EMPLOYMENT TRIBUNALS

Claimant	**Respondents**
Mrs A Vaghji	**1. Edge Grove School Trust Limited** **2. Ben Evans** **3. Martin Sims**

Heard by CVP **On**: 4-7 January 2021
8 January 2021 (in chambers)

Before: Employment Judge Manley
Mr I Middleton
Ms G Binks

Appearances

For the Claimant: Ms F Babalola, solicitor
For the Respondent: Mr J Wynne, counsel

RESERVED JUDGMENT

1. The claimant did not make any protected public interest disclosures.

2. Even if there were any such disclosures, the first respondent did not subject the claimant to a detriment because she made a protected disclosure.

3. The sole or principal reason for the claimant's dismissal was not because she had made a protected disclosure.

4. There was no less favourable treatment by any of the respondents because of the claimant's race.

5. The claimant's claims fail and are dismissed.

REASONS

Introduction and issues

1. The claimant presented two claim forms and these were discussed at preliminary hearing on the 28 January 2020. In summary, the claimant

claims whistle-blowing dismissal and detriment and direct discrimination on the grounds of race.

2. The claimant's application for interim relief was unsuccessful with the judgment of Employment Judge Henry setting out the reasons for that unsuccessful application in a judgment sent to the parties on the 14 June 2019.

3. At the preliminary hearing in January 2020 the list of issues was agreed and appended to the case management orders. The list reads as follows:

"Protected disclosure

10.1 The alleged protected disclosures relied upon are set out in the document presented to the First Respondent on 7 March 2019 (and dated 22 February 2019), as explained by the Claimant's statement presented to the Respondent on 13 March 2019.

10.2 The disclosures concern vaping in classrooms and within school premises and the sharing of one indecent image of her self with a parent on a mobile device.

10.3 In relation to each alleged protected disclosure:

10.3.1 What was the "information" disclosed?

10.3.2 Did the Claimant have a reasonable belief that the disclosure of that information:

10.3.3 Was made in the public interest; and

10.3.4 Tended to show one or more of the 'relevant failures' set out at section 43B(1)(a) to (f) ERA 1996?

10.4 The Claimant alleges that each protected disclosure related to the following relevant failures:

10.4.1 That the health or safety of any individual has been, is being or is likely to be endangered.

10.5 There is no issue that the alleged protected disclosures were made by the claimant to the Respondent (her employer) within the meaning of s43C ERA 1996.

Dismissal

10.6 The claimant was dismissed on 25 March 2019. Was the sole or principal reason for the dismissal that the claimant had made a protected disclosure, such that she was unfairly dismissed contrary to section 103A ERA 1996?

Direct discrimination

10.7 The claimant makes a claim for direct discrimination on grounds of race (see paragraph 34 of the Second ET1).

10.8 The claimant's protected characteristic is of Indian ethnicity.

10.9 Did any respondent treat the claimant less favourably because of her race?

10.10 The less favourable treatment alleged by the claimant is (definitively):

10.10.1 The failure of the respondents to follow policies and procedures in dealing with the matters raised through the 4 reports from staff (Person 3) dated 31st January 2019, and (Person 1, 2 and 3) dated 4th February 2019.

10.10.2 The failure of the respondents to follow the complaints policies and procedures in dealing with the complaint raised by the parent dated 25th January 2019.

10.10.3 The failure to invoke policies concerning alleged grievances concerning staff, bullying and harassment or capability.

10.10.4 The disciplinary process and whistleblowing process conducted in a discriminatory manner.

10.10.5 Allegations of bullying were not put to the claimant, in her suspension letter, nor the invitation to the disciplinary hearing.

10.10.6 The claimant was interviewed by the headmaster (investigating officer) on the 1st February 2019, with matters put to her verbally pertaining to care of children, and matters concerning the child of the parent that made a complaint. The allegations pertaining to the reports provided by the 4 members of staff were not put to the claimant during the investigation hearing of the 1st February, and she was notified of these reports after the conclusion of the investigation and the decision to proceed to a disciplinary hearing.

10.10.7 The reports relied upon from 4 staff were not in accordance to the disciplinary policy.

10.10.8 The headmaster remained present in the room, contrary to the requirement stating the hearing manager will ask all parties to leave the room so that the facts can be considered. Mr Sims asked the claimant and her union rep to leave the room whilst he adjourned the disciplinary meeting to deliberate over the evidence in order to reach a determination on the 25th March 2019.

10.10.9 In the disparity of treatment between the claimant and her white colleagues with respect to the sanction as a result of the whistleblowing allegations, which the Respondent felt would have warranted for the claimant to be dismissed for gross misconduct, contrary to the sanctions for the very serious allegations by the white staff that committed the offences.

10.10.10 The disciplinary policy at 6.4.1 stated that the employee would be invited to an outcome meeting to which the employee will be informed of the decision at the disciplinary hearing. The headmaster was present when the claimant was notified of the decision.

10.10.11 Mr Sims specifically requesting a statement in rebuttal in assisting to building a case against the claimant, improperly inserting himself into this process.

10.10.12 The claimant being informed of the allegation of 'bullying', for the first time on the 25th March 2019 during the reconvened disciplinary hearing.

10.10.13 The labelling of the claimant as a bully by Mr Sims.

10.10.14 Dismissal

10.11 In respect of the claimant's allegation that the decision to dismiss was on the grounds of her race the claimant compares herself with a hypothetical comparator and/or the two members of staff disciplined for the safeguarding matters she raised that in her case would have resulted in dismissal.

ERA 1996 s.47B detriment claim

10.12 Did any respondent subject the claimant to a detriment because she made a protected disclosure?

10.13 The Claimant alleges that she was assured school policies provided that there would be no retaliation for whistleblowing but having made a protected disclosure she was subject to a further disciplinary allegation in response.

10.14 For the avoidance of doubt, there is not a s.27 EqA 2010 claim.

Jurisdiction

10.15 Were the claims presented within their respective time limits?

10.16 If not, should the tribunal extend time?

Remedy

10.17 What if any compensatory award is the claimant entitled to?

10.18 What if any injury to feelings award should be made?

10.19 To what extent should the award be reduced on the Polkey principle or for contributory conduct?

10.20 What if any ACAS uplift should be made?"

The hearing

11 The hearing was held by CVP. The bundle of documents, which was a little over 500 pages, had been sent electronically and the tribunal and the parties and witnesses were all at remote locations.

