EMPLOYMENT TRIBUNALS

Claimant: Mr K Wood

Respondent: Colmers School and Sixth Form College

Heard at: Birmingham Employment Tribunal (by CVP)

On: 27, 28, 29 and 30 April 2021, and 16 June 2021

Before: Employment Judge Mark Butler
Ms L Wilkinson
Mr D McIntosh

Representation
Claimant: In person
Respondent: Ms T Hand (Counsel)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was CVP. A face to face hearing was not held because of the ongoing pandemic and all issues could be determined in a remote hearing.

JUDGMENT

The claimant's claims of having been subject to detriments on the grounds of making protected disclosures, automatic unfair (constructive) dismissal and wrongful dismissal are all ill-founded and dismissed.

REASONS

INTRODUCTION

1. The claims in this case arise following the presentation of a claim form on 03 March 2020. The claimant brought complaints of being subjected to detriments on the grounds of making protected disclosures, automatic unfair dismissal, wrongful dismissal and disability discrimination. The claimant withdrew his disability discrimination complaint at the Preliminary Hearing before Employment Judge Self on 19 June 2020.

2. The case itself was listed initially for 4 days. And took place on 27, 28, 29 and 30

April 2021. However, the case had not been completed in that time. The parties returned to give closing submissions on 16 June 2021, with the tribunal using 17 June 2021 to deliberate and reach a decision. It was communicated to the parties on 16 June 2021 that the tribunal was reserving the decision, as there was a possibility that the judgment would not be ready to be handed down on 17 June 2021.

3. We were assisted by a bundle that ran to 704 pages.

4. The claimant gave evidence on his own behalf and had no further witnesses.

5. The respondent called the following witnesses:

    a. Charlotte Whitehouse, who is the Subject Lead for Computing and the ICT Curriculum Strategy Lead for the respondent.
    b. Emma Leaman, who is the Headteacher of the respondent.
    c. Emma Wilks, who is the Deputy Headteacher of the respondent, and was the Disciplinary Investigation Officer appointed to investigate allegations made by pupils against the claimant.
    d. Martin Brookes, who is a member of the respondent's Senior Leadership Team, and who was initially appointed to investigate allegations made by students against the claimant.
    e. Sarah Finch, who is Assistant Headteacher for the respondent.
    f. Mark Eaves-Seeley, who was the commissioning officer of the disciplinary investigation into the claimant, and who was a member of the Determination Panel.

6. The tribunal was mindful that the claimant was unrepresented and sought to assist him where they considered it necessary and appropriate to do so. This included putting some questions on his behalf. However, this did not extend so far as to present the claimant's case on his behalf. And the claimant was reminded of this when he appeared to be relying a little too much on the tribunal to ask questions of the respondent's witnesses. Further, we were made aware that the claimant had been diagnosed with anxiety. We ensured sufficient breaks were made during the hearing, but also invited the claimant to let us know if and when further breaks were required. No further adjustment was needed to ensure the claimant's effective participation.

7. There are two evidential matters that we record here. First, was the late disclosure of some interview notes of staff, which was disclosed on the second day of the hearing. This did not cause any difficulty during the hearing. Secondly, and more significantly, was that during the period between the conclusion of hearing the evidence and the parties returning to give closing submissions, Mr Brookes undertook further inquiry of his email inbox, during which he located an email sent to him by the claimant on 23 September 2019, which included the letter that appears at page 443 of the bundle. Ms Leaman was informed of this development by Mr Brookes, which altered her belief as to whether she had been sent this document. In light of this, both Mr Brookes and Ms Leaman were recalled to correct their evidence, with the claimant being given the opportunity to cross examine on matters relating to that document.

ISSUES

8. The list of issues was agreed before Employment Judge Self on 19 June 2020, and were confirmed at the beginning of this hearing. However, there were some minor changes to that list of issues in advance of the hearing starting. First, which was raised at the beginning of the hearing was that the Protected Disclosure

recorded as having been made on the 16 September 2019 should have referred to the 17 September 2019. Whilst through a table (see pp.43-45) and during the hearing the following was clarified: the reference to senior management in the alleged disclosure on 16 September 2019, should be to Emma Leaman, and the alleged disclosure on 07 October 2019 was made to Ms Leaman and not Ms Finch, as recorded. The list of issues were that below, but with those minor changes above read in to them:

LIST OF ISSUES

1. Did the Claimant make the following disclosures and were they protected disclosures pursuant to the Employment Rights Act 1996?

a) The Claimant's verbal health and safety complaint of 6th September 2019 to Charlotte Whitehouse

b) The Claimant's verbal health and safety complaint of 13th September 2019 to Charlotte Whitehouse

c) The Claimant's written complaint of 14th September 2019 to the IT Support Team and Facilities Team.

d) The Claimant's written complaint of 16th September 2019 to senior management

e) The Claimant's written complaint of 23rd September 2019 to Sarah Finch?

f) The Claimant's written complaint of 27th September 2019 to Sarah Finch?

g) The Claimant's written complaint of 7th October 2019 to Sarah Finch?

h) The Claimant's complaints about his working conditions in the course of the disciplinary process?

i) The Claimant's complaint of 21st January 2020 to Birmingham City Council?

2. Was the Claimant subjected to a detriment pursuant to section 47B ERA because he had made any, some or all of those protected disclosures, as follows:

a) Initiation of a disciplinary investigation

b) Manner in which the investigation was carried out;

c) Initiation of a determination hearing following his resignation

d) By providing a reference confirming the outcome of the determination hearing

e) A referral to the DBS

f) A referral to the Teaching Regulation Agency

g) Retention of personal items (this is linked to the disclosure at 1j).

3.Did any of the matters detailed above individually or collectively constitute a fundamental breach by the Respondent of the Claimant's contract of employment which entitled him to resign and assert that he has been constructively dismissed?

