr Johnson observed that several members of the governing body were in education. There was also Will Turner and Ms McNaney and their views are contributed - and considered as - experts. Mrs Pacitti reiterated that it was his fee structure – He has too much power. Susie Peck asked what was the specific issue to which Mrs Pacitti replied “This just feels like you are arguing against everything I say”. Mrs Pacitti continued that Mr Baker could recruit any member of our staff and he sets our fees. He produced the salary scale when his wife would benefit. He was in too powerful a position. “If this was

a country and one person was in charge, it would not be allowed to happen. His wife gets special treatment. JB, the Language Teacher is married to his best friend. He cannot be objective. People are too scared and they will not stand up to him." Complaint was made about Mr Baker giving out his phone number.

86. Both Mrs Rudol and Mrs Pacitti positively alleged poaching in this meeting.
87. Mr Hurd read the reports, the minutes of the meeting heard by Mrs Hughes. He subsequently met with Mr Batchelder to discuss the allegations of poaching with him. He met him both on 29 March and 30 March 2017. Mr Batchelder explained that his wife had left him that school year in the Autumn term. He wanted to be in a different environment. The Chesham Choir played at his wedding and there were too many reminders. Wetherby presented a different environment. It was a sports position with less history and he enjoyed sport the most. Mr Batchelder confirmed that he found the job through a TES advert. He had not spoken to Mr Baker prior to seeing the advert. He said she then contacted Wetherby by email. He emailed the school office and asked to come in and look around. He went through the official channels he said. He did not go through Nick. He was in contact with the Deputy Head and he had a tour around the school. He did not admit to contacting Mr Baker directly as we know he did through the emails. He said he was interviewed by Mr Baker and the Deputy Head and he taught a lesson on the games field.
88. Mr Hurd had another discussion with Mr Batchelder on 30 March 2017. Mr Hurd was aware that Mr Batchelder had not given him the full information. Mr Batchelder still did not make reference to the fact he had an informal discussion with Mr Baker in the George in Berkhamsted. It seems that Mr Baker was more forthcoming than Mr Batchelder.
89. Mr Hurd was informed of internal difficulties in the relationship between Mrs Pacitti and Mrs Baker. We accepted however that Mrs Baker was unaware of the complaints and so did not subject Mrs Pacitti to detriments on the grounds of them.
90. Mr Hurd had a meeting with Mr Davies on 30 March 2017. Mr Davies repeatedly stated that all SMT members had a problem with Mr Baker and that Mr Baker poached staff to Wetherby but he was not able to produce any material evidence regarding that. Mr Davies was unable to provide any actual evidence that Mr Baker had actually acted inappropriately, was the assessment of Mr Hurd. The Head Teacher had openly stated that he wanted and was seeking to have the decision to remove him changed. The Head Teacher's position was self-serving in Mr Hurd's view.
91. In April 2017, Mr Hurd provided a draft report for Mrs Pacitti and emailed a copy to Mrs Hughes, Mrs Peck, Ms Almond and Mr Johnson as they had been present in the meetings to ensure accuracy. No copies of the report were sent to Mr Baker or Ms McNaney during the drafting stage. Mr Hurd sent a copy of the Governor's response to Mrs Pacitti on 13 April 2017. The Governors concluded that there was no poaching. They noted that Mrs

Pacitti had been asked whether she had any specific evidence of poaching in the meeting with Mr Johnson and Ms Peck. She did not. The Governors wrote:

“The Governors take this issue of poaching very seriously, but for there to be “poaching” there has to be an active solicitation or inducement and the Governors found absolutely no evidence of this; quite the contrary. The Governors are not of the view that an allegation of poaching can simply be sustained by the mere fact that Mr Batchelder has gone to work there, contrary to assurances from him and from Mr Baker and the email chain regarding Mr Batchelder’s appointment.

92. Mrs Pacitti, the Governor’s noted, alleged that Wetherby would be the “Holy grail” presumably for creative development. The Governors were mindful that a teaching post at Wetherby may be seen as a career step up, given its size, location and reputation. It was not however a competitive school in terms of attracting pupils and any prep school can be seen as competitive in terms of staff. The Governors were very well aware that good and ambitious staff moved to enhance their career development and this worked to Chesham Prep’s advantage as well as its disadvantage as Chesham Prep has a good reputation.

93. There was no evidence of poaching in respect of the other members of staff indicated by Mrs Pacitti.

94. Mrs Pacitti had argued that the fact that staff moved to Wetherby from Chesham was itself an example of an unacceptable conflict of interest. The Governors wrote:

“The potential for conflicts of interest does occasionally occur in many Boards, and it is how this is handled that is crucial in any specific situation. The Governors as a body were satisfied with the handling of potential conflicts of interest and have concluded on reviewing the points raised by Mrs Pacitti that no adverse effect had been experienced by CPS as a result of any conflict or potential conflict.

The Governors have considered the other aspects of Mrs Pacitti’s concerns, namely alleged financial gain to Wetherby or Mr Baker personally. They concluded that there was no evidence of these factors influencing either the governing body “who determine matters on a majority voting basis” or the school’s separately. Any perceived conflict of interest amongst Chesham Prep’s stakeholders was a matter which the Governors took seriously and they have been consulting with the Association of Governing Bodies of Independent Schools with a view to commissioning an independent review of governance matters at Chesham Prep and they will look carefully to any recommendation.”

95. Other points of detail raised by Mrs Pacitti are then traversed. For example, as the allegation of place saving, the Governors were satisfied that Mr Baker had no sight of the waiting list for places and had no influence over it.

**The initial response of the Governors to Mrs Pacitti's complaint.**

96. It is fair to say that once Mrs Pacitti's email landed as forwarded by Mrs Hughes, none of the Governors thought there was any truth in the allegations. All the Governors, as far as the Tribunal can tell, saw Mrs Pacitti's email as an intervention in the dispute with the Head Teacher, taking the Head Teacher's side.

**Alleged bullying and harassment by Mrs Brigid Baker**

97. The Claimant was Mrs Baker's Teaching Assistant. There are several references to Mrs Baker having a certain manner which some might find challenging. Mr Davies, when Head Teacher, had words with Mrs Baker about this. The question for us, however, is whether Mrs Baker treated the Claimant unfavourably on the ground of the alleged disclosures. Fundamental to this point is the evidential position of the Respondent that Mrs Baker was not told about the disclosures by her husband. Mr Baker has maintained that he preserved the confidentiality of Mrs Pacitti's representations and did not tell his wife. Mrs Baker says the same. The Tribunal believes them. Mr Baker, himself a Head Teacher, is aware of the importance of confidences in management structures at schools. He did not tell his wife about the Pacitti letters.

98. On 13 March 2017, Mrs Pacitti raised with the Deputy Head, Alison Bush, a grievance about her whistleblowing concerns regarding Mr Baker. This was in response to the Governors' original position that it was an internal management position. The outcome of the internal management consideration, including the position of Mr Davies, was that as it concerned the Chair of Governors, the matter actually had to go back to the Governors.

99. Aside from that, on 15 March 2017, Mrs Pacitti emailed Mrs Bush that she was upset with Mrs Baker's behaviour that day. Mrs Bush noted that at the time, regrettably, Mrs Pacitti was dealing with a parent who was unwell and who lived in Scotland. Mrs Bush was worried about the sensitivity of Mrs Pacitti. She monitored Mrs Baker's and Mrs Pacitti's interaction more closely. She observed good relationships. She made a point of finding reasons to visit the classroom. All seemed pleasant and normal. Mrs Bush advised Mrs Pacitti to talk to Mrs Baker as she felt they had a good relationship and if Mrs Baker knew Mrs Pacitti was not feeling happy, she would be concerned. Mrs Pacitti emailed on 15 March 2017 to say that matters had substantially improved.