12 For the most part, the hearing proceeded properly except for a very few occasions where it was interrupted by a technical issue which was

resolved without any evidence being missed. The tribunal heard from the claimant and then from the following witnesses for the respondent:

Mr B Evans, former head and named respondent;
Ms G Emmerson, head of pre-prep;
Ms A Caldwell, deputy head pastoral and dedicated safeguarding lead;
Mr M Sims, bursar, named respondent and the dismissing officer.

13 The witness evidence was completed by the end of Wednesday 6 January 2021 and the tribunal received written and oral submissions on the afternoon of Thursday 7 January 2021. It was decided by the tribunal that it would be in the interests of justice to reserve judgment to have sufficient time to go through a fairly lengthy list of issues.

Facts

14 The tribunal find the following facts are relevant to the issues which we have to determine. As is often the case we heard some evidence which goes to background issues, but it is not necessary for us to determine those matters if they do not touch directly on the issues.

15 On 27 June 2017 the claimant was offered employment as an early years teacher at the first respondent's private school. She had worked for many years with young children, having been a nursery nurse and qualifying as a teacher some 3 years previously to this. She was to be employed in the "pre-prep" department which was for the very young children. Ms Emmerson was the head of pre-prep and told us that there were around 26 members of staff in that department. The claimant had a job description which is at page 206 of the bundle. The professional responsibilities were set out there and include, "*Promote the academic ethos and life of the school*" and then under "*Tasks and duties*" appear a range of expectations around teaching and learning and other headings for the usual duties for school staff, staff meetings, discipline and relationships and so on. The claimant was provided with an employment contract and a staff handbook. The aims of the school were said to include:

> *"1. To provide a secure and happy environment in which children feel safe, nurtured and valued;*
> *2. To promote a spiritual and moral awareness in our pupils based on the values of respect, empathy and kindness, developing a sense of service to the school community and beyond;*
> *3. To foster self-confidence and a lifelong love of learning so that pupils leave us as mature, engaging and thoughtful children".*

16 The school was founded in 1935 as a boy's school but became co-educational in 2018. It has charitable status and is a fee-paying school.

17 A number of policies have been referred to which appear in the first respondent's staff handbook. First, we were referred to the whistleblowing policy which makes it clear that there will be no reprisals for raising whistleblowing issues. It also mentions several people who can be

contacted with a whistleblowing matter. There are no designated time limits for anyone to raise such issues.

18 There is also a complaints policy for parents who wish to make complaints and a grievance policy for matters of concern to be raised by staff. There is a definition of bullying which we were referred to which is in the equal opportunities bullying and harassing policy which contains a definition of bullying (page 449) which reads as follows:

> "*Bullying be can be physical, verbal and non-verbal and can include*
>
> - *Shouting or screaming at any person, in public or in private.*
> - *Embarrassing or humiliating people by way of technology on social media or in front of colleagues/pupils/parents.*
> - *Persistent, unfounded criticism, accusations without basis.*
> - *Spreading malicious rumours.*
> - *Isolating, repeatedly ignoring or excluding a person.*
> - *Victimising any person.*
> - *Constantly undermining effort through constant criticism.*
> - *Blocking reasonable applications for leave, training or promotion without appropriate justification or explanation.*
> - *Unnecessarily invoking a disciplinary or capability procedures.*
> - *Overbearing supervision or other misuse of power or supervision.*
> - *Sending or posting of inappropriate or cruel text or images using the internet, intranet or any other form of digital communication.*
> - *A manager encouraging promoting or not halting that behaviour in others.*
> - *Inappropriate email behaviour.*
>
> *Bullying can take many forms, therefore this list is not exhaustive. Any inclusion or omission for the above list does not necessarily mean the bullying has or has not taken place."*

19 There is also a code of conduct which includes the following provision:

> *"Smoking (and this definition includes e-cigarettes/vaping) is prohibited on the school site. This includes school vehicles. This policy applies to all staff members, pupils, parents, visitors and contractors.*
>
> *No member of staff may smoke anywhere on school premises, vehicles and any areas not on the school site but are adjacent to the school entrance and breaches of this policy will be treated as a disciplinary matter."*

20 The claimant also made reference to the "capability" policy. There is no such policy, but there is a policy to which the tribunal was not taken which is entitled "incapability policy". The school also has a safeguarding policy which the tribunal has seen and which is very detailed. It gives a

clear process for safeguarding matters and explains the responsibilities on staff and particularly on the designated safeguarding lead.

21 At the time of the claimant's employment the head was Mr Ben Evans and Mr Martin Sims was the bursar. Ms Caldwell was deputy head pastoral and also the designated safeguarding lead (DSL). The claimant had learning assistants working with her from time to time; she was first assisted by EL and later by TB. At one juncture when EL was on sick leave the agency sent a person who was qualified as a teacher but working for the school as a learning assistant. It was reported at some stage that that person had been unhappy working with the claimant. It was reported that she said that she would not return to the school.

22 The claimant had supplied good written recommendations when she was appointed and her employment appeared to start relatively well. The tribunal has seen examples of copies of her lesson observations which indicate good progress. In around April 2018 the claimant's evidence is that she was approached by EL (her then learning assistant) who showed her an image of herself "half naked" on her phone. The claimant and EL were alone in the classroom without any children and EL told the claimant that she had sent that image to a parent the previous day when she was talking to them. The claimant's evidence was that she had said something to the effect of "*oh my god please don't tell me anymore*" and that EL should stop as it was not right. This version of events was later disputed by EL who did accept that she had told the claimant that she had sent the photo to a parent, and shown it to her, but the claimant's reaction had not been to criticise her. Nothing happened about that incident at the time as it was not reported.

23 When Ms Emmerson gave evidence, she provided examples of her increasing concern about the claimant and, in particular, her relationship with other members of staff. At some point Ms Emmerson became aware that the agency member of staff (referred to above at paragraph 15) had found the tone which the claimant adopted patronising and, at a later point, made it clear to Ms Emmerson that she would not be prepared to work with the claimant again. Ms Emmerson told the tribunal that she tried to encourage the claimant with positive comments and she hoped that she would mix more easily with other members of staff. She noticed that TB, who had become the replacement learning assistant for EL, was becoming upset and found how the claimant spoke to her upsetting.