4. If so, was the reason or the principal reason for his dismissal the fact that the Claimant had made protected disclosures pursuant to section 103A Employment Rights Act 1996

9. In relation to the alleged protected disclosure of complaining about his working conditions, the claimant under cross examination explained that this concerned

the following parts of the document he had prepared for the disciplinary hearing (pp244-277).

a. At page 253, the claimant wrote:

- No mediation was instigated between me and KB (**Article #19**).
    - Furthermore, I was informed that KB's parents did not seem to think that a detention was warranted for strangling a pupil around the neck and attempting to damage school property. The student was not reprimanded for this.

b. At page 254, the claimant wrote:

- Although present in evidence, there is no information in the report regarding student's attitudes and behaviours towards me. This is concerning as it highlights how I have been mistreated during my brief time at Colmers School and the "witch hunt" students have engaged in. Incidents include;
    - Two students threatening to fight me after they had fought each-other and drew blood. This has not been acknowledged at all despite a formal report being submitted by myself. It took SLT approximately twenty minutes to remove them from the classroom, by which time the lesson had already ended.
    - An attempt by a student to steal an item belonging to myself (**Appendix #8**).
    - A communication sent via social media site Instagram by a student that stated "Oi bigman stop thinking your bad" and "You're a fucking pussy" (**Appendix #5**)
        - Username = "sousjsnbeenns".
        - Bio = "Fuck De Feds".
        - Another student tried to follow my account around the same time (**Appendix 6**).
        - Username = "england_is_ours".
        - Bio = "England till I die, Kick the boat hoppers out, We are gonna fight for out country back".

c. At p.257, the claimant wrote:

- Upon my arrival at the school, my room was a complete mess and not an appropriate teaching environment (**Appendix #15**).
    - Desks were pushed forward, providing easy access to electronics cabling.
    - Electronics cabling was haphazardly strewn about.
    - Internal components of computers were accessible by hand.
    - One broken desk which had been clamped in place.
    - One broken chair.
    - Belongings and documents from a previous teacher had been left behind. This amounted to approximately ten black bin bags worth of material which I removed.

d. At p.258, the claimant wrote:

- I am unsure if I recorded this incident, however I distinctly remember feeling intimidated by two pupils during a Year 9 ICT lesson that subsequently were given a Faculty Withdrawal.
    - At least one pupil sat on my desk and refused to move.
    - At least one pupil approached me very closely, face-to-face, and insulted me.
- Another incident, possibly not recorded, is that a group of Year 10 boys repeatedly threw items of food at me during lesson time.

CLOSING SUBMISSIONS

10. We were assisted by both written and oral submissions presented by Ms Hand on behalf of the respondent and by the claimant. Although we do not repeat those here, these have been considered and taken account of when reaching this decision.

LAW

WHISTLEBLOWING PROTECTION

11. The definition of protected disclosure appears at Sections 43A-C of the Employment Rights Act 1996:

    43A. Meaning of "protected disclosure".

    In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H

    43B.— Disclosures 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—

        (a) that a criminal offence has been committed, is being committed or is likely to be committed,

        (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) that a miscarriage of justice has occurred, is occurring or is likely to occur,

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

        (e) that the environment has been, is being or is likely to be damaged, or

        (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed

    43C.— Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure [...] 2 —

(a) to his employer, or

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—

(i) the conduct of a person other than his employer, or

(ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

12. The matter of protection from detriment is contained within s.47B of ERA.

Section 47B (1)

"A worker has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer done on the ground that the workers made a protected disclosure."

13. In effect, the definition of a qualifying disclosure breaks down into several elements which the Tribunal must consider in turn.

(i) Disclosure

14. In **Cavendish Munro Professional Risks Management Limited v Geduld 2010 IRLR 37**, Slade J stated:

"*That the Employment Rights Act 1996 recognises a distinction between "information" and an "allegation" is illustrated by the reference to both of these terms in S43F……It is instructive that those two terms are treated differently and can therefore be regarded as having been intended to have different meanings……the ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around." Contrasted with that would be a statement that "you are not complying with Health and Safety requirements". In our view this would be an allegation not information. In the employment context, an employee may be dissatisfied, as here, with the way he is being treated. He or his solicitor may complain to the employer that if they are not going to be treated better, they will resign and claim constructive dismissal. Assume that the employer, having received that outline of the employee's position from him or from his solicitor, then dismisses the employee. In our judgment, that dismissal does not follow from any disclosure of information. It follows a statement of the employee's position. In our judgment, that situation would not fall within the scope of the Employment Rights Act section 43 … The natural meaning of the word "disclose" is to reveal something to someone who does not know it already. However s43L(3) provides that "disclosure" for the purpose of s 43 has the effect so that "bringing information to a person's attention" albeit that he is aware of it already is a disclosure of that information. There would be no need for the*

extended definition of "disclosure" if it were intended by the legislature that "disclosure" should mean no more than "communication".

15. There has to be something more than simply voicing a concern, raising an issue or setting out an objection. This does not establish the disclosing of information. However, a communication – whether written or oral – which conveys facts and makes an allegation can amount to a qualifying disclosure.

16. In **Kilraine v London Borough of Wandsworth UKEAT/0260/15**, Langstaff J stated:

"I would caution some care in the application of the principle arising out of Cavendish Munro. The particular purported disclosure that the Appeal Tribunal had to consider in that case is set out at paragraph 6. It was in a letter from the Claimant's solicitors to her employer. On any fair reading there is nothing in it that could be taken as providing information. The dichotomy between "information" and "allegation" is not one that is made by the statute itself. It would be a pity if Tribunals were too easily seduced into asking whether it was one or the other when reality and experience suggest that very often information and allegation are intertwined. The decision is not decided by whether a given phrase or paragraph is one or rather the other, but is to be determined in the light of the statute itself. The question is simply whether it is a disclosure of information. If it is also an allegation, that is nothing to the point".

(ii) In the public interest

17. Lord Justice Underhill in the case of **Chesterton v Nurmohamed v PCAW [2017] EWCA Civ 979** gave guidance as to what is relevant to have regard to when considering whether the public interest test has been satisfied under s.43B(i) of ERA:

"*27. First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula. The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable.*

28. Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to "the Wednesbury approach" employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. All that matters is that the Tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking – that is indeed often difficult to avoid – but only that that view is not as such determinative.

29. Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his

head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable.

30. Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para. 17 above, the new sections 49 (6A) and 103 (6A) would have no role. I am inclined to think that the belief does not in fact have to form any part of the worker's motivation – the phrase " in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it.

