# EMPLOYMENT TRIBUNALS

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| **Claimant:** | **Ms J Nicholls** |
| **Respondent:** | **(1) The Girls' Day School Trust**<br>**(2) Mr A Gray** |
| **Heard at:** | **London South Employment Tribunal** |
| **On:** | **8 – 12, 15 – 19, 22 – 23 November 2021, in chambers 24 – 26 November 2021** |
| **Before:** | **Employment Judge Dyal, Miss J Saunders, Ms H Bharadia** |
| **Representation:** | |
| **Claimant:** | **Represented herself with assistance from Mr Reeves (husband) and Ms Reeves (daughter)** |
| **Respondent:** | **Miss Carol Davis QC** |

## RESERVED JUDGMENT

1. The claims fail and are dismissed.

## REASONS[1]

### The issues

1. The issues in the case were identified with great care at Preliminary Hearing before Employment Judge Shore. Thereafter the Claimant provided some further information about comparators. The parties agreed at the outset of this hearing that the issues identified by in Employment Judge Shore's case management summary remained accurate and, read together with the further comparator information, stood as the issues for adjudication. The issues are appended to these reasons.

[1] A correction has been made to the name of the person identified at paragraph 30.9

## The hearing

2. On the first day of the hearing there was a lengthy discussion of the timetable. It was agreed that 2.5 - 3 days would be taken for reading (in the event the tribunal took the 3 days), 4 days for the Claimant's case, 4 days for the Respondents' case, half a day for submissions with the remaining time for the tribunal.

3. One point of concern that the tribunal had and raised at the outset was that Miss Davis QC had allowed little time for the cross-examination of the Claimant's additional witnesses of which there were 12. Miss Davis acknowledged this but made clear at that she preferred to be left to decide how to use the four days for the Claimant's case herself. This was agreed on the express understanding that if Miss Davis used so much of the time cross-examining the Claimant that there was insufficient time to cross-examine some or all of the Claimant's additional witnesses that would not of itself be a basis for seeking additional time.

4. We indicate below which of the Claimant's witnesses gave oral evidence, which Miss Davis indicated she did not wish to cross examine, which attended and were ready to give oral evidence but did not do so because Miss Davis preferred to use its time to cross-examine the Claimant and which did not attend.

5. The Claimant represented herself save that she was assisted at various times by her family. Her husband Mr Reeves conducted a part of the cross-examination as did her daughter Ms Reeves.

6. One of the Respondent's witnesses was vulnerable and required reasonable adjustments. The adjustments were agreed with the parties and were as follows:

    6.1. that only Ms Nicholls (and not her family members) cross-examine this witness;
    6.2. that only one member of Ms Nicholls' family would attend that part of the hearing in support of her;
    6.3. that the questions would be put to the witness in a calm and non-confrontational way;
    6.4. that the witnesses' evidence would be completed in the course of a day so she would not be bound-over.

7. We thank the Claimant for adhering to these adjustments scrupulously.

8. Both sides made very detailed closing submissions. They were made both in writing and orally. We have carefully considered both the written and oral submissions.

9. *Documents before the tribunal*:

    9.1. The trial bundle of documents;
    9.2. The case management orders of Employment Judge Shore following the Preliminary Hearing of 30 November 2020;
    9.3. A table of comparator information provided by the Claimant;

9.4. Witness statements of all of the witnesses identified immediately below;
9.5. On day 10, by consent, the Claimant adduced further documents in the form of an email and some text messages between herself and Mr Angus Meryon.

10. The evidence finished at the close of day 11. At the outset of day 12, shortly before the Respondents' closing submissions, the Claimant applied to adduce a video clip that she says shows the staircase on which the incident with Mr Gray of 12 July 2018 took place. She submitted it would assist the tribunal to better understand aspects of the incident. The video was taken by a former colleague of hers very recently. The Respondents opposed the application. We refused the application:

    10.1. The timing of the application was very significant: the evidence in the case had closed. Although we could in principle have re-opened it, we did not think that it would be in accordance with overriding objective to do so.
    10.2. The detail of the incident on 12 July 2018 has long-since been disputed. We consider that in the life of the litigation the Claimant had reasonable opportunity to obtain and adduce evidence such as this video clip in good time prior to the close of the evidence. There is a dispute about the layout of the building but it predates the exchange of witness statements in the case. In any event that exchange of statements itself happened on 18 October 2021 - over two weeks before the hearing began.
    10.3. The video as described is very unlikely to shed much light on the key issues in dispute in respect of 12 July 2018, such as, what the Claimant said, whether Mr Gray chased her or simply followed her down the stairs and most importantly of all whether the incident was related to sex in any way.
    10.4. It would be prejudicial to admit the evidence. If we had done so we would have to give time for the Respondent to consider it and potentially lead evidence in response (including possibly witness evidence) and hear submissions about it. Doing so would therefore have disrupted the timetable we had all worked very hard to adhere to over the course of the trial and would potentially have caused significant delay.

11. *Witness evidence*:

    For the Respondent:

    11.1. Mr Alistair Gray, Director of Finance and Operations (retired May 2021);
    11.2. Ms Suzanne Longstaff, Headmistress
    11.3. Ms Jane Brandon, Deputy Head Co-Curricular and Outreach
    11.4. Ms Heidi Armstrong, Deputy Head (Pastoral)
    11.5. Mr David Boyd, Director of Legal and Risk Assurance
    11.6. Ms Jane Beine, Director of Human Resources
    11.7. Mr Daniel Hall, Director of IT Services
    11.8. Mr Mark Finnemore, Head of Mathematics
    11.9. Ms Kate Hailstone, Head of Internal Audit

    For The Claimant:

11.10. The Claimant herself;
11.11. Ms Wendy Archibald, former Director of Music and Deputy Head of Putney Junior School (gave oral evidence);
11.12. Ms Jo Wallace, former head of Putney High Junior School (gave oral evidence)
11.13. Ms Samantha Knowles, former Teacher at the School (gave oral evidence)
11.14. Ms Vikki Filsell, Head of Chemistry at the School (tendered for cross-examination but not cross examined)
11.15. Ms Linda Carmichael, former employee at the School (tendered for cross-examination but not cross examined)
11.16. Ms Bethany Reeves, Claimant's daughter, former student at the School (tendered for cross-examination but not cross examined)
11.17. Ms Eileen Merchant, former Headmistress of the School (tendered for cross-examination but not cross examined)
11.18. Mr Brown, parent of former students at the School (tendered for cross-examination but not cross examined)
11.19. Mr Adeyemi, parent of former student at School (tendered for cross-examination but not cross examined)
11.20. Mr Ward, parent of former student at School (did not attend or give oral evidence because Respondents indicated that it did not wish to cross-examine)
11.21. Dr A Starck, Parent of former students at School (did not attend or give oral evidence because Respondents indicated that it did not wish to cross-examine)
11.22. Ms Whinnett, Peripatetic Music Teacher (did not attend and was not tendered for cross-examination. On the Claimant's account, essentially, this was because she did not wish to face Mr Gray).