100. Subsequently, on 28 March 2017, an email was sent by Mrs Pacitti to Mrs Bush and Mrs Hughes. This suggested that Mrs Baker had reacted inappropriately towards her on 28 March which had led to her going home unwell. Mrs Pacitti did specifically refer to her belief that Mr Baker had breached her confidentiality. Mrs Bush, with Mrs Hughes agreement, decided that Mrs Pacitti should take the rest of the week off because her health was being affected. There was nothing to suggest that Mrs Baker knew of the whistleblowing complaint and Mrs Baker seemed genuinely to

believe it when told by Mrs Bush that Mrs Pacitti had gone off feeling unwell, albeit a little surprised that Mrs Pacitti had been fine that morning. There was no awareness on the part of Mrs Baker that anything untoward had happened between them.

101. On 29 March 2017, Mrs Bush together with John Beal, met with Mrs Baker. They informed Mrs Baker that Mrs Pacitti had raised concerns regarding Mrs Baker's behaviour. The context of protected disclosure was not raised. Mrs Baker was calm and completely mystified as to what could have caused Mrs Pacitti to complain. Mrs Baker appeared genuinely confused, repeatedly asking why would Mrs Pacitti complain about her. Mrs Baker listed all the ways she felt she had enabled Mrs Pacitti to enjoy working in the class: helping her when Mrs Pacitti had observations as part of her appraisal progress; empowering her with small groups; being flexible if she needed time off with her children.
102. Later that afternoon Mrs Baker came to see her again and was very upset and tearful saying that she felt betrayed because she had got on so well and Mrs Pacitti had not said anything. She asked why would Mrs Pacitti go behind her back to complain about her to the Senior Management Team. Mrs Bush tells us that she was starting to feel very uneasy as it was looking more likely that Mrs Pacitti was targeting Mrs Baker because Mrs Baker was the wife of Mr Baker. Mrs Bush felt unable to share the concern that Mrs Pacitti had raised. She knew that the Governors were having to speak to Mr Davies as there was so many problems with the members of the staff at the school. She also knew that Mrs Pacitti was a close friend of Mr Davies and had been on holiday with their families and it was clear that this was linked together and Mrs Baker had no idea what was going on. Mrs Bush did suggest switching the teaching assistants if the problems persisted but that was not actioned at the time. It was however done so later.
103. Despite being allowed to go home, Mrs Pacitti returned to the school on Thursday 30 March. Within minutes of being in school there was an argument in Mrs Baker's classroom which occurred before the school started. Mrs Pacitti left the classroom and went straight to see Mr Davies. Mrs Pacitti made a written statement about what had happened. Mrs Bush went to check on Mrs Baker who was shaken up. Mrs Bush asked her to make a written record which surprised Mrs Baker. Staff in the vicinity were shocked and concerned as to what had happened because it was completely out of character for all concerned.
104. In respect of 30 March 2017, Rebecca Eames emailed Mrs Bush to say that she heard Mrs Baker's door being slammed closed and a minute or so later Mrs Pacitti storming out of the classroom almost shouting something about someone being incredibly rude "...so rude" or "the rudest". She could not quite remember which of those were said and telling Mrs Baker to "Ask anyone, all the teachers will tell you" or something very close to those words. Mrs Baker then replied at a similar volume and sounding very upset "I'll do that Mary! I'll do that right now!" at which point Rebecca Eames put down what she was doing, went to a neighbouring classroom where Mrs Baker was, to see what was going on. Mrs Eames continued that everyone

in Year 3 had noticed Mrs Pacitti being out of sorts for a couple of weeks but no one knew why. It was just assumed that she had got a lot on with looking after her parents. Mrs Eames said that they all knew that Mrs Baker could say things in a less than diplomatic way sometimes but anyone who works with her knows that is just her way of talking and that she would never mean to hurt or upset anyone. She is the first to apologise when she has made a mistake or done something wrong. For this to have happened now, opined Mrs Eames, after they had worked closely together for two years, especially with Mrs Pacitti knowing the devastating effect that the meeting with Mr Davies had on Brigid on her self-confidence seemed unbelievable. Mrs Eames stated that there must have been an awful lot of problems that Mrs Pacitti had not been voicing to us for a very long time for her to take this incredibly serious step and she was sorry that she had not noticed to be able to do anything to help.

105. Plainly, Mrs Pacitti was under pressure. She was making serious allegations about the Chair of Governors; she knew that there was an issue in respect of her friend the Head Teacher. Mrs Pacitti assumed that Mrs Baker had been told about her allegations. Mrs Pacitti was wrong about that; Mrs Baker had not been told. Therefore, any behaviour by Mrs Baker was not connected with Mrs Pacitti's allegations. Mrs Baker did not ostracise - or engineer the ostracisation - of the Claimant.
106. There then followed the Easter holidays. Mrs Bush received an email on 15 April before the school returned on 24 April 2017. Mrs Pacitti told her that she had received an outcome from Mr Hurd and that she was not happy with it.
107. The school returned on 24 April 2017 which was a training day. Mrs Pacitti had gone home. Other teachers did not see Mrs Baker behaving inappropriately on 24 April 2017. Mrs Bush then decided to take action.
108. She emailed the Claimant on 24 April 2017 at the Claimant's home email address. Mrs Bush stated that she was sorry to hear that the Claimant had been unwell that morning. She suggested that the Claimant take 48 hours to feel better. She stated that while she knew it would be a disappointment for the Claimant, it would be sensible to move classes. Therefore, she attached the timetable showing the Claimant would be working alongside a Year 1 Teacher. She knew she had a good relationship with that teacher. Year 1 is a delightful year group, suggested Mrs Bush, and she was sure the Claimant would do a fantastic job. She apologised conveying that information by email, she had intended to speak to the Claimant in person that afternoon but the Claimant had gone home.
109. The following day Mrs Pacitti acknowledged the email saying she did not really expect Mrs Baker to acknowledge that she was bullying her. Mrs Pacitti said she would be grateful if Mrs Bush could let her know how this would be resolved fairly. She did not believe that Mrs Baker's widely known bad behaviour should be ignored or tolerated. When she did return to work she would welcome the chance to speak to the Management Team about

the situation. She felt stressed that she was not being believed. She asked Mrs Bush not to doubt her honesty and integrity.

110. The Claimant did not return to work, she was signed off until such time as she resigned.

### **Response to Mr Pacitti's complaint**

111. Mr Hurd also responded to Mr Pacitti's complaint. That response was also read by Mrs Pacitti. As to conflict of interest of Mr Baker, Mr Hurd wrote the following:

“The fact that NB has two children at the school; that his wife is a teacher and that he is Head Teacher of a Central London School have not caused concern among the remainder of the governing body. Indeed, his extremely comprehensive knowledge of CPS, of its staff and all of its workings (also gained from when he was a Teacher there) is considered by the governing body to be a considerable benefit to the proper governance of the school. Nick Baker is passionate about the school and considered by the governing body to be entirely professional and to have the highest integrity. All the Governors recognise that an individual Governor's manner and style may not appeal to everyone, but nevertheless the value that the governing body gain from his expertise in the education sector and knowledge cannot be underestimated. The governing body, including NB, remain mindful of the potential for conflict due to NB's personal connections with the school, however overall these are viewed as positive. The culture of the governing body is one where its members, independently minded, speak freely and ideas are tested before decisions are taken. We are confident that any perceived conflict of interest, or risk of conflict, will be challenged by other Governors.”

112. The Tribunal does not find there was any undue delay in the manner in which the Governors investigated matters bearing in mind they are all volunteers, they investigated matters as best they could. Mrs Pacitti first wrote to the Bursar on 7 March 2017 and Mr Hurd completed his investigation on 11 April 2017. The Tribunal has a wide knowledge of how grievance investigations can be delayed in the world of employment. This was not a delay.

113. The Claimant was entitled to make further complaint and this was referred for external investigation.

114. The Claimant was signed off work from 24 April 2017 with stress. She attributes that to the alleged mishandling of her whistleblowing concerns. Equally, it seems to the Tribunal that it could result from an intervention in the politics of the school which was not going the way Mrs Pacitti hoped.