31. Finally by way of preliminary, although this appeal gives rise to a particular question which I address below, I do not think there is much value in trying to provide any general gloss on the phrase "in the public interest". Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression. Although Mr Reade in his skeleton argument referred to authority on the Reynolds defence in defamation and to the Charity Commission's guidance on the meaning of the term "public benefits" in the Charities Act 2011 , the contexts there are completely different. The relevant context here is the legislative history explained at paras. 10-13 above. That clearly establishes that the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest"

18. Lord Justice Underhill continued in **Chesterton**, and indicated a number of matters that may be relevant when considering whether a disclosure serves only the personal interest of the worker making the disclosure or engages a wider public interest:

"*(a) the numbers in the group whose interests the disclosure served – see above;*

(b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a 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;

(c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer – as Mr Laddie put it in his skeleton argument, "the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest"

– though he goes on to say that this should not be taken too far.

19. He then went on to observe:

"*36. The statutory criterion of what is "in the public interest" does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but what could reasonably be believed to be. I am not prepared to rule out the possibility that the disclosure of a breach of a worker's contract of the Parkins v Sodexho kind may nevertheless be in the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest. I would certainly expect employment tribunals to be cautious about reaching such a conclusion, because the broad intent behind the amendment of section 43B (1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers – even, as I have held, where more than one worker is involved. But I am not prepared to say never. In practice, however, the question may not often arise in that stark form. The larger the number of persons whose interests are engaged by a breach of the contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest.*

37. Against that background, in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under section 43B (1) where the interest in question is personal in character 5), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors' hours is particularly obvious, but there may be many other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The question is one to be answered by the Tribunal on a consideration of all the circumstances of the particular case, but Mr Laddie's fourfold classification of relevant factors which I have reproduced at para. 34 above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."

(iii) Reasonable Belief

20. In **Darnton v University of Surrey and Babula v Waltham Forest College 2007 ICR 1026** it was confirmed that the worker making the disclosure does not have to be correct in the assertion he makes. His belief must be reasonable. In Babula Wall LJ said:-

"… I agree with the EAT in Darnton that a belief may be reasonably held and yet be wrong… if a whistle blower reasonably believes that a criminal offence has been committed, is being committed or is likely to be committed. Provided that his belief (which is inevitably subjective) is held by the Tribunal to be objectively reasonable neither (i) the fact that the belief turns out to be wrong – nor (ii) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence – is in my judgment sufficient of itself to render the belief unreasonable and thus deprive the whistle blower of the protection afforded by the statute… An employment Tribunal hearing a claim for automatic unfair dismissal has to make three key findings. The first is whether or not the employee believes that the information he is disclosing meets the criteria set out in one or more of the subsections in the 1996 Act section 43B(1)(a) to (f). The second is to decide objectively whether or not that belief is reasonable. The third is to decide whether or not the disclosure is made in good faith".

CONSTRUCTIVE WRONGFUL DISMISSAL

21. The seminal case when considering constructive dismissal is that of **Western Excavation v Sharp [1978] ICR 221**. In this case it was established that the

burden was on the employee to prove the following

a. That there was a fundamental breach of contract on the part of the employer;
b. That the employer's breach caused the employee to resign;
c. The employee did not affirm the contract and lose the right to resign and claim constructive dismissal.

22. Further consideration of the propositions of law which can be derived from the authorities concerning constructive unfair dismissal are expressed in **London Borough of Waltham Forest v Omilaju [2005] ICR 481** as follows:
    a. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: see **Western Excavation Limited v Sharp**.
    b. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee: see for example **Malik v Bank of Credit and Commerce International [1998] AC20** 34h-35d and 45c-46e.
    c. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract: see, for example, Browne-Wilkinson J in **Woods v Wm Car services (Peterborough) Limited [1981] ICR 666** at 672a. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.
    d. The test of whether there has been a breach of the implied term of trust and confidence is objective as Lord Nicholls said in **Malik** at page 35c. The conduct relied as constituting the breach must impinge on the relationship in the sense that looked at objectively it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer.

23. In terms of cases that involve a series of acts, with the last act being deemed to be the "last straw" offence, it is described at paragraph 480 in Harvey on Industrial Relations on Employment Law:

    "(480) Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action but when viewed against a background of such incidents it maybe considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the "last straw" which causes the employee to terminate a deteriorating relationship".

24. In **London Borough of Waltham Forest v Omilaju [2005] ICR 481**, the Court of Appeal stated that a final straw should be an act in a series whose cumulative effect amounts to a breach of trust and confidence and it must contribute to the breach. An entirely innocuous act on the part of an employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective.

25. I note that a breach of trust and confidence has two limbs: First, the employer must have conducted itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Secondly, that there be no reasonable or proper cause for the conduct.

FINDINGS OF FACT

We make the following findings of fact based on the balance of probability from the evidence we have read, seen, and heard. We do not make findings in relation to all matters in dispute but only on matters that we consider relevant to deciding on the issues currently before us.
We have split our findings into considering the alleged protected disclosures first before turning to matters pertaining to detrimental treatment (part of which also forms the basis of the wrongful dismissal claim). This is to ensure a logical structure to the findings.

General Findings

26. The claimant commenced employment as a Newly Qualified Teacher (NQT) with the respondent on 02 September 2019.

27. The claimant had read and understood the respondent's policies in advance of starting his employment with the respondent, which included matters pertaining to safeguarding issues.

28. The claimant attended 2 inset days at the beginning of September 2019. Part of this included training on safeguarding (see p.212).

29. The claimant had an understanding of the importance of safeguarding in a school setting, and understood that any allegations made by students need to be taken seriously and investigated and concluded accordingly.

Alleged Protected Disclosure 1 and 2: the claimant's verbal health and safety complaints of 06 September 2019 and 13 September 2019 to Charlotte Whitehouse

30. The claimant met with Ms Whitehouse on 06 September 2019. This was the first Newly Qualified Teacher (NQT) meeting that the claimant had with Ms Whitehouse. In this meeting the claimant raised concerns about IT matters.