# Findings of fact

12. The tribunal made the following findings of fact on the balance of probabilities.

*The First Respondent and the Putney High School*

13. The First Respondent operates 25 independent all-girls schools including Putney High School ('the School').

14. The School was led by its Senior Leadership Team (SLT). The majority of the SLT were women. The Headmistress, Ms Longstaff, and the previous Headmistress, Dr Denise Lodge, were women.

15. The SLT was supported by a further level of governance at trust level. Both the Chair of Trustees and the CEO of the trust were women.

*The Claimant*

16. The Claimant was employed by the First Respondent at the School from September 1986. She was a music teacher. Initially here employment was on a part-time basis. She became full-time on 1 September 2012. From September 2015, she was Assistant Director of Music which she remained until her dismissal on 8 November 2019. The Claimant therefore had exceptionally long service.

17. The Claimant's life was yet more intertwined with the fabric of the School than even her length of service implies:

    17.1. She dedicated a staggering amount of time to additional activities related to the School. For example, she worked with choirs and put on countless concerts, variously to showcase the School and/or raise funds for charity. These were extremely well received and were much loved by the School community. Further she led around 20 school trips per year each of which was a significant undertaking all of its own. She thus led over 600 school trips during her employment.

    17.2. The Claimant's two daughters attended the School. In the case of her elder daughter Jessica from September 1996 to July 2011. In the case of her younger daughter Bethany from September 2004 to July 2017. With this came relationships between her daughters and other girls at the School and relationships between the Claimant and her husband Mr Reeves in their capacities as a parents with other parents of girls at the school.

    17.3. The Claimant is and was a private piano teacher. Many of her private piano students were students at the School.

18. The Claimant's work at the school did not, to say the least, go unnoticed. She was held in the highest regard by a very many parents, students and colleagues. The Claimant adduced a quite astonishing number of testimonials that prove this in spades.

19. In short, we are left in no doubt that, whatever else, the Claimant was widely regarded as an inspirational and quite exceptional teacher. She was the sort of teacher that many students would remember fondly for the rest of their lives.

20. The Claimant herself had a very keen sense of this status - including during her employment. She knew that she was extremely valuable to the School and understood that this gave her a certain amount of security and indeed leverage over management. At times it gave her the confidence to do things her own way rather than the School's way because she felt sufficiently confident in her position that she could ride-out any 'push-back'.

21. We have no doubt that the Claimant was at times very difficult to manage. She could be utterly single-minded. She was prepared to go to disproportionate and unusual lengths to get her way on matters even where, objectively speaking, the matter was a fairly minor one. If she was given a management instruction that she did not agree with, and if it was a matter she felt strongly about, she would look for ways to undermine it, overturn it or side-step it. One of her favoured techniques for doing so was to search for examples that favoured her position

rather than the management position. She was often able to find an example that in some way favoured her position. This was unsurprising because:

21.1. She had very long service so a deep well of experience to draw on;
21.2. Across the School and the GDST there many different managers, who over time cumulatively manage many tens of thousands of issues, and may do so in different ways according to the details of the circumstances faced and managerial discretion which is exercised differently from manager to manager;
21.3. Practices change, sometimes imperceptibly with wider societal changes, over time so what was once acceptable may no longer be.

22. There was a general sense among some colleagues that the Claimant had played a role in the termination of Dr Lodge's employment and in the termination of a previous Director of Music's employment. The Claimant was aware of this and it added to her reputation.

23. Altogether, then, the Claimant was an employee with significant gravitas, standing and leverage well beyond her position in the formal hierarchy. She was widely regarded as someone who was not to be crossed by either peers or managers.

24. The Claimant had a significant number of disciplinary issues during her employment from 2008 onwards:

24.1. Around 6 informal warnings;
24.2. A first written warning in May 2014;
24.3. A final written warning in June 2014;
24.4. A final written warning in November 2018 (this is described in the chronological narrative below).

25. A number or the warnings related to what were, by modern standards, a lax approach to safeguarding.

*The Second Respondent*

26. Mr Alistair Gray had a military background. He was employed by the First Respondent as the School's Director of Finance and Operations (DFO). His employment commenced on 12 November 2012. Mr Gray was responsible for the school's operations, finance (which included staffing) and compliance. The compliance element of his role included enforcement of the School's policies and general health and safety. Mr Gray's role also included ensuring that the School passed ISI inspections and external audits. He retired with effect from 31 May 2021.

27. Mr Gray was good at getting things done but the way he did it upset a lot of staff below SLT level. There is ample evidence, and we find, that he was widely regarded as being rude, harsh and unkind in his communication style.

28. We have seen a fair amount of Mr Gray's written communications and it is clear to see why it caused some offence. He sometimes wrote in an overly blunt and terse way by conventional modern standards. He also had a habit of emphasising instructions using block capitals, bold and underline which made the communications read as if he was, in effect, shouting. His style was out of keeping with the School environment in which there was otherwise an emphasis on kindness.

29. We are also satisfied that there was a broad feeling among staff below the SLT level that he was intimidating. There is ample evidence, and we find, that Mr Gray sometimes stood too close to people when reprimanding them for day to day transgressions of policies that he was responsible for enforcing. There is also ample evidence, and we find, that Mr Gray had a short-temper and that he could become very angry, resulting in him doing things like pointing his finger or raising his voice, particularly if he was challenged. This could be alarming for the person he was angry with.