### **Occupational Health referral**

115. There was a referral to Occupational Health. Complaint has been made about one of the questions asked of the Occupational Health Advisor by the School Bursar. On the referral there was a drop-box question to the effect

“Is the employee fit to attend a capability or disciplinary meeting?” The Claimant has focussed on the word disciplinary. It seems to the Tribunal that there was no question of the possibility of being invited to a disciplinary meeting. However, anyone off sick can be invited under attendance management procedures to a capability meeting. It seems to us that was the context of the question. It was a routine question. There was no detriment here.

### **The Cleaver Report**

116. Lyn Cleaver is a Senior HR Consultant. She was brought in to deal with appeals by the Pacittis against the decision of the Governors in respect of Mr and Mrs Pacitti’s complaints. She was joined by Julie Bann and Dan Pipe, to form a panel. The Panel was to stand in the shoes of the Governors and reconsider all matters. The Panel considered a range of matters very similar to the list of issues brought before the Tribunal, save of course, for the challenge to their decision.
117. One fundamental evidential matter was whether the panel should have interviewed Mr Davies, the former Head Teacher. They dealt with this matter expressly. In summary they took it as read that had they interviewed Mr Davies he would likely have agreed with Mrs Pacitti’s concerns regarding Mr Baker. We know that is accurate because there is a close similarity between the concerns raised by Mr Davies and subsequently by Mrs Pacitti. The panel decided that Mr Davies would not add anything evidentially to the matter. The panel was not investigating what had occurred in the school over the period leading up to the decision to dismiss Mr Davies. Their remit was limited to considering Mrs Pacitti’s appeal to the outcome letter from Mr Hurd and the grievances that arose from that. The panel concluded that Mr Davies’ input was not necessary because they did not believe he could add information that was necessary to determining Mrs Pacitti’s appeal and grievances.
118. The Tribunal finds that that was a position open to the panel to take. Indeed, we have heard from Mr Davies and his evidence did not materially add to the position that we knew, and the Cleaver Panel knew, he took leading up to his dismissal in respect of Mr Baker.
119. The Cleaver Panel noted the similarity between the concerns raised by Mrs Pacitti and those previously raised by Mr Davies. The panel found that it was reasonable for the Governors to be suspicious about whether Mrs Pacitti’s concerns were genuine within the meaning of the whistleblowing policy given her close relationship with Mr Davies. The Cleaver Panel believed that in raising the original concern Mrs Pacitti was, at least in part, motivated by a desire to support the almost identical concern that Mr Davies had raised, on account of their friendship, and/or to seek to de-stabilise the Board of Governors and/or to cause difficulties for Mr Baker, in either event to strengthen Mr Davies’ position with respect to the Governors and/or to

retaliate against Mr Baker for what she perceived to be Mr Baker's and/or the Governors poor treatment of Mr Davies.

120. They went on that it was open to them to find on that basis that Mrs Pacitti's original concern was not "genuine" within the meaning of the whistleblowing policy. However, on balance they concluded that Mrs Pacitti had a genuine desire to see fair play and to ensure that the school followed reasonable procedures so they did not make a finding questioning good faith or the genuineness of the concern and proceeded on the assumption (which the Governors clearly accepted) that the Whistleblowing Policy applied.
121. The Cleaver Panel did find that the Governors did not deal with Mrs Pacitti's concerns in as timely a manner as would have been desirable. They found that the Governors were more concerned with other more urgent and fundamental matters to the running of the school, which of course was dealing with the school's relationship with the Headteacher. The Whistleblowing Policy did not guarantee any particular response time they found. Any delay did not itself affect the fairness or reasonableness of the investigation, they concluded.
122. They could find no breach by the Governors of the Governor's Code of Conduct. The approach, they found, met the standards required of integrity, objectivity, and truthfulness and the obligation of acting in the best interest of the school and its pupils.
123. The panel considered in detail whether there was evidence that Mr Baker had poached Carl Batchelder. They considered in detail the available evidence and concluded that Mr Hurd's finding, rejecting poaching, was supported by evidence, and in the absence of any evidence to suggest the conclusion was incorrect, there would be no change of position from the panel. They saw no evidence to persuade them that a different outcome would have been reached with any different process had been followed. Mrs Pacitti had expressed her opinion; the Governors had conducted a reasonable investigation in to those aspects which they could not already judge, and had satisfied themselves that there had been no impropriety. They did deal with the fact that a meeting was in the pub and noted that Mr Baker did not conceal that in his discussions with Mr Hurd. On the question of poaching, the panel's view was that the Governors' process and outcome were reasonable and likely correct.
124. The panel recorded Mrs Pacitti's contention that Mr Baker controlled the school through a combination of fear and reward which meant that none of the Senior Management Team or Governors would challenge him and he was, as a result, able to run the school as he pleases. Mrs Pacitti contended that evidence from the School Management Team and Governors was to be treated with caution. The panel regarded that as, in many ways, the most serious allegation. The panel took the unusual step of offering to speak to every member of the Senior Management Team "off the record" so as to accommodate the possibility that they were under Mr Baker's undue influence. Not a single person they interviewed wished to

make any off the record comment about Mr Baker or about any of the other Governors. Not a single person, they found, indicated that Mr Baker exercised undue influence over the Senior Management Team or in the school generally. In fact, they concluded the result was the opposite: several of the people they spoke to specifically wanted them to record that they had no issues with Mr Baker and found him a good and supportive Chairman of the Governors. He had been “hands off” until staff had complained to him about the Headteacher. None of the Senior Management Team stated whether on or off the record that they had ever held the view that Mr Baker abused his authority, apart from Hilary O’Connell, now Rudol, who as we have recorded above, changed her mind when evidence came to light that she had been misled on a variety of matters. The Senior Management Team never believed that Mr Baker had an untenable conflict. That was supported by the fact that they refused to sign a letter alleging otherwise when asked to do so by Mr Davies in February 2017.

125. They noted that the Independent Schools Inspectorate Report for 2016 spoke highly of the Governors.
126. The panel concluded that it was more likely that Mrs Pacitti was mistaken about Mr Baker’s influence than everyone else was lying, especially when they concluded that the Senior Management Team was not in fear of Mr Baker. They noted that much of Mrs Pacitti’s belief about Mr Baker’s influence was based on assumptions and guesswork rather than direct experience or hard evidence. Mrs Pacitti had regularly alleged in the course of the investigation that her position was supported by the Senior Management Team. However, it was not.
127. The panel concluded that Mr Baker’s potential conflicts did not preclude him from holding the Chairman of Governors role. Mr Baker and the other Governors were well aware of the potential for actual conflicts to arise and the panel was satisfied that the Board gave careful consideration to how any conflict was managed. The Governors had satisfied themselves that Mr Baker appropriately managed his conflicts. The panel’s assessment was that Mr Baker was acutely aware of the potential for conflicts of interest to manifest themselves, with the potential to damage both the school’s interests and his reputation, and that he took very careful steps to prevent any issue from arising.
128. As to potential conflict as Head Teacher of Wetherby, on balance, the Governors felt that Mr Baker’s experience and personal qualities, and the opportunity for Teachers at Chesham to learn from practice at Wetherby, outweighed any perceived facilitation of conflict between the schools. Clearly, the Governors would have made a different calculation if Mr Baker was actually poaching Chesham staff. The Governors’ position was fair and reasonable, found the panel.
129. The panel rejected any suggestion that Mr Baker was acting inappropriately when he suggested the school might follow the Wetherby model. It was

appropriate for him to Chair the Governors' Finance Committee. The Governors only set the salary for the Head and Bursar. It was the Head and Bursar that set the salary for the staff, including Brigid Baker. The panel found no evidence whatsoever to support the assertion that Mr Baker exercised undue influence. The panel's assessment of the Governors was that they were mature, professional, strongly independently minded people who debate issues robustly and seek to reach consensus decisions. They understood Mr Baker's style of leadership to involve making sure all viewpoints were heard and discussed, and allowing time for everyone's concerns to be fully explored before a consensus view was reached. That was the polar opposite of the Governors' arrangements Mrs Pacitti suggested were in operation, namely that Mr Baker imposed his own view on a weak governing Body.