24 The claimant had passed her probation in June 2018. She sent an email to Ms Emmerson on 29 November 2018 where she asked about the length of breaks and complaining that she was being left on her own. Ms Emmerson's response was to try to encourage the claimant to mix more with other staff. At a later stage, the claimant said that she felt that, although she had tried to fit in, it had been difficult. Ms Emmerson's evidence was that the staff room is a very welcoming place.

25 In the autumn of 2018 Ms Emmerson was told by a playground supervisor that they had found a vaping cartridge and they believed that it

belonged to EL. Ms Emmerson therefore spoke to EL about it and reminded her of the policy about no vaping and made it clear that it would not be tolerated. Ms Emmerson did not recall that EL accepted that she had been responsible for vaping; her recollection was that EL thanked her for her advice. At a later point in March 2019, after the claimant had raised an issue of EL vaping, EL was asked questions about it in by Ms Caldwell. The note records this exchange (page 418):

> *"*(Question) - *Have you ever or do you know of any member of staff who has vaped either in the school building or on the school site?*
>
> EL's response is as follows*: "I was spoken to once by Gill following an incident on the paddock and I have not vaped on site since.*
>
> *AC questioned EL about the allegation of vaping in reception beech in December 2018, EL strongly denied this".*

26 The tribunal accepts that the answer given to Ms Caldwell at that interview in March 2019 could be interpreted as EL perhaps admitting to vaping on that occasion. In any event, nothing further was done at the time of the incident. As will be seen, it was followed up after the March 2019 interview.

27 The claimant also alleges that Ms Emmerson said something to the effect of "*this is not the school for you*". Ms Emmerson denies making such a comment. The tribunal cannot accept that was said. Ms Emmerson struck the tribunal as an empathetic lead teacher, evidenced by what she said in the tribunal and contemporaneous documents. It seems unlikely that she would make that comment given that, at that point, she was trying to encourage the claimant to be more collegiate in her approach. It is possible that, in a discussion with the claimant when she was trying to give her that encouragement, the claimant thought that something she said could be misinterpreted like that, but the tribunal cannot find that those words or anything similar were used.

28 On 25 January 2019 a complaint was made by the parents of a child at the school against the claimant. A note of what the parents then said in a meeting with Mr Evans appears in the documents between 337 and 340. It includes a number of allegations and is detailed and rather wide ranging. It begins with a number of points which are about matters which took place in and around September 2018 when discussions were being held about whether the child was to attend after school clubs. Amongst other things it was noted that the claimant was said to be "*abrupt*" and "*dismissive*". She was also reported to have said negative things in front of the child which had upset them. The claimant was said to have disagreed that the child was ready for a club and had said that in front of them. A mention was made of the child not being able to dress themselves and wetting themself and comments being made about that, in their presence. The document concludes in this way:

> *"The main problem is with (the claimant) being abrupt, not being kind and raising issues next to - . We are unable to communicate constructively with her. Additionally, we and a number of other parents have educational concerns about her approach and it is impossible to raise them with her. Everyone is more concerned about what mood she will be in. I saw her raising her voice to children and this does not back up Ms Emmerson's view that she is kind, caring and putting children in the first place."*

29 As has been indicated, Mr Evans met with the parents and heard about their complaints. He and Ms Caldwell met with the claimant and she was given some indication of the nature of the complaints, She was told that she was to be suspended. Mr Evans and Ms Caldwell told us that they were sympathetic to the claimant's position and we accept that they tried to deal with matters in a sensitive way. The claimant was told in a letter that the school:

> "*had received serious allegations concerning your attitude towards treatment of pupils, their parents and colleagues alike. I advise you that faced with these allegations and complying with our disciplinary policy, a copy which has been given to you today, we will need to conduct an investigation into the allegations. Depending upon the outcome of the investigation, it may be necessary to hold a formal disciplinary hearing and you were advised that should the matter proceed to a formal hearing, one possible outcome of the hearing is for your actions to be construed as gross misconduct, in which case your employment might be terminated without notice."*

30 The letter refers to the disciplinary policy and the clause on suspension and that it would be paid suspension. Although the claimant told the tribunal that she felt she was treated like a criminal and the tribunal can appreciate that it was upsetting, there was nothing in the way she was dealt with that should have made her feel this way.

31 Mr Evans began to undertake an investigation and four members of staff were spoken to. The first person's statement appears at page 342 and is dated the 31 January, this says:

> *"I have heard numerous complaints from colleagues who have appeared upset. A typical example is one LA who felt that she was spoken to in a rather unsavoury tone by (the claimant) and did not comprehend the reasoning behind (the claimant's) rudeness. She could not control her tears and cried publicly in the staff room."*

That person's statement went on to talk about another incident where the agency staff walked out "*vowing never to come back*". That person made reference to the fact that the claimant had her mobile phone in class but it seems that she was unaware that the claimant had been given permission to do this so that she could contact her disabled child.

32 Meanwhile, other parents were writing to express concern about the claimant's absence. Mr Evans was trying to reassure them that matters were in hand without breaching any confidentiality about the situation. In Mr Evans' witness statement, he wrote that he discussed the statements that had been collected with the claimant on the 1 February when there was an investigation meeting with the claimant. However, he accepted under cross examination that this cannot have been correct as the other three statements were not dated until the 4 February.

33 There was a meeting with the claimant on 1 February, again with Mr Evans and Ms Caldwell. Notes of the hearing appear in the bundle at pages 354 to 355 and the discussion was primarily about the parental complaints. The claimant sought to give an explanation for her actions about what the parents had raised. She denied some of the allegations and said that she did try to give a warm welcome to parents, that being one of the allegations against her. She agreed that she usually spoke to the parent about a child with the child present. Matters were not taken much further at that point.

34 Other statements came from three other members of staff all dated 4 February. Person one, (page 358), said that "*her manner of talking to adults could be rude and abrup*t". Person one also said that "*assistants working with her on many occasions came to me crying about the way she treated them or the way she spoke to them*". Person one made reference to the claimant's not doing outdoor activities with the children but she did say that she had never heard her be "*mean to the children*". She said the claimant showed a caring side but concluded, "*I found she happily would take but was short on the giving side*".