30. A significant number of complaints were made about Mr Gray's communications and behaviour many of which were reported to the SLT. The following list is not comprehensive but is representative of the kind of complaints that were made:

    30.1. In 2015, Mr Riley, peripatetic music teacher, complained that Mr Gray was rude, aggressive in tone and physically intimidating, at one point quickly stepping up close to his face. The matter was drawn to Ms Longstaff's attention;
    30.2. In 2015, Ms Munro complained about the tone of the "continuous hounding" of peripatetic music staff" to the then Director of Music (and to the Claimant);
    30.3. In 2015, Ms Whinnett complained to the then Director of Music (and to the Claimant) about Mr Gray's treatment of her including his communication style which she found rude and bullying (this is described in the chronological narrative in more detail);
    30.4. In 2015, an anonymous complaint was made to the Chief Executive of the Firs Respondent that Mr Gray was a bully who undermined staff. It was said he had a disgusting tone and manner and thought nothing of reducing others to tears;
    30.5. In July 2017, Mr Brown (a pseudonym) complained in a letter to the Chief Executive, that Mr Gray was rude, threatening and verbally and physically intimidating;
    30.6. In November 2018, Katie Whyman (contractor), notified the Chief Executive that she had almost filed a grievance for bullying and harassment in relation to Mr Gray's behaviour. The matter was passed on to Ms Longstaff;
    30.7. In December 2018, Gloria Alexander complained that Mr Gray had lost his temper with her when she challenged him, saying "*You don't know who you are talking to"… "This will go further"…"You don't know who you are talking to"… "You don't know who I am and who you are messing with".* She reported this to Mrs Armstrong. This is discussed further in the chronological narrative below.

30.8. In May 2019, a further anonymous complaint was made alleging that Mr Gray delighted in trying to belittle people and enjoyed bringing them to tears especially women;

30.9. Ms Archibald, left her employment with the First Respondent in part because of Mr Gray. She found Mr Gray's emails rude and aggressive. She reported to Mrs Armstrong, in around late 2015/early 2016, that they were the source of much unhappiness in the junior school. On one occasion, and we find that this indeed happened, Mr Gray made a comment to the effect that it was fathers who paid school fees in an SLT meeting. This shocked the room which contained many highly successful women who were the primary earners for their family;

30.10. Ms Carmichael felt bullied by Mr Gray in a meeting and complained about it to the head of the junior school;

30.11. In November 2019, Ms Steph Upton, Finance Officer, resigned in part due to the way that Mr Gray dealt with her. She found him very rude. She reported the matter to Ms Longstaff;

30.12. Ms Jo Wallace, previously Head of the Junior School, considered Mr Gray to be aggressive and condescending. She raised her views with Ms Longstaff on more than one occasion. It was Ms Wallace's view that Mr Gray was more aggressive to women. However, we found the examples she gave to support that view far from compelling. For example, firstly, that Mr Gray referred to his wife as Mrs Gray. Secondly, that Mr Gray shared pictures of badly parked cars and dirty mugs of female staff (we did not think, even stepping back and considering the whole evidence in the case in the round, that this had anything to do with the fact the staff members in question were female).

30.13. Ms Filsell, complained that she was left nervous and shaken by Mr Gray's conduct when interrupting one of her lessons to ask her to shut a fire door in November 2019. The door was open because of an ongoing problem with the smell of chemicals. She refused to do as Mr Gray said and matters became heated with Mr Gray asking her to leave her class to speak to him outside. Mrs Armstrong was present and led Mr Gray away. Mrs Armstrong later advised Ms Filsell that she had asked Mr Gray to stay away from her (Ms Filsell). Ms Longstaff later apologised to Ms Filsell for Mr Gray's attitude. At the time, Mr Gray was prepared to accept that he had not handled the situation very well, but in his evidence to the tribunal he largely rowed back on that. He could not see past Ms Filsell's decision to prop open a fire door; for him that was essentially the start and finish of the relevant analysis of the incident.

31. In our view the Respondent's response to the above complaints, particularly once the complaints began to accumulate, was exceptionally lenient. It never dealt with a complaint against Mr Gray formally even as they multiplied. Instead it took, at most, an informal approach. We found this very surprising given the number of complaints and the common threads between them.

32. On at least two occasions the management response to the complaints was to suggest that Mr Gray should attend an anger management course. However, the suggestion he needed anger management angered him. He refused to attend anger management and was allowed to refuse. We find that very surprising. This

occurred firstly when Ms Whyman complained about Mr Gray. He indicated that he would be prepared to attend a difficult conversations course instead which he did. If occurred again after the incident with Ms Alexander. Mrs Armstrong told Ms Alexander her that the incident would appear on Mr Gray's record and with that assurance she decided not to formalise her complaint. The incident did not, however, appear on Mr Gray's record. We accept Mrs Armstrong's evidence that she forwarded the notes of her meetings with Ms Alexander to HR for them to put on Mr Gray's record. Unknown to Mrs Armstrong, HR failed to do so.

*Chronological narrative: 2013*

33. In October 2013, Mr Gray noticed that the Claimant had left dirty crockery in her office over half term as well as a small salt-shaker. He emailed her and copied in her line manager (p980). The email was forceful in tone. It stated: "*I was shocked to find these dirty items left in your work space… I strongly advise you do NOT consume hot drinks or eat food in areas where girls are being taught*". It also stated, "*I'm not sure why you need salt*". This was an odd, unnecessary and no doubt irritating comment. There was no reason to think the salt was there for anything other than the usual purpose of seasoning food.

34. This is a low-key, example of Mr Gray's communication style. He invariably had legitimate points to make but an unfortunate tendency to make them in a high-handed way that caused unnecessary upset and sometimes offence.

35. The Claimant believes that this email was copied to all staff. That is what a colleague (Ms Hooper) appears to have told her. However, we do not accept this. On the face of the email the distribution was limited as stated above and we accept Mr Gray's oral evidence that he did not send the email to all staff but only those on the distribution list.

*Chronological narrative: 2014*

36. In around March 2014, Dr Lodge asked Mr Gray to conduct an investigation into allegations that the Claimant:

    36.1. gave a boy a piano lessons on site at 5.00pm on Monday 24 March;
    36.2. was talking during the fire practice so loud that a member of the admin staff heard what was being discussed.

37. Mr Gray produced an investigation report on 30 April 2014. He recommended that the first allegation proceed to a disciplinary hearing but that no further action was required in relation to the second allegation.

38. We acknowledge that the Claimant continues to dispute some of the details of the incidents under investigation but we are satisfied that Mr Gray conducted a reasonable investigation and made reasonable recommendations based upon it. His report makes this clear.