130. The Bursar, Mrs Hughes, had rejected any suggestion that Mr Baker was able to, or attempted to, manipulate waiting lists. The panel concluded that Mrs Pacitti was relying on rumours and assertions by other parents but had given no clear examples or evidence to support allegations of wrongdoing.
131. There was no evidence that Mr Baker had acted inappropriately in promotions and appointments. It seems that Governors were involved in reshaping the Senior Management Team at a time when the Head was leaving. In the panel's view, Governors were involved appropriately in considering and approving promotions. Mr Baker's involvement in dealing with Mr Davies was entirely appropriate for a Chairman of Governors, they found.
132. It was not inappropriate for the Chairman of Governors to share his contact details with staff at a time when there was considerable dissatisfaction with the Head including subversive messages being posted on staff notice Boards. Sharing his personal phone number gave staff an additional route for sharing any concerns they had about the school.
133. The panel found there was a delay between the Claimant raising her concern on 7 March 2017 and Mr Hurd publishing his outcome on 14 April 2017. However, in all the circumstances, they found the delay was entirely reasonable. The Governors were volunteers with other important demands on their time. There were other matters going on at the school at the time, not least dealing with Mr Davies in light of concerns about him. That Mrs Pacitti's concerns were similar to those raised by Mr Davies may have caused the Governors to see Mrs Pacitti's letter of concern as ancillary to the wider issue of the Head and that may have been a factor in prioritisation. Part of the delay was also caused by the Governors' initial decision to ask Mrs Pacitti to raise her concerns with her Line Manager, Mrs Bush, in the first instance. That said, given the nature of the complaints, it would always have been the Governors who had to deal with the matter.
134. There was an element of pre-judgment by the Governors in terms of Mr Baker's wider conflicts and influence. That was because the Governors

were already fully aware of the background to Mr Baker's potential conflicts and had recently considered very similar allegations by Mr Davies. Any pre-judgment, found the panel, was entirely reasonable. There was no pre-judgment however with regard to the poaching allegation which was fully investigated.

135. There was a delay in Mr Hurd's revelation of the breach of confidentiality made by Mr Jordan. They found that Mr Hurd did mislead Mrs Pacitti about the details of the breach of confidentiality, specifically:

135.1 Mr Hurd delayed confirming the breach of confidentiality for a number of days.

135.2 Mr Hurd suggested that the breach of confidentiality had "become apparent" to Governors when he knew that the breach had happened overtly earlier.

136. The panel accepted that Mr Hurd did not intend to conceal the breach permanently. The panel characterised Mr Hurd's representation to Mrs Pacitti not as an outright lie but as a diplomatic evasion. There is no doubt that Mrs Pacitti found being misled in this way annoying and insulting and there was some sympathy for that position.

137. The panel did not believe that at that stage Mrs Pacitti could profit by knowing which Governor had breached a confidentiality. The Governors generally act as a body and Mrs Pacitti had received an apology from them as a body. The panel did not think that Mr Hurd acted wrongly in withholding the identity of the relevant Governor from Mrs Pacitti. The panel rejected sundry other ancillary matters raised by Mrs Pacitti.

138. It was accepted by the panel that the breach of confidentiality undoubtedly occurred and should not have done so. The school's policy relating to whistleblowing was structured to ensure that employees should feel free to come forward with any concerns. The policy made express reference to protecting confidentiality and committing to making every effort to keep a whistle-blowers identity secret.

139. The Cleaver panel had to grapple, as we have had to grapple, with whether Mr Jordan's breach of confidentiality was deliberate or careless. Mr Jordan had said that he could not remember the exact circumstances of his state of mind when he had copied NB and AM into an email exchange discussing the letter of concern which mentioned Mrs Pacitti's name. In the panel's interview with him, Mr Jordan showed no contrition about the breach of confidentiality. He seemed to suggest that he thought Mrs Pacitti's letter of concern was meritless, based on his knowledge of - but not friendship - with Mr Baker and therefore not deserving of confidentiality where, in effect, he regarded Mr Baker as a victim who should be able to defend himself for the benefit of full knowledge of the complaint against him. The panel concluded that Mr Jordan's breach was not malicious. The panel found that Mr Jordan acted entirely alone and that other Governors would not have taken that

step. However, Mr Jordan's breach of confidentiality was contrary to the school's policy and contrary to Mrs Pacitti's legitimate expectations. The panel upheld this aspect of her complaint.

140. The panel noted that Mr Hurd had apologised to Mrs Pacitti on behalf of the Governors. The panel found that this apology was sufficient and that Mrs Pacitti was not entitled to any further apology from the Governors or any individual Governor. The panel did recommend that the Governors receive additional training on whistleblowing with particular emphasis on recognising whistleblowing and handling confidentiality issues.
141. The panel found that Mrs Baker had not been told by Mr Baker about Mrs Pacitti's allegations. Whilst on one view, many would expect a husband to share such information with his wife, following interviewing Mr Baker and Mrs Baker the panel concluded that the information had not been shared, with Mr Baker observing professional boundaries. There was no evidence that Mr Baker had disclosed anything inappropriate to other third parties or parents.
142. The panel reiterated that they found that Mr Baker did not disclose to Mrs Baker the fact of Mrs Pacitti's letter of concern. Accordingly, that could play no causal role on Mrs Baker's behaviour. The panel found nothing irregular in the way in which Alison Bush investigated Mrs Pacitti's complaint of bullying by Brigid Baker. They did observe that Alison Bush's investigation never went beyond interviewing witnesses to difficulties on 30 March. No fuller investigation took place because Mrs Pacitti declined to attend scheduled meetings to discuss her allegations and insisted that no investigation could be carried out without interviewing her first.
143. The panel rejected the suggestion that the referral to occupational health was a detriment for reasons similar to those the Tribunal found above. They found that "capability meeting" was a generic term for a meeting that could relate to performance issues or to incapacity due to sickness. Therefore, the wording was not inappropriate in the circumstances. There was no intention to start disciplinary process.
144. The panel found it a reasonable course of action to separate Mrs Pacitti and Mrs Baker particularly considering the school's duty of care to its students. They recognised that Mrs Pacitti would have been disappointed at the idea of moving classes, having formed a bond with the children in Mrs Baker's class. However, they noted that the class teacher had the primary relationship with the students so Alison Bush did not have the alternative of removing Brigid Baker. Mrs Bush's email of 24 April was polite, kind and reasonable. The panel concluded that moving Mrs Pacitti to another classroom was a wholly appropriate action on the part of the school, especially in view of its duty of care to protect its students from witnessing further negative interactions between Mrs Pacitti and Brigid Baker. The relocation did not cause Mrs Pacitti any loss or hardship beyond the minor disappointment and inconvenience that any employee may experience when asked to make a similar move.

145. The panel did not find evidence of any breach of confidentiality leading to social exclusion of the Claimant. They concluded that in none of the reported incidents did they find any evidence that the breach of Mrs Pacitti's confidentiality extended to parents or other staff via Mr Baker as Mr Pacitti alleged. They found that Mrs Pacitti's belief on this point was most likely based on paranoia rather than on evidence.
146. Other points are dealt with by the panel which go beyond the matters we are dealing with.

Cleaver Report: Recommendations.