35 Person two (page 360) alleged that the claimant, "*would get into a mood which would go on for days"*. Person two also said that she herself took some time off because she became distressed and then, "*adopted a coping mechanism*" when she returned. Person two said that they did this to avoid an atmosphere within the classroom. Person two gave three examples of toileting matters involving small children where they felt that the claimant did not deal with the matter appropriately.

36 Finally, person four (page 361) said that, "*working with (the claimant) has been extremely challenging. I found her to be very demanding. She struggles with change, positive criticism and with basic social interaction*". Person four gave a number of examples of this stating that the claimant spoke in, "*a very abrupt and rude manner*". Person four went on to say that (the claimant*)* had *"bellowed"* at her and that she had complained about this to Ms Emmerson. Person four also raised the issue of the claimant having her mobile phone in class and that the claimant did not meet and greet at the door in the mornings.

37 On 6 February Mr Evans wrote to the claimant again, sending copies of the notes of the meeting of 1 February and enclosing copies of the four staff statements. He went on to say that this meant there was a case to answer over the allegations and she was asked to attend a disciplinary hearing on the 14 February. As he had led the investigation, the claimant

was informed that Mr Sims was to be the hearing manager. The hearing did not proceed on 14 February because the claimant had sought trade union assistance and that was not available on that date. It therefore did not take place until 7 March.

38 The meeting on 7 March started with the claimant attending with her union representative. There is some dispute about the accuracy of the notes and the tribunal has seen two versions. One prepared by the claimant (page 495) and another which the first respondent fully accepts at page 428. There is not a significant difference between them and no real points were taken in cross examination with respect to any particular disputes. The claimant brought a number of written character references to the meeting and her representative raised an issue about the staff statements being anonymised. It was then stated that the claimant wished to present a written statement and she did so.

39 This statement is dated 22 February but it is accepted that it was not handed to the first respondent until 7 March. It is this document at page 375 which raises the first of the alleged public interest disclosures. It is worth reading the whole of that document which reads as follows:

> *"My name is Anita Vaghji, I have worked with children for over 28 years and I have never had such strong allegations made against me. These allegations have left me completely heartbroken. In all my years of working with children I have shown love, care and attention enabling every child to reach their full potential carrying out my duties passionately.*
>
> *I have worked in a variety of settings and proved to be a strong and valuable asset to every team. I have never witnessed such that I am experiencing here today. I thought that I was being a listening ear to those that needed me and I managed to clear up and reorganise not only my current setting but any that I might have been in with high regard.*
>
> *I have always treated staff, parents and children with respect, importance and value as I am fully aware that the children are my primary concern and without them I would not have a job.*
>
> *I have always tried to create an even balance in terms of learning, fun and classroom management with an organised, personal and independent atmosphere which enables the children to thrive and flourish. I have always carried out my role and fulfilled my duty as a teacher in the best way possible showing receptiveness.*
>
> *It saddens me that other staff members can:*
>
> - *Vape in classrooms and within the school premises.*
> - *Have long breaks which are extended.*
> - *Have mobile phones in class.*
> - *Have personal intermate conversations with parents.*

- *Have shared indecent images of themselves with a parent on a mobile device.*
- *Talk about me with no regard towards my feelings amongst themselves.*
- *Leave me out.*
- *Isolate me – making me feel isolated.*
- *Make me feel vulnerable.*
- *Make me feel inadequate.*
- *Not supporting me.*
- *Say I am doing a great job one minute and subsequently be presented with such serious allegations. These allegations that can completely ruin my career with children and demoralise me in an instance.*

At the end is a hand-written note:

"I feel that the allegations are a discredit to my character and I feel victimised 2/3/19"

It is signed by the claimant.

40 The tribunal has to consider what the claimant's intention was when she presented these matters at the disciplinary hearing. For the purposes of the public interest disclosure claim, the tribunal needs to consider whether the claimant had a reasonable belief that anything she said would amount to a disclosure which was in the public interest and, in this case, that it concerned health and safety of an individual. We do not accept that that was what the claimant was doing at this point. The way in which that document is worded is entirely about the claimant's own position. There is no hint in there that she believes there are any matters of health and safety or that she is, in some way, "*whistleblowing*". She specifically refers to the fact that it saddens her about "*other staff members*". The tribunal finds that the claimant did not have a reasonable belief that this was in the public interest or that it raised matters of health and safety when she submitted this statement which was entirely to do with the disciplinary process and was a way of comparing her alleged behaviour as against other staff members.

41 The claimant alleges that Mr Sims was furious when she handed this document. Mr Sims postponed the hearing so that he and Mr Evans could take some time to read the document. The tribunal do not accept that Mr Sims was furious but he accepted that he was frustrated by the document given that some things needed further investigation and this would lead to further delay, there already having been some delay whilst the claimant's trade union representative was able to attend. It is possible that his frustration led to an error which he made when he indicated that the claimant's suspension would continue without pay. The claimant also alleges that Mr Sims instructed her or asked her to retract the statement. Mr Sims denies that he did so. The tribunal find that there was no such instruction or suggestion. Having heard all the evidence, we find that it is

highly unlikely that the school would wish to cover up some of the potentially relatively serious allegations, some of which might possibly amount to matters needing to be considered under the safeguarding policy. It is possible that the claimant heard some of his frustration in what Mr Sims said, but we cannot accept that he either harassed her or instructed her to retract the statement. In any event, even on her case, she did not retract it and the disciplinary hearing had to be postponed for further investigation.

42 As indicated Mr Sims told her that the delay had been caused by her late statement and her suspension would be unpaid. The tribunal accepts that was an error which he made but he cleared it up immediately and although it was unfortunate, he apologised for it in an email sent the next day on 8 March when he told the claimant that suspension would continue with pay (page 405).

43 It was decided by Mr Sims that there needed to be an investigation into other staff's potential wrongdoing and matters the claimant had raised about attitudes to her. Firstly, he asked Ms Caldwell to carry out an investigation into matters which could amount to safeguarding matters. For our purposes those are the allegations about vaping and the sharing of the photo. Secondly, he asked Ms Emmerson to comment on what she knew about the last seven bullet points in the claimant's statement.

44 Ms Emmerson told the tribunal that Mr Sims had told her about the claimant's statement on 11 March and she sent him an email later that day in response to the last seven points. She said she had supported the claimant and had encouraged her to "*assimilate*" into the team. She gave examples of the claimant commenting on how supportive Ms Emmerson had been.