31. It is more likely than not that the claimant expressed information about front covers missing from computers where CD drives had previously been housed and that this could lead to student's putting their hands into the chassis of the device. It is also likely that the claimant referred to health and safety risks to students in relation to the missing computer front covers. The claimant is clear in his recollection that he raised such matters. Whilst Ms Whitehouse accepts at para 9 of her witness statement that some IT issues were mentioned, which she confirmed in her oral evidence. Although not being able to recall the specific matters raised, Ms Whitehouse gave evidence that she told the claimant to raise IT matters with IT support. The email to IT support is at p.358. This email was sent on 16 September 2019. The matter being recorded on that email suggests that the claimant likely raised this matters with Ms Whitehouse on the 06 September 2019. Furthermore, it is noted on the NQT meeting notes of 06 September 2019 (p.353) and 13 September 2019 (p.354) record that 'IT issues in W12 needed resolving', with no reference to matters concerning facilities. The claimant received these minutes around the time of the meetings, and did not query their content and so is taken to accept the record as being accurate.

32. On the 13 September 2019, the claimant had a further NQT meeting with Ms Whitehouse. The claimant again likely raised the IT issues again: that there were front covers missing from computers where CD drives had previously been housed and that this could lead to student's putting their hands into the chassis of the device. It is also likely that the claimant again referred to health and safety risks to students in relation to the missing computer front covers and the

power/ethernet cable arrangements. This led to Ms Whitehouse in this meeting enquiring as to whether the claimant had raised these issues with the IT support team.

33. For the avoidance of doubt, we do not find that the claimant expressed concern to Ms Whitehouse of imminent risk to the health and safety of pupils having observed some putting their hand into the chassis. But rather used a hypothetical example of what if a student took that action.

34. The matters being raised by the claimant were matters relating to general wear and tear in a school. He simply identifies equipment that has become damaged over the years.

35. The claimant when faced with a broken chair gave evidence that he removed that chair from his classroom so as to no longer be in use. This was action taken to ensure that no pupil would be harmed through sitting on the broken chair. However, in respect to the computers, the claimant took no action himself. He did not remove them from use, he did not find a means of preventing access into the chassis. The claimant left the computers in use as he did not consider them to be endangering the health and safety of pupils in his class.

36. Ms Whitehouse did not report any of the matters raised on 06 September 2019 or 13 September 2019 on to any of her superiors, as the matters had been dealt with appropriately by the claimant, and the issues resolved. In particular, this is recorded as being a strength of the claimant on the NQT Review Document completed by Ms Whitehouse on 29 November 2019 (see p.421). This was the clear evidence of Ms Whitehouse, who was clear and consistent when asked about this. Further, the claimant did not challenge this evidence of the claimant, no adduced evidence to the contrary.

Alleged Protected Disclosure 3: the claimant's written complaint of 14 September 2019 to the IT Support Team and Facilities Team

37. The claimant on the advice of Ms Whitehouse sent an email to the IT Support team on 16 September 2019 (see p.358). The claimant wrote the following:

High Priority

At time of writing, 12x computers missing front cover next to USB ports – Huge health & safety risk, as I have caught students placing hands inside the chassis whilst the device is switched on. Covers need replacing, preferably supplying teacher with spares, or some other means to block access.

38. The claimant also wrote to the Premises/Facilities team on 16 September 2019 (see p.359). The claimant wrote the following:

Please see below issues related to room W12. This is in addition to an email I sent last week.

- 1x chair broken – Leg bent and unstable. Requires replacement.
- 2x additional chairs required – Not enough in room to support classes with high number of students.
- All desks need checking to see if they are suitable for use. Some appear to be unstable, one is missing supporting panel at the rear.
- Power and ethernet cables are haphazardly arranged. Health and safety risk if students go behind desks, or teacher is required to do so to fix technical issues. Requires organisation.

39. Neither the IT Support Team or the Facilities Team passed this information on to any of the senior management involved in any of the detriments. The claimant does not bring any evidence to suggest that this was the case. And he did not put any such proposition to any of the witnesses that were involved in the alleged detriments.

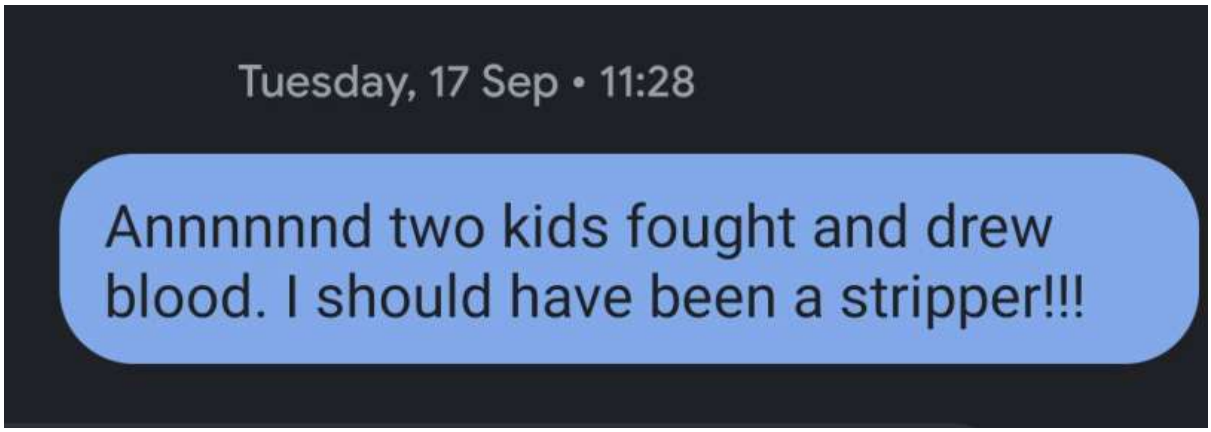
40. The first knowledge of those involved in the investigation of allegations/determination of allegations that the claimant had raised IT issues or issues with facilities was when the claimant included the emails in the file which he submitted on 17 December 2019 for consideration at the investigation stage.

Alleged Protected Disclosure 4: the claimant's written complaint of 16 September 2019 to senior management / Emma Leaman

41. On the 17 September 2019, there was an incident in the claimant's classroom whereby two students were engaging in what was described as "play fighting". The claimant did not intervene in this matter, but gave verbal warnings to the students to stop.