147. The panel recommended additional training for the Senior Management Team and perhaps other senior staff on bullying, in particular identifying and handling the early stages so they are more confident. They further recommended training for the Governors in the Senior Management Team on whistleblowing, with particular emphasis on recognising when the school policy applies.
148. As to the relationship between Mrs Pacitti and the school they noted several references to comments from Mrs Pacitti showing that her trust and confidence in the school had broken down. The panel recommended the school consider whether it was possible for *it* to retain or regain its trust and confidence in Mrs Pacitti. They noted first that Mrs Pacitti had repeatedly alleged that the Senior Management Team all agree with her original concern regarding Mr Baker when that was not the case. They recorded their view that Mrs Pacitti's view of Mr Baker (and much of her appeal and grievance) seemed based on conjecture, assumption and gossip. With that in mind, the panel recommended that the school must consider whether it had confidence in Mrs Pacitti as a faithful, diligent and professional employee. Secondly, Mrs Pacitti had made numerous statements about staff and Governors that border on being, or likely were, defamatory. Thirdly, the tone of much of Mrs Pacitti's correspondence was inappropriate for an employee writing to an employer. They noted vitriol, sarcasm and aggression. Much of her correspondence with the Senior Management Team and Governors incorporated generalised and unfounded allegations of lies and collusion. The panel observed "This is simply not how we would expect reasonable employees to conduct themselves with their employers, even in the most extreme circumstances".
149. Indeed, the panel noted that Mrs Pacitti's approach to them was also inappropriate, including allegations of bias and unethical conduct that were inappropriate to the point of being actionable if repeated. The panel accepted at the time, and still accepted, that this was founded in Mrs Pacitti's paranoia that nobody connected with the school could be trusted.
150. The panel recommended that the school should now consider whether the obvious breakdown in trust and confidence between the school (in the form of the Governors and the SMT) and Mrs Pacitti was irretrievable. If Mrs

Pacitti did return to work they would recommend some form of mediation between her and any members of staff where there were unresolved issues.

### **The Tribunal's findings on the Cleaver Report.**

151. The Cleaver panel was asked to undertake a thorough investigation into the Claimant's allegations. This they did. There is an impressive body of evidence and detail collated by them. The fact is that they found against the Claimant substantially in their conclusions. The fact that the panel rejected the Claimant's position does not amount to a detriment. They did not make those findings on the ground that the Claimant had made protected disclosures. On the contrary, they investigated the allegations and came to the conclusion based on the evidence. Their conclusions are supported by the evidence that was put before them.

### **The Claimant's resignation.**

152. By letter dated 29 January 2018, following receipt of the Cleaver Report, the Claimant resigned claiming a constructive dismissal. She asserted that as a result of raising a whistleblowing concern she had been subjected to ongoing detrimental treatment by the school. She alleged a breakdown in trust and confidence, not on her part as the appeal outcome suggested, but on the part of the school. She alleged that her health and wellbeing had not been supported by the school. The delays had been intolerable and unjustifiable. The appeal outcome report was received 10 months after she first raised her concerns. The damage could not be undone. The suggestion of a mediation was too late. The report was described as the final straw. She argued that if her concerns had been treated with integrity, responded to in a timely manner, the school's procedures followed and her confidentiality respected, she would not have been in that situation.

153. Her daughters would stay at the school but her continued employment had become untenable. She had been absent with work-related stress since 24 April 2017. She argued that the concerns raised in her letter of 7 March and subsequent meetings were legitimate, genuine and raised in good faith. The school is a charity. She believes she raised serious issues about conflicts of interests in relation to the Governor's duties and the operation of the school including a suspected solicitation of key staff to another school. Her concerns were valid and worthy of an investigation, she argued. She described the appeal outcome as denouncing her, in effect.

154. The appeal outcome acknowledged, and could not avoid doing so, the breach of the express request for confidentiality. The report recognised that the breach was concealed for some weeks despite her repeated request for assurance that her confidentiality had been respected. It was only through making a subject access request that an apparent deliberate breach was revealed.

155. She argued that confidentiality was fundamental if staff are to feel they can safely raise concerns without the risk of retaliation.
156. The appeal outcome report stated her identity was irrelevant, yet this was obviously not the case. She was not afforded the protection of anonymity and as a result suffered retaliation on a very personal level and continued to suffer ongoing detrimental treatment as set out in her letter of 7 June and subsequent correspondence. She maintained the suggestion she had been subjected to bullying, harassment and ostracism from Brigid Baker, colleagues and parents. She describes this as ongoing bullying and ostracism and exclusion by colleagues and parents.

## **CONCLUSIONS**

### Did the Claimant make any protected disclosures?

157. We have referred above to the guidance in the case law to distinctions between allegations, on the one hand, and disclosure of information, on the other; much of the Claimant's position was allegation. The single most important allegation was one that Mr Baker had poached Mr Batchelder. There are other elements which might involve disclosure of information but which would not necessarily point to any breach of civil obligation. For example, that at Christmas drinks Mr Baker said he would recruit Carl Batchelder and his wife. That does not involve a breach of civil obligation. The Claimant alleged that staff were in abject fear of raising concerns, let us interpret that in a little less incendiary fashion that staff were in fear of raising concerns, that is a mixture of information and allegation; that the Chair had a staff meeting where he said he could be contacted directly might be information but it is not purporting to show any breach of civil obligation. If it were the case that the Chair had manipulated waiting lists or keeping open places then that might point to a conflict of interest. To that end there was an element of information.
158. The Tribunal cannot help but note that this was an intervention by Mrs Pacitti into the ongoing dispute with the Head Teacher. Much of the content of her allegations repeated allegations made by Mr Davies who was, in all probability, a source for much of the beliefs she relied upon. There was an ulterior motive in this intervention, namely to side with Mr Davies in an attempt to keep him in employment.
159. This is borderline as to whether the Claimant disclosed information rather than made borrowed allegations. We note that the school and the Cleaver panel assumed that these allegations were protected disclosures. On balance, the Tribunal concludes that there was disclosure of information, albeit the Tribunal is fully aware of the political context of the Claimant's intervention. The suggestion that Mr Baker had poached Mr Batchelder was a disclosure of information, albeit factually wrong.

160. Did she have a reasonable belief that they were made in the public interest? We note with interest the evidence of Mrs Rudol, who said that the Claimant believed that there was conflict of interest which needed to be called out. We accept that the Claimant believed what she was saying was made in the public interest. The public being the staff, parents and pupils associated with Chesham Preparatory School. The Civil obligation was around Governor's duties in the context of the law of fiduciary duties in respect of running a charity. If it were the case that Mr Baker had poached Mr Batchelder then that would support an argument that there had been a breach of fiduciary duty. The Claimant believed it at the time. It was reasonable for her to think the public interest was engaged - just. The Claimant could be reasonably criticised for making these allegations without more than minimal investigation on her own part. That said, she was entitled to raise matters confidentially and allow the Governors to look at them.
161. There was some concern in deliberation expressed by the panel that this might have been allegation based on tittle-tattle in the metaphorical school playground. However, there was sufficient factual content in the allegations to amount to disclosure of information.
162. So the Claimant made at least one protected disclosure relating to conflict of interest of Mr Baker as Chair of Governors and Head Teacher of Wetherby.
163. The Tribunal itself, however, finds that there was no conflict of interest. Mr Baker did not attempt to poach Mr Batchelder. He in no other way acted in conflict of interest or inappropriately, still less unlawfully. He is an educationalist, keen for the success of the school at which he works and for that attended by his children, at which his wife also works. He and fellow governors were forced into having to manage the breakdown in relationship between the Chesham staff and the former Head Teacher, Mr Davies. It seems that he has done that successfully.

Did the Claimant suffer detriments on the ground that the Claimant she made a protected disclosure.

164. On analysis, we find that the Claimant was not subject to any detriment on the ground that she made a protected disclosure.
165. Her concerns were investigated at length both by governors and by the Cleaver panel. That they were rejected (save for the breach of confidentiality) does not mean she was subjected to a detriment on the ground of having made one or more protected disclosures.
166. Her confidentiality was breached in an act of carelessness by Mr Jordan. On balance, we find it was not deliberate. It was not done on the ground that the Claimant had made at least one protected disclosure. It was not done for a retaliatory/victimising or deliberate reason.