45 Mr Sims replied to that email, also on the same day, asking Ms Emmerson to make a statement "*maybe using your notes as rebuttal of her statement?*". Mr Sims was cross examined in this hearing on what was meant by "*rebuttal*". Mr Sims said that, with hindsight, he would have used a different word but did not agree that he was only looking for evidence that went against the claimant. Ms Emmerson said that she understood "*rebuttal*" to mean that she should give her opinion alongside the claimant's. She did not accept it was necessarily confrontational. On 12 March Ms Emmerson signed a statement which repeated much of what she had said in her email. In summary, that the claimant had been supported, that the claimant herself had been reluctant to participate but that she had encouraged her and given positive feedback. The tribunal accepts that Ms Emmerson was giving as accurate a picture as she could of the claimant's concerns. Ms Emmerson was not influenced by the use of the word "*rebuttal*" as she put in her statement much the same information as was in her email before that word was used by Mr Sims.

46 As for the other bullet points about other alleged wrongdoing by staff, Mr Sims and Ms Caldwell have slightly different recollections of the process which was discussed between them for the investigation into these potential safeguarding matters. Ms Caldwell's evidence was that she

agreed with Mr Sims what the questions to those staff members should be whereas he recollected that they simply discussed the scope of the questions. This has been characterised by the claimant's representative as "limited" questioning because there appeared to be no follow up questions at the investigation stage. This is partly accurate, although for some of the people involved there were further questions at the disciplinary stage. One allegation which was subsequently made by the claimant does not seem to have been pursued, that of BM losing her vape at some point.

47 The claimant was asked for more information from Ms Caldwell who was then asked and provided assurance to the claimant that there would be no reprisals for her raising matters under the whistleblowing policy. The claimant then provided further information on the matters she had raised in the 22 February document by a document of 13 March 2019. The claimant put some dates on the allegations she had mentioned in that statement. She alleged that EL came into reception area where the claimant was working in December 2018 and started vaping. She further alleged that EL had been there on the 10 January with a vape in her hand and that she had asked her not to vape. Finally, she said that EL had confided in her personal issues in January 2019. She went on to say that EL had confided in her about a topless photograph on her phone and that she had made the response referred to at paragraph 16.

48 The claimant also raised issues about TB in that she alleged that she took long breaks. As far as a colleague BM was concerned, she alleged that she had told her that she had lost her vape in December 2018 when she had asked if she had seen it because she had lost it. She alleged that sometime later she said had found it. She also alleged that she had seen TB using her mobile phone on 22 January 2019.

49 As indicated, those were the matters which formed the basis of the questions asked of various staff members by Ms Caldwell and the notes appear between pages 418 and 422. It is not necessary to refer to all of them. We have already made reference to EL's response about vaping. As far as the intimate photo was concerned, EL agreed that she had sent the photo and that she had spoken to the claimant about it. She did not suggest that the claimant had shown any concern, but said she had made other comments including that she did not need to worry.

50 One staff member, MA, said that she had seen BM and EL vaping, but not when children were present. TB said that EL and BM had vaped in team meetings and BM said that she had seen EL vape once. BM vehemently denied any vaping behaviour and strongly refuted the allegation. Ms Caldwell notes that she did follow this up and Ms Emmerson said that she had not had any of that reported to her. It seems that Ms Caldwell did not follow up any of the other answers at that stage.

51 Mr Sims was sent the questions and answers and discussed them with Ms Caldwell. They both agreed that they would proceed to a formal disciplinary hearing against EL on the inappropriate photo and vaping, but that BM and TB would be advised there was no case to answer as they both

denied the allegations. Mr Sims was to be the hearing manager for EL and he said that they should be sent the relevant documents. In letters to BM and TB Mr Sims made the mistake of calling Ms Caldwell the hearing manager when she was in fact the investigation manager, but nothing very much turned on that.

52 On 20 March the claimant was written by Mr Evans to be told that,

> *"The scope of the disciplinary hearing being held on the 25 March has been extended to include consideration of the much delayed whistleblowing and the potentially serious allegations contained in your statement. The reason for this is that it is considered to amount to a breach of trust between you and the school."*

53 On 21 March Mr Sims held a disciplinary hearing with EL. He told the tribunal that EL had denied vaping, but it seems that he did not put directly to her that that might contradict what she had said in answer to questions from Ms Caldwell (as mentioned above at paragraph 19 and 20). In any event, he decided that there was no case to answer with respect to vaping and the EL was given a final written warning for the inappropriate photo which reads as follows:

> *"A final written warning will be placed on your HR file, and due to the seriousness of the matter, that warning will not be time limited. This is because the sharing of the media concerned could have caused disrepute to the name of Edge Grove School. You should be aware that any future proven serious allegations of any nature may result in your instant dismissal."*

54 As indicated, the claimant had been informed that her disciplinary hearing would include the alleged breach of trust. The first respondent accepts that this only allowed 3 working days between 20 March, which was a Wednesday, and 25 March, which was a Monday, whereas its disciplinary procedure says that 5 working days' notice is required. This matter was not raised by the claimant either before or at the hearing or by her representative, but it has been criticised here.

55 The disciplinary hearing was held on 25 March 2019. It was held in Mr Evans' office, and he was there to present the case as the investigation officer. The claimant was present with her trade union representative and Mr Sims was the hearing manager. There are handwritten notes and there are typed notes; as indicated these are not entirely agreed, but some of them have been referred to and there are no significant differences that go directly to the issues. It is not disputed that a copy of the written parental complaint referred to above at paragraph 22 was never provided to the claimant but it does not seem it was requested.

56 Mr Evans said that the four matters were to be considered:- *"1. Treatment of children; 2. Bullying of staff; 3. Poor relationships with parents; 4. Breach of trust"*. It was said that there had been investigations following the claimant's personal statement presented to the meeting on 7 March

2019. Mr Evans then went through some of the details contained within the documents, statements from staff and the parents' complaint letter. On the claimant's behalf, the trade union representative stated that some matters should be considered separately and that the breach of trust allegation should not proceed as it was not part of the original disciplinary hearing. No specific point was taken about the time frame.

57 Again, details of the allegations were gone through with the claimant. She gave a number of explanations for what had occurred and took issue with characterisation of her attitude to staff, parents and children. To a large extent it seems that there was a difference of opinion as to how the claimant's attitude had or had not impacted on other people.