39. The disciplinary hearing was chaired by Ms Wallace, then head of the junior section of the School. She gave the Claimant a first written warning. In her oral evidence,

Ms Wallace suggested that she had no option but to give the Claimant a warning because of the way that the matter had been dealt with prior to her involvement, i.e., because of Mr Gray's investigation. We do not accept that aspect of her evidence. She was the decision-maker and she was free to decide what sanction if any there should be. She made her choice and did so freely. It was also a perfectly reasonable outcome to that disciplinary process.

40. The Claimant's appeal against the warning was dismissed on 24 June 2014 by Dr Lodge. By letter dated 27 June 2014, Dr Lodge took matters further and instructed the Claimant as follows:

> I am writing to let you know that after the last day of term, Friday 11th July, you will no longer be able to give any peripatetic music lessons, whether paid or unpaid, on site at Putney High School, whether to Putney High School pupils or to non-PHS pupils. I also give you notice that that you must abstain from any occupation, paid or unpaid, which in my opinion interferes with the proper performance of your duties (see GDST Statement of Employment for Full Time Teachers, term 20.) In my opinion this includes all occupations.
>
> This change is so that you are treated the same as all Putney High School staff, who are not allowed to undertake any teaching or coaching, outside school hours to any Putney pupil or non-Putney High School pupil or student, whether or not for financial gain.

41. There were, however, some transitional arrangements and Dr Lodge agreed that the Claimant could continue to teach a large handful of existing students privately until the end of the autumn term.

42. The Claimant raised a grievance against Dr Lodge. It was dealt with by Amanda Riddle, Director of Communications. The outcome was given by letter dated 12 September 2014. The outcome letter stated that the grievance was rejected because Dr Lodge had correctly identified and construed the clause of the Claimant's contract that prohibited her from conducting other work if it interfered with her contractual duties. However, in substance the grievance was upheld. Ms Riddle stated "*you may continue to teach your piano lessons*". This was essentially because there was no proper evidential basis to conclude that the Claimant's private piano teaching did interfere with her contractual duties. She recommended that the situation was kept under review and regularly revisited.

43. It is clear on the evidence that it was well known even at this time that the Claimant taught some of her private piano lessons at home.

44. By this stage, though Dr Lodge remained in employment she was not working. Ms Riddle said in her letter *"I shall inform Dr Lodge (and Suzie Longstaff as Acting Head) of my decision and so she will be aware that you are currently no longer required to give up your private piano teaching."*

45. On 8 September 2014, Mr Gray emailed the Claimant in the following terms (with the emphasis below replicating the original):

> Dear Jo, The peris have been told they can use the ***Sixth Form Diner*** for a break and to buy coffee/lunch. They are ***NOT repeat NOT*** to use the fridge/microwave/etc in the Sixth Form Internet Café – this for the girls' use. It

is disappointing you didn't clarify this we me ***before*** passing this erroneous information to the peri staff. Please amend your advice to the peris asap!

46. The context of the email was that the Mr Gray had recently been given some advice to the effect that the Respondent needed to treat the peripatetic music teachers (who did not have express contracts of employment with the school) differently to the School's own teachers. That was in order to help maintain the School's position that the peripatetic teachers were not employees. This meant that the working conditions of the peripatetic staff became less generous and comfortable. Unsurprisingly the changes were extremely unpopular. The Claimant was responsible for liaising with the peripatetic music teachers. It is true that her job description referred only to their timetables but in practice the Claimant coordinated them more generally.

47. This email was later to feature in one of the Claimant's grievances against Mr Gray. It's wording and presentation is another example of his communication style. Again, there is a sensible message communicated in a high-handed way.

*Chronological narrative: 2015*

48. In around 2015, for good reasons related to safety and security, Mr Gray introduced some new rules in relation to the wearing of lanyards. The new lanyards were colour coded so that employees, contractors and visitors etc could be differentiated. There was some resistance to these changes and it was Mr Gray's job to enforce them.

49. On 25 February 2015, a male peripatetic teacher emailed the Claimant complaining about the way that Mr Gray had challenged him for not wearing a lanyard. He wrote: "*The problem I had with Alistair was how he spoke and acted towards me. He was rude, aggressive and physically intimidating (at one point quickly stepping up very close to my face) which is utterly unacceptable behaviour*".

50. On 26 February 2015, the Claimant emailed Ms Longstaff noting that a male peri had complained about *"the aggressive way Alistair has dealt with the lanyard being in his pocket rather than being clearly visible."*

51. On 4 March 2015, a more general complaint was made by a female peripatetic music teacher. She stated: "*The tone of this continuous hounding of the peripatetic music staff is not conducive to a pleasant working environment".*

52. Also in March 2015, Mr Gray noticed that Ms Whinnett, a peripatetic music teacher, was not wearing the correct lanyard. He then checked to see whether she had signed in and ticked to indicate that she had taken lunch (for which there was now a charge for peripatetic staff). Mr Gray raised this with the Claimant and asked her to investigate the matter.

53. It transpired that Ms Whinnett had signed in. This was ultimately confirmed by CCTV footage and by the receptionist. A page of the signing in book had, somehow, gone missing. Ms Whinnett perceived that Mr Gray was sceptical of

her honesty and declined to meet with him to further discuss the matter. Looking at the email chains, that perception was a reasonable one for her to have. Thereafter she ceased to eat lunch in the School cafeteria.

54. The Claimant was variously copied into emails about the above matter and in private correspondence with Ms Whinnett encouraged her to complain about Mr Gray. She also told Ms Whinnett on 11 March 2015 *"… I am more inclined to pursue the matter for you this week. I didn't get the HOD job, which I was aiming for. I am thoroughly pissed off about it… Everyone over in SLT seems to have lost any sense of honesty. Similarly to the Alistair issue, I think there is a lack of honesty, respect and trust".*

*Chronological narrative: 2017*

55. In around June 2017, the claimant was having lunch on the staff lawn. She took off her lanyard while she ate. Mr Gray picked her up on this and asked her to put her lanyard on. The evidence in respect of this incident is very sketchy. On balance we think it is likely that Mr Gray did tell the Claimant to put her lanyard on in a way that was terse and blunt, indeed rude by normal standards of address. That would be consistent with his communication style and the incident is unlikely to have stuck in the Claimant's mind had there been nothing in it.