42. The claimant contacted Ms Leaman through the school receptionist to inform her what had happened. Whilst waiting for Ms Leaman, the two students involved implied that they wanted to fight the teacher. However, the claimant viewed this in a playful way and diffused the situation. This is likely to be the extent of this incident, which was explained to Ms Leaman on her arrival to the claimant's classroom. These findings are in line with what the claimant recorded on the staff incident report form at the time (p.401).

43. The claimant did not view this incident as posing a serious threat to his safety. Not only is the claimant's views of the incident recorded on the incident form (that he viewed implicit 'threat' as playful), but this is further supported by the text message that the claimant sent to his mother on 17 September 2019 (see p.455), where the claimant wrote:



Alleged Protected Disclosure 5: the claimant's written complaint of 23 September 2019 to MR Brookes/Ms Leaman

44. On or around the 23 September 2019, the claimant sent an email to Mr Brookes. This email is on p.443. This email highlights a number of allegations made by students against the claimant, and references some of his experiences to date. Within this email, which the claimant submits is him making a Protected Disclosure, he expresses that:

> As an employee, I should be able to work in a safe environment without fear of violence, intimidation or harassment. I received good reports from my university and both placement schools

45. This email was forwarded on to Ms Leaman at around 1pm on the 23 September 2019. This was the evidence of Mr Brookes when he was recalled as a witness.

46. It is more likely than not that Ms Leaman opened this email and read its contents or at the very least had its contents explained to her by Mr Brookes, but reached

the conclusion that no further action was needed in relation to it. Although when recalled Ms Leaman explained that she cannot recall whether she received it or read it, it is likely that she did. It would seem implausible that Ms Leaman would not make sure she knew the contents of this document given that the claimant was subject to a number of allegations.

47. Ms Leaman was not left with the impression that the claimant was raising an issue of health and safety concerns in the school, otherwise she would have addressed the manner under the appropriate procedures.

48. The claimant raises a personal and non-specific concern in this document, relating to being able to work in a safe environment without fear of violence, intimidation or harassment. No disclosure of facts in relation to these matters is contained within this document.

Alleged Protected Disclosure 6 : the claimant's written complaint of 27 September 2019 to Sarah Finch

49. The claimant in his email at p.375 to Ms Finch, did not make a disclosure of information tending to show that he had a reasonable belief that a failure under s.43(B)(1) of the ERA occurred. This was the clear and unambiguous evidence of the claimant under cross examination.

Alleged Protected Disclosure 7: the claimant's written complaint of 07 October 2019 to Ms Leaman

50. The claimant raises an issue that he is having with a particular student by email to Ms Leaman on 07 October 2019, with Ms Whitehouse copied in (see p.385).

51. The email in its entirety reads:

Hi both,

Unfortunately, [redacted] has made it clear that he plans to jeopardise my job security, and I wished to report this and have it on record.

On a related matter (and I can't believe I have to be writing this), he has informed me that he intends to make a complaint against myself for allegedly calling him a "dwarf". This is not accurate.

Given the aforementioned threats to my career, I am not confident he would be truthful in this matter.

52. There is no disclosure of information in this email that is tending to show that the respondent is failing to comply with a legal obligation.

53. The email is raising purely personal matters, which are focussed on the claimant's own career.

Alleged Protected Disclosure 8: the claimant's complaints about his working conditions in the course of his disciplinary process

54. In the document submitted by the claimant on 17 December 2019 (pp244-277), the claimant made the following statements:

    a. At page 253:

- No mediation was instigated between me and KB (**Article #19**).
    - Furthermore, I was informed that KB's parents did not seem to think that a detention was warranted for strangling a pupil around the neck and attempting to damage school property. The student was not reprimanded for this.

b. At page 254:

- Although present in evidence, there is no information in the report regarding student's attitudes and behaviours towards me. This is concerning as it highlights how I have been mistreated during my brief time at Colmers School and the "witch hunt" students have engaged in. Incidents include;
    - Two students threatening to fight me after they had fought each-other and drew blood. This has not been acknowledged at all despite a formal report being submitted by myself. It took SLT approximately twenty minutes to remove them from the classroom, by which time the lesson had already ended.
    - An attempt by a student to steal an item belonging to myself (**Appendix #8**).
    - A communication sent via social media site Instagram by a student that stated "Oi bigman stop thinking your bad" and "You're a fucking pussy" (**Appendix #5**)
        - Username = "sousjsnbeenns".
        - Bio = "Fuck Da Feds".
        - Another student tried to follow my account around the same time (**Appendix 6**).
        - Username = "england_is_ours".
        - Bio = "England till I die, Kick the boat hoppers out, We are gonna fight for out country back".

c. At p.257:

- Upon my arrival at the school, my room was a complete mess and not an appropriate teaching environment (**Appendix #15**).
    - Desks were pushed forward, providing easy access to electronics cabling.
    - Electronics cabling was haphazardly strewn about.
    - Internal components of computers were accessible by hand.
    - One broken desk which had been clamped in place.
    - One broken chair.
    - Belongings and documents from a previous teacher had been left behind. This amounted to approximately ten black bin bags worth of material which I removed.

d. At p.258:

- I am unsure if I recorded this incident, however I distinctly remember feeling intimidated by two pupils during a Year 9 ICT lesson that subsequently were given a Faculty Withdrawal.
    - At least one pupil sat on my desk and refused to move.
    - At least one pupil approached me very closely, face-to-face, and insulted me.
- Another incident, possibly not recorded, is that a group of Year 10 boys repeatedly threw items of food at me during lesson time.

55. In respect of each of the 4 expressions above, the claimant has not disclosed any information tending to show that there has been any health and safety violation, or failings of the respondent in respect of a legal obligation. These are all private concerns

<u>Alleged Protected Disclosure 9: the claimant's complaint of 21 January 2020 to</u>

Birmingham City Council

56. On the 21 January 2019, the claimant submitted a complaint to Birmingham City Council (see pp.426-428).

57. This complaint primarily focusses on the investigations of the claimant. The claimant states at p.426:

> I have vehemently denied all allegations that were made against me, and have provided strong and thoroughly-presented evidence that defends this position. Furthermore, I submitted evidence that during my employment I was constantly harassed my students, including threats to engage me in a fight, threats to "get you sacked", verbal abuse, written abuse through social media, and physical intimidation at close proximity. I received very little support in dealing with these issues, and the school failed to protect me from this behaviour. In addition, as an NQT the school failed to provide adequate provisions in the form of not allowing me to teach classes with significant behaviour issues, as was the case that I experienced. I was requested to fill out an NQT comment after the conclusion of the disciplinary procedure, so this document should already been available to you as part of the NQT programme that is monitored by the local authority.