167. Save for the breach of confidentiality, there was no mishandling of the investigation into her concerns.
168. The process was not compromised from the outset. The Claimant's concerns were fully and fairly investigated by the governors and by the Cleaver panel. It is true that some governors accurately saw hers as a factually mistaken intervention into the dispute with the former Head Teacher done to support the Head Teacher. That some expressed that (accurate) view right at the beginning did not prevent the allegations from being investigated fully.
169. It probably was not the right course for Mr Hurd to suggest that in the first place the Claimant raise her concerns with her line manager. That was a bona fide but probably mistaken view by Mr Hurd. It was not a material detriment and was soon rectified. The mistake was not made on the ground that the Claimant made one or more protected disclosures. It was made on the ground of a mistaken view of the correct procedure.
170. It is right that it took Mr Hurd 8 days to disclose the breach of confidentiality, between 13 and 21 March 2017. There were some misleading statements from him in the course of those days. Ultimately, he volunteered disclosure. The reason for the delay was that he was seeking to manage the handling of the dismissal of Mr Davies. The Claimant's disclosures were not the grounds for his decision-making.
171. There was no unreasonable delay in the timescales the Respondent dealt with the Claimant's complaints. The members of the Tribunal have seen far greater delays in workplace grievance handling than the timetable followed in this case. The Claimant was raising serious matters allied to the School's difficulties with its own Head Teacher. It was inevitable that some time would be taken. Indeed, the School went to the expense of paying for external specialists to look at the matter.
172. The Governors' outcome report was not a detriment. They bona fide concluded that Mr Baker had not poached Mr Batchelder. They were right, moreover.
173. Mrs Baker did not bully and harass the Claimant. The Claimant assumed Mr Baker would tell Mrs Baker about her allegations. He did not. He behaved entirely professionally. Mrs Baker did not bully and harass the Claimant on the ground of her protected disclosures, or at all. Mrs Baker was very upset at the allegation having previously enjoyed an effective working relationship with her teaching assistant. The Claimant misinterpreted Mrs Baker's conduct. The Claimant was over-sensitive because she knew she had made serious allegations.
174. To move the Claimant to another class was not a detriment done on the ground that the Claimant had made one or more protected disclosures. Alison Bush reasonably made the decision on the ground of the breakdown

in working relationship with Mrs Baker which was caused by the Claimant's behaviour misinterpreting the position with Mrs Baker.

175. The Claimant further misinterprets the referral to Occupational Health. It was legitimate to ask occupational health whether the Claimant would be fit to attend capability meetings. This is a normal request to make in the case of managing sickness absence. The Claimant has misinterpreted the request to relate to potential disciplinary meetings. It did not.
176. Alison Bush did not subject the Claimant to a detriment in making enquiries into the breakdown of her relationship with Brigid Baker, whether on the ground the Claimant made a protected disclosure or at all. Alison Bush made enquiries in good faith. She obtained relevant accounts from other staff.
177. The Claimant was not ostracised. This was her misinterpretation of events. She knew she had made serious allegations against Mr Baker and her misinterpretation of events had elements of paranoia to it.
178. The Cleaver panel did comprehensively reject the Claimant's allegations, save for the breach of confidentiality complaint. The Cleaver panel undertook a full and thorough investigation into the matters. It comprehensively rejected the Claimant's allegations of conflict of interest, as it was entitled to do. As a matter of fact, Mr Baker had not acted in conflict of interest or unlawfully at all.

#### Constructive unfair dismissal

179. The strongest argument the Claimant has always had is the breach of confidentiality. We have found above that it was not done on the ground that she had made a protected disclosure. It was however, as everyone has acknowledged, most unfortunate. The Claimant should have had an option of withdrawing her concerns if the Governors had come back to her and said, "The only way we can look at this is by sharing the disclosure to Mr Baker". We have never quite understood why Mrs McNaney was subject to the request for confidentiality. We well understand why in the first instance Mr Baker was asked not to be informed. However, we cannot conceive of how this matter could have been investigated fully without involving Mr Baker with knowledge of who was making the allegation because that would put it in to context. The context, of course, being that the Pacittis were close to the Headteacher and were intervening on his behalf.
180. Further, it seems very uncertain that Mrs Pacitti would have withdrawn at that point because Mr Davies, of course, had made exactly the same allegations and was not seeking that Mr Baker was ignorant of the allegation. Mrs Pacitti expressed her conviction that there was a conflict of interest on the part of Mr Baker forcefully and uncompromisingly to the Governors and to the Cleaver enquiry. So, in so far as Mrs Pacitti was intervening on behalf of Mr Davies, it would have been entirely consistent

with that to maintain her position even if it had to be disclosed to Mr Baker. That said, she should have had the option to withdraw the complaint.

181. Even though we have found the breach of confidentiality to be inadvertent, we find it was conduct that had the capacity to destroy the relationship of trust and confidence between employer and employee, and did so. It was a breach of the implied term that the employer, represented by the Governor Mr Jordan, would not conduct itself in a manner likely to destroy the relationship of trust and confidence between employee and employer, without reasonable cause. There was no reasonable cause.
182. The question then is whether that breach was affirmed by the Claimant awaiting the outcome of the internal appeal. We find, on the balance of probability, that the Claimant did not affirm the contract. She was entitled to wait to see how the internal appeal would deal with the breach of confidentiality. When the report came out unsympathetic to her overall position, the Claimant was entitled then to resign for the breach of confidentiality. Her resignation was significantly influenced and caused by that breach of confidentiality.
183. This is for a remedy hearing but the Tribunal, provisionally, is uncertain that the constructive dismissal gave rise to any substantial ongoing financial loss. There seems a real chance that the Claimant would have resigned anyway, with so many of her concerns having been rejected, or that the school would have taken up the recommendation to consider whether the employment could continue because of the Claimant's misconceived criticisms of Mr Baker, the Governors and the Senior Management Team. Many of her allegations were simply demonstrated to be wrong. Centrally, the allegation that Mr Baker acted with conflict of interests and an unmanaged abuse of power, and had poached multiple members of staff including Mr Batchelder, were demonstrably wrong.
184. We will repeat the context of the Claimant's intervention. This was an intervention in the politics of the school. At that time, the Governors were in the process of dismissing the Headteacher because of widespread dissatisfaction with the Headteacher across the staff and Mr Davies' manoeuvring in connection with the Chairman of Governors, seeking to have him removed. She made that intervention in ignorance of the full extent of matters, especially why it was that the Governors were acting as they were. Having made misconceived allegations, the Claimant's position was untenable, leaving aside for a moment the breach of confidentiality. She had maintained before the Governors and before the Cleaver enquiry, the specific allegations of conflict of interest and poaching. She did not withdraw them - she prosecuted them. Sadly for her, they were shown to be misconceived
185. The Claimant was constructively dismissed. The Respondent does not, in reality, try to defend the breach of confidentiality. Accordingly, it does not show a potentially fair reason for dismissal. The dismissal was unfair.

186. The Respondent does show that neither the reason nor the principal reason for the constructive dismissal was the fact that the Clamant made one or more protected disclosures. We have found above that Mr Jordan's inadvertent breach of confidentiality was not on the ground of any protected disclosure.

\_\_\_\_\_  
Employment Judge Smail

Date: .....

Sent to the parties on: .....

.....  
For the Tribunal Office

## APPENDIX 1

### AGREED LIST OF FACTUAL AND LEGAL ISSUES

Right not to suffer detriment in relation to whistleblowing Part IV Employment Rights Act ("ERA") 1996 section 47 B (1)

#### **Jurisdiction**

1. Was the Claimant's claim within the statutory timeframe for its submission?

1.1. The Claimant initiated ACAS Early Conciliation on 14 July 2017. The Respondent contends that any complaint by the Claimant in relation to detriment which is alleged to have occurred before 15 April 2017 is out of time in accordance with section 48(3) (a) ERA 1996

1.2. Is the detrimental treatment to which the Claimant contends that she has been subjected ongoing and part of a series of similar acts and/ or failures to act?