56. We also note that around this time, in June 2017, the Claimant had an email exchange regarding booking coaches with Mr Gray. In that exchange she politely asked Mr Gray why she could not use a particular supplier. Mr Gray responded tersely stating "*Dear Jo. We have a contract. Please follow instructions and there won't be issues. Thanks".* The Claimant forwarded the email to Ms Longstaff stating: "*it's a shame Alistair writes such curt, unnecessarily nasty emails…*". Ms Longstaff responded "*Oh dear. Thanks for forwarding…. I will say sorry on behalf of the school for the tone of Alistair's email*". Ms Longstaff also gave a bit of background and detail explaining why a particular coach provider should have been used. This busy headmistress would not have needed to do so had Mr Gray simply given the Claimant a polite rounded response.

57. In the summer of 2017, the claimant led a school trip for girls to the Edinburgh Fringe Festival ('Edinburgh 2017'). The purpose of the trip was for the girls to perform as an *a cappella* choir and generally to enjoy the experience of the festival.

58. As trip leader, the Claimant was responsible for organising the trip. It was for her to do all of the 'heavy lifting' in terms of matter such as organising accommodation, booking train tickets, theatre space and much more. This was a major undertaking that required a huge amount of work.

59. Trip leaders are supported and supervised by Dr Jane Brandon, Head of Co-curricular (and member of the SLT) and as required her manager, Mrs Armstrong, Deputy Head. Because there is a financial element to trips, the finance team are also involved. The Respondent has a piece of software known as Evolve, that is used to capture trip details including details about the budget.

60. An unusual feature of Edinburgh 2017 was that the girls performed at ticketed events. The ticket sales generated income and as seen further below this seemingly innocuous detail of this and subsequent trips generated a huge amount of difficulty and friction.

61. Edinburgh 2017 was a great success in many respects. The girls had a fantastic experience and their performances were very successful. However, from a procedural and compliance perspective the trip was problematic.

62. In September 2017, the School was undergoing an external audit by KPMG. This audit had a broad remit only one small part of which was school trips. KPMG audited Edinburgh 2017. There is some controversy as to whether or not Mr Gray asked Edinburgh 2017 to be audited. On balance we think he did. The best evidence on this, we think, is what Ms Sue Upton said when interviewed by Mr McMillan. We find Mr Gray's own evidence on that matter somewhat inconsistent over time.

63. The KPMG auditors were critical of aspects of the trip, including:

    63.1. Two of the Claimant's children had provided services for the trip and this was a breach of the First Respondent's Procurement Policy which provides "…. *members of the immediate family of those individuals, including dependents and partners, or a company in which those individuals hold any interest, must not be appointed as a supplier or appear on preferred supplier lists."*
    63.2. The Claimant had not declared in advance that her children would be providing services;
    63.3. Neither of the Claimant's children had been CRB checked by the School and it was unclear if one or both of them had stayed in the same accommodation as the girls. The Claimant had not stated in advance that two of her children would be on the trip;
    63.4. The girls had performed at a number of venues and were due to receive a share of profits from the ticket sales. However, the Claimant had not kept a record of the number of tickets sold per performance so it was not possible for the profit due to be calculated and there was no way for the school to confirm that, when the money was received, it was the right amount;
    63.5. No trip reconciliation comparing costs incurred to the budget had yet been provided.

64. KPMG advised the School to undertake an investigation into the trip to understand if and to what extent internal policies had been contravened. KPMG did not speak to the Claimant. It was reliant upon information provided by Mr Gray together with documentation. This is not a criticism of KPMG but this process meant the audit was conducted on incomplete information. For instance:

    64.1. Only one of the Claimant's children (Jessica) was actually on the trip. She had a CRB check (she was a teacher) albeit not one sourced by the School. (N.b. That was not acceptable to the School it required its own CRB check and was entitled to);

64.2. The Claimant's children had previously been approved as suppliers by the School, indeed by Mr Gray, albeit that it was nonetheless the case that there was a breach of the procurement policy;
64.3. The girls' ticketed performances had been at a single venue. There was an agreement with C-Venues to manage those performances in the sense of taking care of the box office, ticket sales and receipts. It was wholly unrealistic for the Claimant herself to manage those matters and no reason why she should.
64.4. One of the features of the agreement with C-Venues was that it would account for the ticket sales in around October 2017 (since it was simply too busy to do so during the festival).

65. In any event, an internal investigation was carried out by Ms Jude Lowson (a former deputy head). She produced a report dated 10 November 2017 in which she concluded that there had been numerous breaches of internal policies. She found that the claimant had been culpable in various ways but well-intentioned and therefore that the matter did not merit formal disciplinary action. This was, in our view, lenient to the Claimant.

66. Ms Lowson also made a number of recommendations. One of which was: *"Trips involving 'business ventures': the school should put in place explicit guidance and assistance for staff taking trips which will involve profit-making ventures".*

67. The Respondent's Chief Financial Officer, Tom Beardmore-Gray considered the report and emailed Ms Longstaff with the following reflections:

> *There are some learnings for the school and for the GDST. For the school I think that the most important learning identified is the need for a more formal process for signing off on the various arrangements for school trips. This process should always involve a member of the SLT and should provide an opportunity to identify any potential conflicts of interest or other issues that should be brought to the attention of the school's senior management. In the event that the member of SLT or the Head thinks that guidance should be sought on how to deal with potential conflicts of interest, this guidance can be sought from the Governance team at Trust Office.*
>
> *For GDST more broadly we need to consider how we can best ensure that members of senior leadership teams in all of our schools are more alert to the important aspects of GDST's Procurement Policy. This will enable those responsible for reviewing the arrangements for trips (or any other expenditure) to identify potential conflicts of interest or other matters that may breach policy.*

68. In November 2017, the Claimant had a discussion with Ms Lowson about what to do with the profits from the performances in Edinburgh 2017. Initially, on 15 November 2017, Ms Lowson's position was that a refund for parents would be arranged. However, on 17 November 2017, Ms Lowson emailed the Claimant stating "*SU [Sue Upton]* and *AG [Mr Gray] agree that this can be put towards next year's trip.".* In other words, Ms Lowson told the Claimant that instead of

refunding the ticket sales money to parents of the girls on the Edinburgh 2017 trip, the money could be put towards the trip the Claimant planned to run the following summer ('Edinburgh 2018').