58. Within this complaint, the claimant has not disclosed information tending to show that has been any health and safety violation, or failings of the respondent in respect of a legal obligation.

59. Ms Leaman had had no knowledge of the complaint that was raised by the claimant to Birmingham City Council. This is unchallenged evidence of Ms Leaman.

Initiation of disciplinary investigation

60. On the 22 October 2019, whilst in a lesson, a number of students made allegations against the claimant to another teacher, that being Ms Gurney. Ms Gurney asked the students to write down their concerns about the claimant. These are contained at pp201 to 211.

61. There are common themes in the notes written by the student. These included the use of the term arse or something similar, holding a chair over the head of a student, making reference to the dating app Tinder in class, touching the face of a female student. The claimant accepted this under cross examination, with the common themes being consistent with the contemporaneous documents created around the time of the allegations.

62. Ms Gurney, in light of such allegations, was under a duty to escalate this matter. This was accepted by the claimant under cross examination. As part of the school's relevant policy, this matter was reported directly to Ms Leaman.

63. The respondent has a safeguarding responsibility to all pupils, and the claimant was fully aware and understood this responsibility. Where there is a genuine concern as to safeguarding matters, then the respondent is under an obligation to

investigate. This will ensure that they can meet their safeguarding obligations.

64. Due to the seriousness of the allegations, Ms Leaman made a referral to the LADO team by phone on 22 October 2019, and by referral form on 23 October 2019 (see p.172). This referral confirms that there was an investigation into the allegations made by students against the claimant, and that the claimant was to be suspended whilst these investigations were undertaken.

65. Ms Leaman appointed Mr Brookes to undertake an initial fact-finding exercise on 23 October 2019 in light of the information that had been passed to her.

Manner in which investigation carried out

66. On 23 October 2019, the claimant was suspended pending disciplinary investigations. This was following a meeting between the claimant and Ms Leaman where the allegations were discussed. The claimant accepted under cross examination that he was aware of the serious allegations that had been made. The letter confirming the claimant's suspension is at pp.159-160. The letter confirms that suspension was an act being taken due to the seriousness of the allegations, which could amount to gross misconduct.

67. The respondent uses suspension to protect both the pupils and the member of staff, where it considers it necessary to remove an individual from the school environment. This is a plausible conclusion to reach in the circumstances where the claimant was raising concerns of malicious accusations, but that the students would need protection if the allegations were substantiated.

68. The decision to suspend the claimant was because of the allegations made by students. No other considerations, including those that the claimant allege to be protected disclosures, had any bearing on this decision.

69. The claimant was not accompanied by anybody at the meeting at which Ms Leaman suspended the claimant. However, this was by reason that there is no right to be accompanied to any member of staff at meeting where suspension was taking place immediately.

70. Mr Brookes, who was tasked with investigating the allegations, interviewed relevant students individually across the dates 23 October 2019-25 October 2019. A copy of these notes are at pp.175-186.

71. On 25 October 2019, the claimant was sent a further letter (pp.170-171) which included two additional allegations. This was a clerical error, whereby an erroneous paragraph had been cut and pasted into this document. This was correct by Mr Brookes by letter dated 04 November 2019 (pp.163-166).

72. However, within that same letter, the claimant was informed that an investigatory meeting had been arranged to take place on 05 November 2019, and that he was to confirm his attendance along with the name and position of any person who would be accompanying him at that meeting by 04 November 2019. This is a reasonable period of time given to the claimant to confirm these details.

73. Following expressions of concern on the claimant's behalf by Ms Ava Verrier, the claimant's NASUWT representative, about Ms Leaman being the commissioning officer and Mr Brookes being the investigating officer a decision was made by Ms Leaman to appoint Mr Eaves-Seeley as the commissioning officer and Ms Wilks as the investigating officer.

74. Ms Wilks was informed of her appointment as investigating officer by Ms Leaman

on 13 November 2019. She was given the evidence gathered by Mr Brookes. Ms Wilks met with Mr Brooks to discuss the process in order to understand her role before commencing with the investigation.

75. From this point on, Ms Wilks determined how the investigation would proceed. Having taken evidence from HR, having considered the evidence that she had received, and having weighed up the detrimental impact re-interviewing students can have, Ms Wilks decided that there was no need to re-interview any of the students that had already been interviewed. This followed the training approach under KCSIE, where it is made clear that re-interviewing of children should be avoided. This, in part, is due to the impact that going over incidents can have on children that either found it difficult to make the report in the first instance, or where they have particular vulnerabilities and/or issues. But further, is the time lapse which affects reliability of accounts.

76. Ms Wilks interviewed the claimant as part of her investigation on 18 November 2019.

77. Ms Wilks held interviews with staff members on 21 November 2019 and 25 November 2019, at the request of the claimant.

78. There was some confusion during the disciplinary process as to the correct date on which students reported matters to Ms Gurney. This was not in any way caused by the claimant having made alleged protected disclosures. This was accepted by the claimant in evidence.

79. Ms Wilks produced her report on 04 December 2019 (pp.236-243). Having considered all of the evidence, she concluded that there was a case to answer and recommended that the case should be referred to a Disciplinary Hearing.

80. On 06 December 2019, Ms Wilks wrote to the claimant, seeking a response to a sixth allegation that had been made against him (pp.168-169). The claimant responded and denied this allegation by email.

81. The claimant produced a pack of supporting evidence in defence of the allegations against him. This was produced on 17 December 2019. At no point within this document does the claimant allege that any of the action against him were in some way motivated or as a result of having raised protected disclosures (this is at pp244-277).

82. The claimant was informed by Teresa Davies by email on 17 December 2019 that the Governors Disciplinary Hearing had been arranged to take place on 10 January 2020. The claimant decided not to attend this hearing in person, but to submit written evidence instead (para 88 of claimant's witness statement, pp514-515, pp516-549).