1.3. In the alternative, if, which is denied by the Claimant, the Claimant's claim in respect of detrimental treatment ( or part thereof) is held to be outside the statutory timeframe for its submission then was it " reasonably practicable" for the claim to be presented within that timeframe given the Respondent's alleged conduct in relation to dealing with her Whistle blowing concerns?

#### **2. Whistleblowing**

2.1. Did the following constitute "qualifying" disclosures made by the Claimant as defined by S43B ERA?

2.1.1. The Claimant contends that she made qualifying disclosures in her letter of 7 March 2017 to the Governors sent via Caroline Hughes, the School Bursar.

2.2. Was there a disclosure of information (conveying facts) by the Claimant?

2.2.1. The Claimant disclosed the following information in her letter:

-At the end of February 2017 it had been announced that Carl Batchelder, a key teacher at the school was leaving the Respondent to join Wetherby Prep. The Chairman of the Board of Governors, Nick Baker is the Head Teacher of Wetherby Prep. There was widespread concern amongst teachers and staff that Nick Baker had recruited Carl Batchelder.

- in December 2016 Nick Baker had told the Claimant that he was one of two staff he would recruit for Wetherby.

- Nick Baker was married to a member of staff and had introduced a salary scheme from his own school.

-Staff were in abject fear of raising concerns because of the Chair's position and influence in the School to include a salary scheme and that they were frightened to speak up. She referred also to the Chair's wife being a teacher in the School.

-the Chair had at a staff meeting said that he could be contacted directly with staff concerns, notwithstanding procedures in the staff handbook.

- parents, friends of the Chair, had told her that he had said to them that he would "get them up the waiting list" and "keep a place open for us". She expressed her concern that the Chair was running a private members' club.

2.3. Did the disclosures tend to show there had been a failure to comply with a legal obligation pursuant to S43 (b) ERA?

2.3.1. The Claimant contends that the disclosures within her letter of 7 March were qualifying disclosures because they contained information tending to show that the Respondent had failed or was failing or was likely to fail to comply with a legal obligation to which they were subject. The Respondent is a registered charity subject to the Charity Commission's Code and a company (limited by guarantee), the Board of Governors of the Respondent are both Trustees and Directors of the same and owe fiduciary duties at common law and duties under statute section 178(2) of the Companies Act 2006 (CA 2006). CA 2006 (Chapter 2 Part 10 codifies the company directors' duties at SS 171177).

2.3.2. The Claimant contends that the Chairman, Nick Baker was in breach of his legal duties under the Companies Act as a director and trustee to:

- promote the success of the Respondent - exercise independent judgement - avoid conflicts of interest

2.4. Did the Claimant reasonably believe that the information disclosed tended to show that there had been a failure to comply with a legal obligation?

2.4.1. The Claimant contends that she had a reasonable belief that the Chairman was in breach of these obligations. The Governors' legal duties are more fully set out in the Respondent's Code of Conduct for Governors – Roles and Responsibilities. The Governors are responsible for ensuring that the overall structure is fit for purpose and consistent with the School's charitable objectives. The Governors must - act in the best interests of the Charity and its pupils, taking into account the interest of parents and staff; -comply with charity, company and financial regulations; - avoid conflicts of interest; duty not to put themselves in a situation where they have interests which conflict with their duty - comply with the law and ISI.

2.4.2. The Claimant contends that the Chairman as a Head Teacher of Wetherby Prep school and the husband of a teacher at the Respondent had a conflict of interests and loyalties and could not act objectively in the running of the school because of those connected persons and business interests. The school was losing one of its best teachers. Carl Batchelder had been recruited by the Chair to Wetherby Prep. There were also financial implications. Governors were not

meant to have any financial gain and the Chairman was potential saving recruitment costs for Wetherby Prep by not having to go through an agency.

2.5. Did the Claimant have a reasonable belief that that the disclosure was in the “public interest”?

2.6. Was the Claimant’s disclosure protected?

2.6.1. The Claimant formalised her concerns under the Respondent’s Whistleblowing policy on 14 March 2017.

2.7. Were there subsequent qualifying disclosures?

2.7.1. The Claimant contends that in a meeting at 2.30pm on 23 March 2017 with Suzie Peck, Paul Johnson and her companion Hilary O’Connell to discuss the concerns raised in her letter of 7 March she disclosed the following additional information: - Two members of staff had told her how surprised they were that Carl Batchelder was going to Wetherby. -The Claimant referred to Stephen Blundell and that the Respondent paid for his training. She repeated that at the 2016 Christmas party the Chair had told her he would recruit Carl. - The Claimant’s workplace companion stated that there were 4 members of staff that had been poached: Henry Elstub, Stephen Blundell, Jane Balgobin and Carl Batchelder -The Claimant stated that the Chairman’s wife got special treatment and no-one could chastise her because her husband was Chair.

## **Detriment**

3. Was the Claimant subjected to detriment by the Respondent because of the disclosures made?

The Claimant contends that she suffered the following detriments:

Mishandling of concerns 3.1. Concerns not treated seriously in accordance with the Respondent’s policies. The Claimant was not initially directed to the Respondent’s whistleblowing policy. The Respondent’s Whistle blowing Policy provides that: “The Aims of this policy are: 1.2.1 To encourage staff to report suspected wrongdoing as soon as possible in the knowledge that their concerns will be taken seriously and investigated as appropriate and their confidentiality will be respected.”

3.2. Breach of confidentiality. On or around 7-9 March 2017, shortly after the Claimant submitted her letter of 7 March to the Governors the Claimant’s confidentiality was breached. The Claimant had expressly requested in her letter of 7 March that her identity be kept confidential from the Chairman and the deputy Chair Annmarie McNaney. The Claimant was concerned not only for the potential implications for her position as a part-time teaching assistant in the School, but also as a parent of children at the School. The Claimant worked in the same class as Nick Baker’s wife Brigid Baker, a teacher in the School. Annmarie McNaney was a family friend.

3.3. Process compromised. Upon receipt of her letter of 7 March the Board of Governors treated her concerns in a very dismissive and high handed manner. One of the Governors proposed a vote of confidence in the Chairman before any investigation had been undertaken into the Claimant's concerns. The Chairman also sought to involve himself in dealing with the Claimant's concerns despite the fact that he was implicated in these. These actions gave the Claimant little assurance that her concerns would be dealt with objectively or in accordance with due process. The process was compromised from the outset.

3.4. Disparaging comments. Disparaging comments were made about the Claimant and her husband by the Governors when her concerns were first being discussed upon receipt of her letter of 7 March. " I don't know who this couple think they are but they are not in a position to threaten us and I remain of the opinion that we reply to his letter at our convenience".

3.5. Initial dismissal of concerns by Governors. On 13 March Patrick Hurd Governor informed the Claimant that she should raise her concerns with her line manager not the Governors. The Claimant did so but expressed her concern as to whether this was appropriate given the nature of the issues raised which related to the Chair of Governors, the Governors having ultimate responsibility for their own governance and the School. The Claimant had in her letter expressly referenced the apparent abject fear of staff for their careers given their view that the Chair decided everything. The Claimant reiterated her concerns in relation to her confidentiality being breached. The fact that the Claimant had to raise her concerns with her line manager resulted in the Senior Management Team, being aware of her concerns and further breaches to her confidentiality. The Governors only agreed to investigate her concerns when she raised these as a formal whistleblowing complaint on 14 March.

3.6. Mistruths. Between 13 and 20 March Patrick Hurd, Governor, failed to admit that there had been a breach of the Claimant's confidentiality. It was only on 21 March that he admitted that there had been an "inadvertent" breach of confidentiality. It was he said a copying issue. The Claimant suspects that this is also not true and that the breach was in fact deliberate. Patrick Hurd had been fully involved in multiple email exchanges with the Chair prior to his email to the Claimant stating that he was not aware of any breaches of confidentiality. There had not only been serious breaches of her confidentiality and a deliberate attempt to conceal these breaches, but also an attempt by the Governors to compartmentalise and contain her whistleblowing concerns. The Respondent continues to refuse to provide a copy of the relevant email to the Claimant despite numerous requests and an SAR.