58 The conversation then moved on to the breach of trust allegation. It was put to the claimant that she had known about the allegations "*as it had happened in the past but only chose to whistleblow now due to the disciplinary hearing*". The claimant replied that it was more a reflection of herself. She said that she was scared and new to the school and now she had representation she felt able to raise matters. This has been her explanation throughout this hearing as to the delay in bringing potentially serious disciplinary and/or safeguarding matters to the schools' attention. When asked why she was scared she said that she did not know who to go to. Mr Evans commented that he was concerned that she did not know what to do with a safeguarding issue as that was clear from the policy and training. She repeated that she was saddened to raise the issue now and repeated that she had been scared.

59 There was then an adjournment. The disciplinary policy at 6.3 (page 202) states that all parties should be asked to leave the room while a decision is made, but Mr Sims stayed in the room with Mr Evans and the note taker present whilst the claimant and her representative left the room. Mr Evans gave evidence that there was no discussion between them and the tribunal accepts that given that it is quite clear that the decision was taken entirely by Mr Sims. There had been an earlier adjournment (page 343) which the claimant asked for. She was asked whether she wanted to make other comments and there were a considerable number of bullet points recorded, the points she made at page 434. These are a mixture of concerns about her own treatment and the statements about her willingness to improve if that was needed. When the meeting reconvened after Mr Sims had considered matters it is recorded that he said:

> *"That it was not within reasonable doubt that the four statements and the original investigating officer's interview with (the claimant) gives strong credence to bullying behaviour by (the claimant) and breach of trust between (the claimant) and the school. The outcome is gross misconduct and (the claimant) was dismissed effect 25 March 2019"*

60 There was then a short discussion about the claimant's right of appeal and the claimant collecting some personal items. An email was sent later that day by Mr Sims which says:

> *"I am writing following the disciplinary hearing held with you today at which you were advised of the allegations of bullying and of betrayal of trust had on the balance of probability, been upheld again you and that you were therefore being dismissed with effect from today 26 March 2019." (page 436)*

61 Mr Sims gave detailed reasons in his witness statement to the tribunal about his decision to dismiss. In that witness statements (paragraphs 28 to 32) he says that he deliberated by going through all the evidence, including the statements from the colleagues and Ms Emmerson's statement. He said that he considered the disciplinary policy, including the examples of gross misconduct which include bullying or harassment of employees and (at paragraph 31) he concluded that the claimant's treatment of children also amounted to bullying.

62 At paragraph 32 he sets out, in some detail, why he took the view that her delay in raising the matters which could fall under the whistleblowing policy but also could form safeguarding issues amounted to a breach of trust so that, if he had already not decided to dismiss her for the other reasons, he would have dismissed her for breach of trust. What he says in his statement is not completely in accordance with the contemporaneous evidence of what he said at the hearing and in the email. That rather suggests that his concentration was on bullying and breach of trust taken together.

63 However, the tribunal has to consider, as a question of fact, whether the reason for the dismissal was because the claimant had made a public interest disclosure. Putting to one side the question of whether what she said did amount to a protected disclosure under its legal definition, the tribunal has considered whether anything she wrote in the statement was the sole or principal reason for her dismissal. We find that it was not. Quite clearly, Mr Sims took the view that both the bullying aspect and breach of trust were matters of gross misconduct and that was the reason for the claimant's dismissal. The breach of trust was a breach of trust not because the matters were raised but because there had been a delay in raising them. In the first respondent's view, they had been raised only to delay or derail the claimant's own disciplinary procedure by pointing the finger at other potential wrongdoing.

64 The tribunal accepts that the first respondent had sufficient evidence to convince it that the claimant's attitude amounted to gross misconduct because of the impact that it had on parents and staff (and potentially the children) and that was the reason for dismissal. We also pause here to consider whether, as a matter of fact, the claimant's race played any part in this decision. There is simply no evidence to that effect but we will provide further details on that when we deal with the issues and our conclusions.

65 The claimant did present an appeal and attended an appeal hearing with the chair of governors but that was dismissed and no point is taken on it. As indicated, she lodged two claims and there was a hearing to deal with

an interim relief claim for the protected disclosure matter which was unsuccessful.

The Law

66 The law with respect to public interest disclosures is set out in part IVA of Employment Rights Act 1996 (ERA). Section 43A ERA 96 defines a 'protected disclosure' *as a qualifying disclosure (as defined by s43B) which is made by a worker in accordance with any of sections 43C to 43H".*

67 The relevant parts of section 43B of ERA 96 state:

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following—

(a) -

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) -

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

68 Pursuant to s43C a qualifying disclosure is made if the worker makes the disclosure to his employer.

69 When considering whether there has been a 'disclosure' within the meaning of s43(B)(1) the employee must disclose 'information'. It is not sufficient that the employee has made an 'allegation' (Cavendish Munro Professional Risks Management Ltd v. Mr. M Geduld [2010] ICR 325) although that has been clarified by the Court of Appeal in Kilraine v London Borough of Wandsworth [2018] ICR 1850 so that there is little distinction between allegation or information. The tribunal must look at what was said and must consider whether the disclosures contain sufficient factual content and specificity to amount to a reasonable belief in the breach alleged.

70 The claimant must show that she reasonably believed the disclosure was in the public interest. There is no requirement to show that the breach actually occurred. Our task is to consider, in relation to the alleged disclosures, whether, in the claimant's reasonable belief there was information which was in the public interest and tended to show one of the matters in s43B (1) b) or d), namely that there had been or was likely to be a breach of a legal obligation or a health and safety risk. As far as the public interest aspect is concerned, Parsons v Airplus International Limited UKEAT/0111/17 reminds us that where a disclosure is "solely made" in the claimant's self-interest, it will not be in the public interest. It may, of course, be in the claimant's self interest as well as in the public interest.

71 Guidance is provided to tribunals hearing public interest disclosure cases in Blackbay Ventures Ltd T/A Chemistree v Gahir [2014] ICR 747. It is suggested that each disclosure should be separately identified; that each failure to comply with a legal obligation or health and safety allegation should be separately identified; that the legal obligation may need to be identified; that the issue of whether the claimant had a reasonable belief that it was in the public interest and, where detriment is alleged, that the detriment should be identified.