69. On 11 December 2017 and 10 January 2018 there were Organisational Learning Review meetings in respect of the Edinburgh 2017 trip. Ms Longstaff, Mrs Armstrong, Mr Gray were present and Dr Brandon were present for the second of those meetings. At this point, the guidance to staff on trips that involved profit-making ventures, remained a work in progress. Mr Gray was in discussions with Malcolm Shearer, the GDST Financial Controller, about it.

70. On 19 December 2017, Dr Brandon emailed the Claimant and Mr Meryon among other things stating that no letter to parents regarding Edinburgh 2018 could be sent to parents until the trip had been approved by Ms Longstaff.

*Chronological narrative: 2018*

71. In January 2018, the Claimant began correspondence with Ms Upton regarding costings for the proposed Edinburgh 2018 trip and in relation to her own children supplying services to the school. Ms Upton involved Mr Gray, who wrote to the Claimant on 8 January 2018 among other things quoting the procurement policy and the provisions therein prohibiting family members from being appointed as suppliers.

72. The Claimant then emailed HR at the Trust Office asking for advice about using family members as suppliers. The response she received directed her to the Respondent's recruitment policies which related to employment of family members rather than using them as suppliers. The correspondence was forwarded by the HR officer back to the School HR and from there to Mr Gray. He was irritated that the Claimant had sought to get around his instructions. He made this clear to Ms Longstaff.

73. On 11 January 2018, Mr Meryon reported to Mrs Armstrong, who reported to Dr Brandon, that the Claimant had sent out letters to parents regarding the Edinburgh 2018 trip and had booked a hotel. The trip had not yet been approved. In fact that Claimant had not formally booked the accommodation though she had informally asked the owner to mark the dates down for her group. Nonetheless, there was a significant element of insubordination here on her part.

74. On 12 January 2018, there was a departmental music meeting at which the issue of ticket sales on school trips was discussed. Dr Brandon told the Claimant that henceforth the costs of the trip must be separated from the costs of 'enterprise'. The accounting of the two things needed to be done separately. Among other things this meant that ticket sales needed to be paid in the GDST Enterprises account before anything else was done with them. It also meant that the anticipated revenue of ticket sales could not be used, in advance of receipt, to offset expenditure in the trip budget.

75. After the meeting the Claimant set about trying to overturn the instructions she had been given. She spoke to a colleague, Ms Crocombe, who told her that on

the trips she ran she did things differently to the method described in the meeting of 12 January. Ms Crocombe told the Claimant that she "*off-sets ticket money against the costs, i.e., it goes on the costing form as a negative expenditure*". The Claimant asked Dr Brandon if she could do the same. Dr Brandon replied to her reiterating that the message from the meeting and stating that things had now changed.

76. A further meeting was arranged to discuss ticket sales with the Claimant. On 24 January 2018, Mr Gray emailed the Claimant, Dr Brandon and Mrs Armstrong, Ms Longstaff and Ms Upton. He stated:

> *"Just to save time at the meeting; Trust policy would not allow us to subsidise the trip through tickets sales, which is an Enterprise (ie trading) activity and needs to be dealt with separately to the trip. Strictly speaking, any profit from Enterprise (such as letting the school gymnasium for a netball club…. Gets reinvested for the benefit of the whole school."*

77. Although the Respondent had an Enterprises Policy and a Trips Policy, neither policy contained the advice in Mr Gray's email. Rather, his reference to 'policy' was to guidance that he had sought and been given by Mr Shearer. As yet this had not been reduced to writing anywhere.

78. On 25 January 2018, the Claimant emailed Ms Upton asking: *what happens to the ticket sales from shows such as Jesus Christ Superstar. Do they help fund the show itself?* She was again looking for a way of undermining the advice she had been given.

79. On 27 January 2018, the Claimant wrote to Mr Shearer, Financial Controller. In essence she indicated that she wanted to use the money that would be raised from ticket sales to fund the girls' attendance at other shows. She suggested that if the ticket sales were added to general school funds this would be "*in effect child labour"*. Mr Shearer did not respond directly to the Claimant. She chased him several times.

80. On 31 January 2018, Ms Longstaff wrote to Mr Shearer that she was very keen to see an updated Enterprise Policy as "*we*" are still struggling with the Edinburgh trip. She went on "*We have been given advice on where to account for revenue generated on a school trip but there is still [no] definitive update policy (following the KPMG audit). We really need a policy. Can you help us?"*.

81. On 31 January 2018, Mr Shearer responded to Ms Longstaff and copied in Mr Gray. He stated that the accounting for the Edinburgh trip had to be done differently to how it had been done before. It needed to treat the trip and the performance (which generated sales) as separate activities. This was in part to ensure that there was compliance with VAT rules. In essence his view was that the performance was carried out under the name of Putney High, tickets were sold to the general public and this was a trading activity to which VAT applied.

82. Mr Shearer said there were three options:

82.1. Cancel the trip;
82.2. Continue with the trip but have no performance for which tickets were sold;
82.3. Account for the trip and the performance separately and comply with the VAT regime in relation to the performance.

83. In terms of what the proceeds of ticket sales were actually used for, Mr Shearer did not really offer any advice (not a criticism of him). However, he indicated that not all of the proceeds of ticket sales were necessarily profits because there were performance costs that could be directly attributable to the performance such as theatre hire, programme and production costs.

84. On 28 February 2018, Mr Shearer finally responded to the Claimant herself and indicated that he had been in touch with Mr Gray and Ms Longstaff who could advise her. The Claimant immediately contacted Mr Gray and Ms Longstaff asking for a response to the points she had raised with Mr Shearer. She did not receive a reply. She contacted them again on 5 March 2018. Mr Gray responded on 6 March 2018 stating the position had not changed since the meeting in January 2018.

85. The Claimant followed this up again in a further email on 6 March 2018 to Mr Gray, Ms Longstaff, Dr Brandon and Mrs Armstrong. She stated that it was not appropriate for the girls on the Edinburgh trip to raise money for the School. She also stated that she was unhappy with an answer Mr Gray had given her about '*the Cadogan'.* This was a reference to a major event the school was running at Cadogan hall for students to sing at a ticketed event at which profits were made. Mr Gray had told her that this was different because it was not a school trip.

86. The claimant followed this up yet again with a further email to Ms Longstaff and Mr Gray, on 20 March 2018. She said: "*I can't accept the statement from Alistair that Edinburgh is a trip and Cadogan Hall is not a trip. This is not true and I don't like receiving false statements; neither would anybody else who is working at PHS…"*.