<u>Initiation of determination hearing following claimant's resignation</u>

83. The respondent, given the nature of the allegations and with them concerning safeguarding duties, is under a statutory requirement to hold a determination hearing even in circumstances where the claimant resigned. The claimant accepted this in evidence. The initiation of the determination hearing was as a direct consequence of the allegations being investigated and concluded.

<u>Providing a reference confirming the outcome of the determination hearing</u>

84. The claimant accepted in evidence that he was not subjected to this detriment. The respondent did not provide a reference to a prospective employer or

anybody in which the outcome of the determination hearing was confirmed.

A referral to the DBS and the Teaching Regulation Agency

85. The respondent held a genuine belief that the claimant had misconducted himself in a manner that involved safeguarding issues relating to pupils of the school.

86. The respondent is subject to the guidance on teacher misconduct (see pp.285-299). In the guidance it is made clear that:

> **Before making a referral** please consult the 'Teacher Misconduct: The Prohibition of Teachers' document (available at www.gov.uk/tra/teachermisconduct) which outlines the types of misconduct and relevant offences that might lead to a teacher being prohibited from the teaching profession in England.
>
> Then please consider the following questions:
>
> 1. Is the allegation against the teacher serious enough that they should be prevented from teaching?
> 2. Has the teacher been dismissed for serious misconduct, or resigned prior to a likely dismissal for serious misconduct? If so, do you think a prohibition order may be appropriate?
>
> If the allegation against a teacher is in any way connected to the risk of harm, or actual harm, to a child (safeguarding) then you should make the referral to the Disclosure and Barring Service (DBS). If misconduct and safeguarding are both involved, or if you are in any doubt, referral should be made to both the DBS and TRA. Further information relating to referrals to the DBS can be found on its website: www.gov.uk/government/organisations/disclosure-and-barring-service.

87. The claimant resigned on 04 January 2020.

88. Due to the claimant's resignation the disciplinary hearing that was due to take place on 10 January 2020 was converted to a determination hearing.

89. The determination hearing of the claimant took place on 10 January 2020. The claimant was not in attendance. The minutes of that meeting are at pp.281-284. Having considered all of the evidence before it, the panel determined that the charge of misconduct should be upheld. And as a result of this there would need to be a referral to TSA and DBS due to safeguarding.

90. The claimant was informed of the outcome of the hearing on the 15 January 2020 (pp.303-304). The summarised the evidence considered, and the outcome. It concluded that:

> Governors concluded that the six allegations did amount to gross misconduct. We concluded that had you still been in the employment of the school, we would have dismissed you. We also concluded that we must instruct the Headteacher to refer these matters to both the Teacher Registration Agency and the Disclosures and Barring Service, given the serious safeguarding nature of the matters we had considered.

Retention of personal items (this is linked to disclosure at 1j only)

91. The personal items that the claimant requested to be returned to him could not be located.

CONCLUSIONS

Alleged Protected Disclosure 1 and 2: the claimant's verbal health and safety complaints of 06 September 2019 and 13 September 2019 to Charlotte Whitehouse

92. In our judgment, the claimant disclosed information to Charlotte Whitehouse on both 06 September 2019 and 13 September 2019. He did provide specific information, that being that there were front covers missing from computers where CD drives had previously been housed and that this could lead to student's putting their hands into the chassis of the device. Which he linked to health and safety being endangered. However, we also conclude that the claimant, although raising this matter, did not reasonably believe himself that this state of affairs was endangering the health and safety of his pupils. The claimant had he considered this to be such an endangerment would have taken evasive action in relation to the offending equipment. The fact that he did not, suggests that he could not have held a reasonable belief of the health and safety risk that he is now suggesting.

93. The claimant's disclosure does not satisfy the statutory requirements of section 43(b)(1).

Alleged Protected Disclosure 3: the claimant's written complaint of 14 September 2019 to the IT Support Team and Facilities Team

94. In relation to the email to the IT Support Team, the same conclusion as that reached for alleged protected disclosure 1 and 2 is reached, and so is not repeated here.

95. In relation to the email to the facilities team, the claimant does not disclose information that the claimant reasonably believes tends to show that the health and safety of an individual is being or is likely to be endangered. This email lacks the necessary facts and specifics in order to be considered a disclosure of such information. But further, this email also fails the statutory test in terms of the claimant establishing that he reasonably believed that this is what the information he was showing. The claimant could quite easily prevent the potential health and safety risk he identifies in relation to the wires and power cables through adequate supervision.

96. This tribunal would further conclude that such a disclosure, if other parts of the test were satisfied, would not satisfy the need to be in the public interest. These matters are general wear and tear issues, which lack the necessary public interest. The claimant failed to adduce evidence that he believed at the time that he was raising these matters in the public interest and that that belief would be reasonable.

97. Collectively, in relation to the alleged protected disclosures 1,2 and 3, the claimant was raising matters that he wanted fixed in the room where he would occupy. These were raised with a view to creating an environment where the claimant would be happier teaching. These were not matters raise din the public interest, but were more from a personal and selfish point of view. And this is not criticism of the claimant, as it is only human nature that when we start a new job we all want to be provided with the most suitable of working environments.

Alleged Protected Disclosure 4: the claimant's written complaint of 16 September 2019 to senior management / Emma Leaman

98. The report completed by the claimant at p.40 does not disclose any facts that would amount to a disclosure of information that the claimant's health and safety

was being endangered.

99. Further, given that the claimant described this incident as "mostly playful" and the sarcastic text message sent by the claimant to his mother after the incident in question, this tribunal concludes that the claimant did not honestly believe that s.43B(1) was being engaged.

100. And even if we were wrong on the above, it is clear that the claimant was concerned with a matter that was personal to hm. And thus lacks the necessary public interest aspect to be considered a protected disclosure pursuant to s.43B(1).

Alleged Protected Disclosure 5, 6,7 and 9

101. Each of these disclosures fail to satisfy the statutory requirement of s.43B(1) on the same grounds. And therefore these have been grouped together.