72 Section 103A ERA provides:

"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".

73 If we find that there were one or more public interest disclosures, we must then consider whether the dismissal was because the claimant made the disclosure(s). With respect to the burden of proof where the claimant claims automatically unfair dismissal under s103A ERA, the case of Kuzel v Roche Products Ltd [2008] IRLR 530 states that the claimant must challenge the employer's reason and produce some evidence of a different reason for dismissal.

74 Section 47B ERA provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer on the ground that the worker has made a protected disclosure. Section 48(2) ERA provides that on a complaint under section 47B :- "*it is for the employer to show the ground upon which any act, or deliberate failure to act was done*". The tribunal must decide what caused the detriments (if any are found) and the dismissal. Helpful guidance in assessing causation is provided in the Court of Appeal's judgment in Fecitt v NHS Manchester [2012] ICR 372 where it was said:

"*section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than trivial influence) the employer's treatment of the whistleblower".*

75 The direct race discrimination claim is brought under sections of the Equality Act 2010 (EQA). The most relevant are as follows: - section 13 for the direct race discrimination claim (along with section 23 on comparators) and the burden of proof provisions at s136. Those sections are reproduced below.

Section 13 : Direct discrimination

(1) *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

(2) *If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.*

Section 23 : Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of Section 13, 14 or 19 there must be no material difference between the circumstances relating to each case

Section136: Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) an employment tribunal;

76 The tribunal must make findings of fact and apply the legal tests to those facts. The tests for direct discrimination were discussed in Igen v Wong [2005] ICR 931 and it is clear that all evidence before the tribunal can be taken into account, not just that put forward by the claimant. The tribunal is mindful that it is unusual for there to be clear, overt evidence of direct discrimination and that it should consider matters in accordance with section 136 EQA. When making findings of fact, we may determine whether those show less favourable treatment and a difference in race. The test is: are we satisfied, on the balance of probabilities that this respondent treated this claimant less favourably than they treated or would have treated someone of a different race. We are guided by the decision of Madarassy v Nomura International plc 2007 IRLR 246 reminding us that unfair treatment and a difference in race, or any other protected characteristic, does not, on its own, necessarily show discriminatory treatment.

77 If we are satisfied that the primary facts show a difference in race and less favourable treatment, we proceed to the second stage. At this stage, we look to the employer for a credible, non-discriminatory explanation or reason for such less favourable treatment as has been proved. In the absence of such an explanation, proved to the tribunal's satisfaction on the balance of probabilities, the tribunal will conclude that the less favourable or unfavourable treatment occurred because of the claimant's race.

78 The parties provided written submissions and added to them orally. Although they helpfully addressed the list of issues, as they were invited to, there was no dispute on the legal tests to be applied, as set out above.

Conclusions

79 The best way to give our conclusions is by reference to the list of issues. Some of what we say will be obvious from the facts already found but we will make it clear what we conclude on the basis of having come to those factual findings.

Protected Disclosure

80 At issues 10.1 and 10.2, it is clear that the claimant's case is that she raised alleged protected disclosures in documents given to the first respondent on 7 March and further details on 13 March. For our purposes, the ones relied upon are the matters concerned vaping on school premises and the sharing of an indecent image.

81 Issue 10.3 asks us to determine what information was disclosed. Information that was disclosed was that there had been a breach of the rule against vaping and that there had been a sharing of an indecent image with a parent on one occasion contained in the claimant's two statements.

82 We next have to consider whether the claimant had a reasonable belief that the disclosure of that information was made in the public interest (issues 10.3.2 and 10.3.3). The tribunal finds that the claimant did not have that reasonable belief. If she had had a concern that either of those matters were in the public interest and they amounted either to something which endangered health or safety of the children or anyone else or that it was a safeguarding matter, there is really no good explanation for the delay in bringing that matter to the attention of the school. At the very latest, those matters must have occurred before 25 January when she was suspended and it was not until the hearing on 7 March that she provided that information. Her explanation for not providing it earlier, even though the document itself is dated 22 February 2019, is that she was scared and wanted the assistance or support of a trade union representative. That is not a good reason for the delay or the hesitancy in bringing those matters forward. If as the claimant now seeks to argue those matters were relatively serious, her hesitation in bringing them to the first respondent's attention is not credible. It is quite clear from the whistleblowing policy, which the claimant had received, that these matters would be considered without any question of reprisal. If the claimant considered they were safeguarding matters, there was an extra responsibility on her to bring it to the first respondent's attention earlier. The fact that she raised it within the disciplinary process and as comparisons of other alleged reprehensible behaviour, makes it clear to the tribunal that she did not have a reasonable belief it was in the public interest. It was in her sole interest that she made these allegations.

83 The tribunal then have to consider whether she had a reasonable belief that (at 10.4.1) that the health and safety of any individual was likely to be endangered. The tribunal cannot find this on the evidence before us. Although it is potentially the case that there might be aspects of health and safety of an individual in either vaping or the indecent photo, there was no hint from the claimant that that was her concern. She did not mention that in any of the documentation or the information disclosed and we do not accept, at the time, she had such a reasonable belief.

84 We therefore turn our attention to issue 10.6 which is the dismissal. Strictly speaking we do not need to determine this because we have found that there was no protected disclosure. However, it makes sense to go on to consider, if there had been was a protected disclosure, whether that was the sole or principal reason for her dismissal. The tribunal finds that the fact that the claimant had provided information was not the reason for her dismissal.

85 Firstly, there are other allegations against the claimant which the first respondent found, on a balance of probabilities, to have taken place. The first respondent did not break these down, but it seems that it is at least an equal cause of concern for it, that she had been found to have been responsible for bullying. The breach of trust allegation was one which they took into account, but it was not the sole or principal reason. In any event, it was a question of breach of trust for both the delay in bringing those concerns to the first respondent and also its belief that she had only brought it because of her own disciplinary proceedings. It was a question of delay and timing rather than the mere fact of bringing the information. The claimant's claim that she was dismissed because she had made a protected disclosure must be dismissed.

Direct Discrimination

86 This appears between issues 10.7 to 10.11. The tribunal accepts the issues between 10.7 and 10.9, that this is a claim based on the claimant's Indian ethnicity. Turning then to the alleged less favourable treatment under issues 10.10.1 to 10.10.14, we have to consider whether the claimant has shown that there was less favourable treatment such as to pass the burden of proof to any of the respondents.