87. On 27 March 2018, the Claimant emailed Ms Longstaff again complaining that she had not had a response to her messages and stating that she did not think fair consideration had been given in light of the Cadogan Hall trip. She ended stating "I *just need a reply and a fair, honest, moral one ASAP*".

88. On 27 March 2018, Ms Longstaff responded to the Claimant stating that she had not previously replied because, essentially, the position had been made clear to the Claimant by Mr Gray, Dr Brandon and the GDST. She stated that there was a GDST policy which could not be breached.

89. The Claimant responded to Ms Longstaff and stated:

> *This is not the answer I was expecting as it doesn't answer the problem which I have raised. I can't be told about the GDST policy which the school has just contravened. Unless I have a satisfactory answer I will be forced to speak to lawyers on this. I will be doing this in the Easter holiday if I have not had a*

*suitable answer. In addition the GDST policy needs looking into from a legal perspective for the various reasons I have mentioned.*

90. Whilst some frustration on the Claimant's part may be understandable, in our view by this stage the manner in which she was dealing with the matter was out of all proportion to the significance of the issue. All that was at stake was a relatively small amount of money generated by ticket sales (in the order of £1,300). When split between the approximately 20 girls on the trip it amounted to around £60 per head. Instructing lawyers in respect of this matter was an extreme proposition in the circumstances.

91. Already by this stage, the Claimant's incredibly dogged, slightly obsessive approach to the Edinburgh trips was seriously damaging her relationship with the First Respondent. It took up a totally disproportionate amount of management time. Further this threat – and it was a threat – to instruct lawyers really upped the ante. It transformed what was essentially and administrative domestic issue into legal one. That in turn soured relations further. It made the First Respondent, led by Mrs Longstaff in particular, wary of the Claimant which in turn generated further work like getting extra support from HR or legal with communications to the Claimant.

92. On 29 March 2018, the Claimant and Ms Longstaff had a meeting to discuss Edinburgh 2018. After the meeting Ms Longstaff emailed the Claimant:

*1) The Edinburgh trip in the Summer of 201[7] had been fantastic but the financial auditors had raised a number of questions relating to the accounting and running of the trip. An investigation had occurred and a number of actions points had been put forward as a result.*
*2) Following this we did meet and agreed that the trip could again take place in the Summer 201[8]. One of the actions put related to the accounting for the ticket sales.*
*3) We have agreed today that the students pay for the full cost of the trip. Any ticket sales must be paid into the Enterprise account and as tickets are sold to the public it must be compliant with VAT legislation.*
*4) Today you said that you may use the ticket sales to pay for tickets for the girls to watch other events. I cannot agree to that. How the money is accounted for must be agreed with the Finance Department who understand the rules and regulations. My understanding was that the money for the ticket sales must be paid directly into the Enterprise account and this is what must happen.*
*5) We also agreed that the tickets sales (after VAT is paid) could be used towards the performance costs of the trip such as theatre hire, programme and production costs. Please liaise with Jane Brandon and Steph Upton on this.*

93. In our view, the meaning of point 5 is this: since VAT is paid after the event, i.e., upon completion of a VAT return after revenue for services has been collected, revenue generated by ticket sales cannot be used prospectively. Rather it can only be used once VAT has been paid which will necessarily post-date the trip. Thus, if ticket sales were used to offset costs such as theatre hire, programme

and production costs (which are paid in advance) this would have to be by way of a refund to the parents of the girls who went on the trip. Although the meaning of point 5 is decipherable if one reasons it through, the meaning is not obvious and it could have been explained much more clearly. On a quick reading the significance of the words "*(after VAT is paid)*" can easily be lost, and lost they were on the Claimant, as we shall see.

94. In June 2018, Mr Gray told the Claimant off for trying to take a plate of food out of the cafeteria. This was in front of other staff. The general policy was that food should be eaten in the cafeteria, although staff were allowed to take food to the staff lawn. Mr Gray stood within a metre of the Claimant when did this. It was embarrassing and very uncomfortable. This is the Claimant's account which we accept. Mr Gray has no recollection of the incident.

95. On 11 July 2018, there was a pre-trip planning meeting for Edinburgh 2018 between the Claimant, Dr Brandon, Mrs Armstrong and Ms Upton. At the meeting it was agreed that the Claimant could have a Caxton card in order to make payments prior to the trip departing and over the summer holidays.

96. On 12 July 2018, the last day of the summer term, the Claimant emailed Ms Longstaff and asked:

> *Please can I see you this afternoon or tomorrow some time to revisit the ticket sales money from our Edinburgh Shows. Back in December, you told me that we would be able to offset the cost of the theatre hire against the money we get from our ticket sales. A projected amount for this could be given, based on last year's figures. Because I am not able to use Putney High in the summer for our 3 full days of rehearsals and our concert, I will be paying to hire a venue. This could easily be set up but it needs you to authorise. We discussed it at the end of the Christmas term and you were positive about this being something we could fix up.*

97. The last day of term was always an incredibly busy one, especially for Ms Longstaff. She responded to the Claimant in effect saying that she did not have an immediate recollection of the issues and was so busy that she could not deal with the matter and needed to pass it to her Mrs Armstrong and Dr Brandon./ This was at 07.48.

98. Dr Brandon went and spoke to Mr Gray and reported to Mrs Armstrong by email that:

> *The line on this hasn't changed. Until there is money available from the ticket sales – which won't happen until after the event – there is no possibility of paying for a venue out of projected costs. For now, the money for the venue will have to come out of the £2700 left in the trip budget.*

99. At 08.18, Ms Longstaff emailed the Claimant again having dug out her email from 29 March 2018. She quoted the following passage and asked the Claimant if there was an issue as she was not aware of one:

*"We also agreed that the tickets sales (after VAT is paid) could be used towards the performance costs of the trip such as theatre hire, programme and production costs. Please liaise with Jane Brandon and Steph Upton on this."*

100. The Claimant forwarded this email to Ms Upton and Dr Brandon:

100.1. Ms Upton responded to Mr Gray "*I am at a loss to understand what goes on here as I thought this was not agreed, but apparently it is now allowed so I am obviously going to have to allow this."* It appears that the significance of the words "(*after VAT is paid*)" also eluded Ms Upton at this moment in time. She appeared to read Ms Longstaff's email as permitting the Claimant to spend ticket sales money in anticipation of it being receive.