102. In none of the alleged protected disclosures 5, 6, 7 and 9 does the claimant provide sufficient factual content and specificity such as is capable of tending to show one of the matters listed in s.43B(1). These are general allegations. Furthermore, each of these matters concerned concerns of the claimant that were personal to him. The claimant has failed to establish that at the time he had a reasonable belief that these were in the public interest. Nor does he establish that it would be reasonable for him to hold such a belief.

Alleged Protected Disclosure 8: the claimant's complaints about his working conditions in the course of his disciplinary process

103. In relation to this alleged protected disclosure, we repeat the conclusion reached at paragraph 92.

104. But for completeness, in relation to alleged protected disclosures that make reference to pp253, 254 and 258 of the bundle the same conclusions reached in relation to the alleged protected disclosures 5, 6, 7 and 9 are made, and so repeated here. In relation to the alleged protected disclosure at p.257 of the bundle, the same conclusions reached in relation alleged protected disclosures 1 and 2 are made and repeated here.

Conclusion on alleged protected disclosures

105. In our judgment, none of the disclosures that the claimant pleads as protected disclosures satisfy the statutory requirement of s.43(B)(1). And therefore there are no disclosures that qualify for protection under s.43(B)(1). In the absence of a protected public interest disclosure the claimant's claims for detriments and automatic constructive unfair dismissal on the grounds of having made a protected disclosure must therefore fail.

Conclusions on detriments/wrongful dismissal claim

106. Given the timing of the claimant's resignation, that being by letter dated 04 January 2020, the constructive dismissal aspect of his claim can only be considered against the two detriments that predate his decision, and is therefore limited to the initiation of a disciplinary investigation and the manner in which the investigation has been carried out. And whether these were matters that would support the claimant's resignation as being a constructive dismissal

107. The claimant pleaded that the manner of the investigation was the last

straw that led him to resigning.

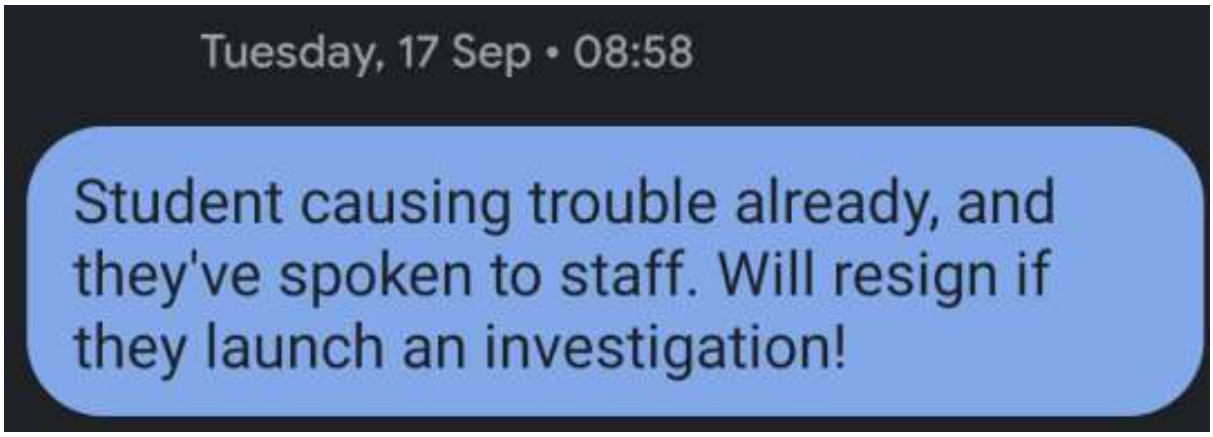
108. Interestingly, the claimant did not set out in his resignation letter the reasons on which he now relies. It does not have to, but it is good evidence of what was in his mind at the time of resigning. His resignation letter simply indicates that he considers that his position has become untenable due to the investigations that were ongoing, rather than it being the decision to initiate a n investigation or the way in which things have been done which has led him to having to resign.

109. The document at p.443, which is the 23 September 2019 document, and the text message exchange between the claimant and his mum on the 17 September 2019 is also relevant when considering the claimant's approach to the investigation and his actions that he then took as a result, namely resigning.

110. In the 23 September 2019 document the claimant wrote:

Whilst I understand there are procedures in place to safeguard children, if this situation is escalated further, I am worried I may have to resign from my position as ICT teacher in an effort to protect my career and well-being.

111. Whilst in the text exchange with his mum, the following was stated:



112. Reading the resignation letter itself, and the pre-emptive action being considered by the claimant when faced with possible investigations on safeguarding grounds, it is likely that the reason behind the decision to resign was the presence of an ongoing investigation, rather than matters concerning the decision to initiate or the manner in which it was undertaken.

113. Further, in relation to both the decision to initiate the disciplinary investigation and the manner in which the investigation was carried out, as identified in the findings of fact, the respondent had reasonable and proper cause for adopting the actions that it did. The claimant has not satisfied the tribunal that the respondent's actions were calculated or likely to destroy the relationship of trust and confidence. When considered objectively, neither of the these two matters, either individually or collectively, is a breach of a fundamental term of the claimant's contract. Rather, the respondent has acted reasonably and carefully, and altered its approach where it considered it necessary or where the claimant had raised concerns. The constructive dismissal is therefore not made out.

114. Turning to the alleged detriments. Although not strictly necessary for the purposes of this judgment given our findings and conclusions above, if we are wrong in relation to the status of the alleged protected disclosures and they had

satisfied the statutory definition as required, this tribunal would have found that there was no causal link between the disclosures and the alleged detriments, and the claims would still have failed. In short, there is simply no evidence to support that any of the alleged detriments were in some way influenced by any of the alleged disclosures made by the claimant, but instead were as a result of allegations made by students (initiation of the disciplinary investigation and manner of investigation), the obligations placed on the respondent in relation to safeguarding (manner of investigation, initiation of a determination hearing following resignation, referral to DBS, referral to Teaching Regulation Agency), or by simply things going missing in the ordinary course of a school (retention of personal items). However, we take this no further given our decision in relation to the alleged protected disclosures.

115. We do take this opportunity to wish the claimant well in his future endeavours. As he presented himself well in tribunal, and is clearly an articulate and intelligent individual.

116. However, for the reasons set out above, all claims brought in this case are ill-founded and are dismissed.

Employment Judge **Mark Butler**

Date_27 July 2021____

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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