3.7. Unreasonable delay. On 11 April the Claimant had no option but to raise a formal grievance against the Governors regarding their handling of her whistleblowing concerns. It had been 25 days since she had first raised her concerns to the Governors and no meaningful action had been taken.

3.8. Outcome of Whistleblowing investigation. On 11 April 2017 the Claimant received the outcome in relation to her whistleblowing concerns. These were

entirely rejected. The Claimant contends that the outcome was pre-determined as she had suspected. There was no mention of any breach of confidentiality by the Governors or the reprisals suffered as a result. The Claimant contends that the Governors were clearly seeking to distance her Whistle blowing concerns from the bullying despite the fact that these were obviously linked. The Whistleblowing policy had not been followed in terms of timelines and process. The report was very short. There did not appear to have been any real investigation undertaken. No interview notes were provided of those interviewed namely Carl Batchelder or Nick Baker. Witnesses such as the Head Teacher and the Senior Management Team were not interviewed as part of the investigation. Interview notes from 30 March with the Head Teacher were not provided. It was not evident what if any documents had been considered. The report was not independent as it was one Governor Patrick Hurd investigating another Nick Baker. The Claimant was very disappointed having waited a month for this and having suffered at work as a result of raising her concerns. She appealed against the findings.

3.9. Further delay. On 7 June , no progress having been made in relation to the investigation of her concerns, but only continued delays and stonewalling the Claimant felt she had no option but to submit a formal grievance, consolidating her earlier concerns and failures in the handling of these and setting out full details of the detrimental treatment suffered and which she continued to suffer. The internal process only concluded in January 2018.

#### Bullying and harassment

NB. A detailed account of the bullying and harassment experienced by the Claimant is set out in her grievance letter of 7 June.

3.10. Bullying and harassment. The Respondent's Anti-harassment and Bullying policy' defines harassment as: "3.1. any unwanted physical, verbal or non-verbal conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. A single incident can amount to harassment. " [REDACTED] From 10 March Brigid Baker acted and continued to act from that date in a hostile manner toward the Claimant. The Claimant suspected that this was because her husband had made her aware of the concerns she had raised regarding him. The Claimant reported this to her line manager and the Head Teacher on 15 March 2017.

On 27 March the Claimant had to leave work because she was so upset by Brigid Baker's behaviour towards her. Caroline Hughes suggested that the Claimant take some time off if this was affecting her health. The Claimant was reluctant to do so as she did not want to be bullied out of her job and had never taken time off before. She wanted the investigation into her Whistle blowing concerns to be carried out promptly as this situation was ruining her job and putting her under unbearable stress.

The Claimant returned to work on 30 March but met with further overt hostility from Brigid Baker.

3.11. Failure to properly investigate bullying and harassment complaints. The Respondent failed to properly investigate and /or address this behaviour. On 31 March the Claimant had a follow up meeting with Governors Catharine Almond and Suzie Peck. Earlier that day the Claimant had again suffered further hostility from Brigid Baker when she attended work. The Claimant found the meeting entirely unsatisfactory. The minutes of the meeting confirmed the Governors' apparent view that they could not deal with the alleged bullying incident as they thought that this was a staff issue.

3.12. Further bullying and harassment. The Claimant returned to work on 24 April after the Easter break. She was immediately subjected to further bullying treatment by Brigid Baker. She became extremely upset and physically unwell as a result and had to leave work. She notified the Head Teacher Mike Davies and her line manager Alison Bush.

3.13. Moved class without consent. On 24 April the Claimant was notified by Alison Bush, without any prior consultation, that she was being moved to another class. The timetable was already prepared and she was told that it was for the good of her health. The Claimant had previously emailed Mike Davies and Alison Bush on 1 April confirming that she did not wish to be removed from her job as a teaching assistant in class 3B as a result of Brigid Baker's behaviour. She did not consider that this addressed her concerns, but found it humiliating and unfair.

3.14. Work related stress. The Claimant's health has suffered. She was signed off work from 24 April as she was diagnosed as suffering from work related stress. The Claimant attributes her work related stress to the mishandling of her whistleblowing concerns and reprisals suffered as a result of raising her concerns.

3.15. Occupational Health. On 5 May the School requested that the Claimant see an Occupational Health Advisor. The Occupational Health Advisor contacted the Claimant some weeks later, without the Claimant's knowledge that they were to contact her or her consent to her personal contact details: phone and email be provided to them. This caused the Claimant even greater anxiety. The Claimant contends that the referral was not to support her return to work. The School Bursar lied to the Claimant about the content of the requested report. The Claimant subsequently discovered from the Occupational Health Advisor that some of the questions from the School were to establish whether or not she was fit to attend a disciplinary meeting. This caused the Claimant further concern regarding her job security.

3.16. Outcome meeting bullying and harassment complaint. On 8 May the Claimant was requested by email to attend a meeting on 11 May with Alison Bush in accordance with the School's Grievance and Anti-Harassment and Bullying Policies. She was informed that Alison Bush had investigated this matter and would like to meet with her to report her findings. The Claimant was not well enough to attend this meeting. The Claimant had had no input into the investigation. No statement was taken from her. In fact the Claimant was not

aware that any investigation or interviews had even taken place until she got this meeting request. The Claimant subsequently discovered that contrary to its procedures the Respondent had interviewed 8 people without speaking to the Claimant first to understand the full details of her concerns so that these could be properly investigated. This resulted in further breaches of confidentiality as those interviewed were informed of the Claimant's concerns without her knowledge or consent. This just made the Claimant's position more difficult and led to her being further ostracised in school as this became public knowledge.

3.17. Social ostracism. In the period from on or about 13 March to date the Claimant was ignored by mutual friends of hers and Brigid Baker and blanked as she walked into school. Abusive comments have been made by other parents. This was as a result of breaches of confidentiality and caused subsequent ostracism and stigmatisation from staff and parents.

3.18 With regard to the report by the panel appointed by the Respondent to consider the Claimant's appeal against the original investigation into her whistleblowing complaint dated 11/04/17 ("the Report") • Was the Report overwhelmingly negative and dismissive of the Claimant's complaint? • Did the Report make repeated and unjustified attacks on the Claimant's character and integrity? • Was the Report unbalanced and partial in its assessment of the evidence it obtained? • Did the panel go to impractical lengths to explain away findings that were unhelpful to the Respondent?

## **Dismissal**

4.1 Did the alleged series of acts and omissions on the part of the Respondent undermine the implied terms of trust and confidence between the Claimant and the Respondent?

4.2 Did the Report trigger or revive earlier incidents? 4.3 Did the Report constitute a breach of contract or an incident capable of being a "last straw"? If so, was this sufficient to amount to a repudiatory breach of contract giving rise to an entitlement to treat the contract as terminated? 4.4 Did the Claimant's resignation amount to a constructive unfair dismissal within the meaning of section 98 of the ERA 1996? 4.5 Did the Claimant's resignation amount to an automatic unfair dismissal within the meaning of section 103A of the ERA 1996?

## **Remedy**

5. If successful in her claim what remedy is the Claimant entitled to?

5.1. The Claimant seeks:

a. a declaration that she has suffered a detriment by virtue of raising her Whistle blowing concerns contrary to section 47B of the ERA 1996;

b. compensation for the detriment suffered and dismissal;

c. an uplift in compensation of up to 25%.by reason of the Respondent's alleged failure to comply with the ACAS Code of Practice on Disciplinary and Grievance

**Procedures**

5.2. Were the Claimant's disclosures made in good faith or should any reduction be made to any compensation awarded pursuant to section 49(6)6A(b) ERA 1996?

Employment Judge Smail

South East Region

\_\_\_\_\_17.03.2020\_\_\_\_\_

Judgment sent to the parties on

\_\_\_\_\_27.03.2020\_\_\_\_\_