87 Issues 10.10.1 to 10.10.3 all appear to be about alleged failures to follow procedures or to fail to follow one procedure rather than another. The purported failures are not always particularly clear, but the tribunal comes to these conclusions. The tribunal accepts that the first respondent decided to follow the disciplinary procedure rather than any of the other procedures which it has (save for the safeguarding investigation which came later). At the outset the parental complaint could perhaps have been followed under the complaints policy. However, it did raise issues which the first respondent reasonably considered to be questions of discipline and therefore it was quite right that it considered matters under the disciplinary policy which, in any event, provided a level of protection to the claimant which it is possible following the complaints policy would not.

88 Similarly, the matters raised by staff when they put in their statements could not have been any better followed under any grievance or bullying and harassment policy or the claimant's alleged difficulties at work under the incapability procedure. It is a matter for the respondents to decide which is the most appropriate policy and there is really no criticism which can be levelled at them for choosing the disciplinary policy which, on the facts of this case, was certainly the most appropriate one. In any event, the tribunal can find no less favourable treatment in that, particularly as the individual named comparators were also subjected to the disciplinary process later after the information the claimant provided was investigated. There is no less favourable treatment there.

89 Issue 10.10.4 makes no sense given we are considering whether the claimant can show less favourable treatment and no reply is needed.

90 As far as issue 10.10.5 is concerned, it is correct that the word bullying was not used to describe the claimant's behaviour before the disciplinary hearing commenced on 25 March. Although it would have been better for it to have been clearly stated, the tribunal can understand why the respondents felt that it would have been clear to the claimant that the allegations contained in the staff statements could amount to bullying. In a perfect process, the four points raised by Mr Evans at the commencement of the disciplinary hearing would have been put in a letter to the claimant before she attended. However, we cannot see that this was any disadvantage to the claimant as she was clear about the details of the allegations and what had been said against her. She had had some time to read the staff statements and consider her responses to them. In any event, there is nothing to suggest to the tribunal that the claimant's race had anything to do with that matter not being said as clearly as it might have been.

91 At issue 10.10.6 the claimant raises an issue of the staff statements not being put to her on 1 February which is of course correct because three of them are dated the 4 February. This means that she did not have an opportunity to respond to them in the investigation meeting. The tribunal accepts that that is the case but can see little or no disadvantage to her about that because she had some time to consider them and answer them fully in the disciplinary hearing. In any event, that is a very similar process to that used for EL who was called to a disciplinary hearing without, as far as we can tell, a formal investigation hearing. The tribunal does not accept that this amounted to less favourable treatment given that it appears to have nothing to do with the claimant's race.

92 The tribunal do not understand the allegation in issue 10.10.7. There is no evidence that those four staff statements were "*not in accordance with the disciplinary policy*". There is no less favourable treatment there.

93 As far as issue 10.10.8 is concerned, it is true that there was a breach of the disciplinary policy when Mr Evans remained in the room when Mr Sims was deliberating. However, the tribunal has accepted there was no

discussion between them and, in any event, it does not necessarily amount to less favourable treatment as we do not know who was in attendance at other people's disciplinary hearings. It might be something that the first respondent should be careful about in the future as it is a minor breach of its procedure.

94 At issue 10.10.9 the claimant asks that the tribunal find that there was a disparity of treatment. Of course, there is disparity of treatment as between the claimant and others facing disciplinary proceedings. That is because the matters for which other people were investigated were very different. As far as EL is concerned, she was disciplined and found to be culpable of a one-off incident for which she got a serious final written warning. The allegations against the claimant were a number of different matters over a longer period of time. In essence, they were more serious than those of her white colleagues. The issue of vaping might be something which the first respondent should consider reminding staff of, but it is not in the same category as a number of the allegations about the claimant's attitude and behaviour. There is a material difference between the claimant's situation and that of her named comparators.

95 As far as issue 10.10.10 is concerned, the tribunal do not accept there was any breach of the procedure. The policy does not say that nobody else should be present when the claimant was notified of the decision and it cannot amount to less favourable treatment in the circumstances.

96 As far as issue 10.10.11 is concerned the tribunal find that although the word "rebuttal" can suggest an oppositional attitude, it is quite clear Ms Emmerson only understood it to be that she needed to respond to what the claimant said and does not amount to less favourable treatment. The question of Mr Sims "*improperly inserting himself into the process*" is one the first respondent might wish to be careful of in the future. However, it is not unusual for a hearing officer to have some say about what information might be required in the investigation process and, in any event, it seems clear that Mr Sims was involved in the other disciplinary investigations as well as hearing manager for the claimants and her named comparators. There is no less favourable treatment there.

97 Issues 10.10.12 and 10.10.13 are about the late allegation of bullying and the "labelling" of the claimant as a bully. As is clear from the facts, it might have been better for the claimant to be told that her behaviour could be considered as bullying but that does not indicate any less favourable treatment. No real detriment has been identified and certainly nothing that amounts to less favourable treatment.

98 Finally on race discrimination, we turn to the issue of whether there is less favourable treatment in the dismissal. The first thing to say is that there has been no evidence that the claimant was less favourably treated because of her race**.** The mere fact that she is Indian and her named comparators are white or that there could be a white hypothetical comparator does not show any difference in treatment because of race.

She has been unable to indicate anybody who is similar circumstances being treated differently. The matters are quite different and she therefore cannot show less favourable treatment.

99 For completeness, even if the claimant had shown facts from which we could conclude that there was less favourable treatment, so that the burden of proof passed to the respondent, the tribunal is satisfied on the evidence before us, that the decisions taken were completely without any concern for the claimant's race.

100 Turning then to the public interest disclosure detriment claim. First of course the tribunal has already found that there was no protected disclosure. For completeness, we deal with issue 10.13 and say that there was no detriment in the further disciplinary allegation because of the whistleblowing allegation. As stated before, the tribunal is quite satisfied that the further disciplinary action was for matters of trust because the claimant had raised these matters some time after the event and, in the first respondent's reasonable view, she raised them because of her own disciplinary matter rather than as a public interest disclosure.

101 For all these reasons the claimant's claims must fail and are hereby dismissed.

_____
Employment Judge Manley

Date: …3/2/21……

Sent to the parties on: .....

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For the Tribunal Office