100.2. Dr Brandon also forwarded the message to Mr Gray stating "*I confess that I'm at sea with this!"*. The meaning of Ms Longstaff's email was, we infer, also confusing to her.

101. The Claimant went to the Finance Office to collect the Caxton card. She was expecting it to contain not only the remainder of the trip budget but also a further amount of around £1,000 in anticipation of ticket sales. Ms Upton by this stage had properly understood Ms Longstaff's email and refused to add any sum in expectation of ticket sales to the card. The Claimant was angry and confrontational and said she would speak to Mr Gray.

102. The Claimant then went and spoke to Mr Gray in his office. The first part of the conversation related to an opera performance the Claimant was organising. She and Mr Gray had a disagreement as to whether or not it was appropriate for the students involved to organise the refreshments. Mr Gray was of the view that it was not because the school had caterers. The Claimant was of the view that it was since it was part of the ethos of this particular event and is the way it had been done in previous years. In previous years the event had been organised by male colleagues. Mr Gray had had nothing to do with the organisation of the event in previous years and had no prior knowledge of how refreshments had been organised.

103. The conversation moved on to the Caxton card. Mr Gray refused to allow any sum to be added in anticipation of ticket sales. The conversation was heated. There are competing accounts of what happened next. That said, we do not think that the differences in the accounts are as significant as the Claimant does.

104. On the Claimant's account of the incident Mr Gray said *"I don't care what happens in Edinburgh".* As she left the room she said "*I will follow this through, just like I did with Denise".* Once she had left the room and was on her way downstairs she said "*and I got rid of her".* The Claimant says, and thinks it significant, that she did not say this to Mr Gray – she had already left his room. She believes that Mr Gray heard the word 'Denise' and leapt out of his office to try and catch what the Claimant was saying. He proceeded to chase her down the stairs which were split into three flights. The altercation came to an end when

the Claimant reached Ms Longstaff's office at the bottom of stairs. Ms Longstaff heard commotion, came out of office and told Mr Gray to calm down.

105. On Mr Gray's account, the Claimant became irate when he refused her request in relation to the Caxton card and said *"I'll get rid of you, like I got rid of Denise!".* He says that he followed her down the stairs asking her to repeat the threat, and that he was calm and not aggressive.

106. Over the course of 12 July 2018, a number of employees emailed Mr Gray with an account of the incident. For the most part their accounts related to the build up to the incident rather than the incident itself. The exception was Ms Ackie's account. She said:

> I overheard part of a conversation between Alistair Gray and Jo Nicholls this morning.
>
> Jo was coming down the stairs from Alistair's office and said to Alistair that she would get rid of him the same way she got rid of Denise. Alistair asked Jo to repeat what she said. Jo refused to.

107. Ms Ackie was later interviewed in an internal disciplinary investigation. The Claimant considers that a comparison between the notes of that interview and the above account cast serious doubt on Ms Ackie's version of events and indeed whether the above account really is Ms Ackie's at all. We disagree. The matters the Claimant points to are minor anomalies. The Claimant also doubts that Ms Ackie could have heard what she said but we consider that Ms Ackie did hear what she said and that is why she gave an account of it.

108. We do, however, agree with the Claimant that it is likely that Mr Gray solicited the accounts of the incident that he gathered. His evidence, which we reject, is that he only asked Ms Rodrigues to provide an account. We think it is more likely that he asked everyone who provided an account on 12 July 2018 to provide an account. However, we do not think he told anyone what to say.

109. Having considered all of the available evidence, including oral evidence in the hearing, in our view the following are the key features of the incident:

109.1. The Claimant was angry and confrontational in relation to the Caxton card. The conversation became heated on both sides. Mr Gray probably did say at some point '*I don't care about Edinburgh'*. He was exasperated by the Claimant and the amount of time and trouble the Edinburgh trip had taken up.

109.2. The Claimant left the office and began descending the stairs. As she did so she said words to the effect of '*I will get rid of you like I got rid of Denise'*. Roughly this form of words is supported by both Ms Ackie's contemporaneous account and Mr Gray's. However, even if the form of words used was exactly those the Clamant recollects, it makes no material difference. The Claimant was threatening Mr Gray's employment and fortifying that threat by reference to a claim she had gotten rid of Dr Lodge the former Headmistress.

109.3. Mr Gray did chase the Claimant down the stairs. He was not trying to lay hands on her or anything like that, but he was trying to catch up with her to see if she would repeat the threat.

109.4. Mr Gray was angry rather than calm.

109.5. The staircase was steep.

110. On 12 July 2018, Mr Gray raised a grievance against the claimant. He complained of her behaviour that day and in particular that the Claimant had said *"I will get rid of you like I got rid of Denise".*

111. Ms Longstaff took advice and decided that it would be more appropriate to treat the matter as a disciplinary investigation into the claimant's conduct. Mr Rob McMillan was appointed as the investigator. On 13 July 2018, Ms Longstaff notified the claimant of this by email. She said: *I have been made aware of an alleged serious incident that happened in school yesterday morning (Thursday 12 July). The allegation relates to your behaviour and conduct towards Alistair Gray and is sufficiently serious for the school to commence an investigation relating to your conduct in the workplace.*

112. The claimant responded stating "*there was no serious incident; I will be emailing Rob McMillan the facts over the weekend"*.

113. On 18 July 2018 the Claimant wrote to Ms Longstaff initiating a dignity at work complaint against Mr Gray. She set out the definition of bullying from the Dignity at Work Policy and complained about a number of matters in very general terms including 12 July 2018.

114. In August 2018, the Claimant led the Edinburgh 2018 trip. The trip was once again a great success from a musical point of view and as an experience for the girls.

115. On 6 September 2018, the Claimant's grievance was acknowledged and she was given the option of mediation as a means of attempting to resolve the complaint. In the alternative she was asked to particularise her complaint.

116. On 7 September 2018, Mr Ben Richards emailed Mr Gray with an analysis of the financial information following Edinburgh 2018. Dr Brandon and Mr Gray exchanged emails about this. Dr Brandon said *"presumably we need evidence/receipts for the spend highlighted in yellow?".* Mr Gray responded "yes!!!!".

117. It is not entirely clear from the email chain whether any of the matters that the Claimant was said to be required to provide receipts for relates to things purchased through the girls' 'pocket money'. However, we accept the Claimant's evidence that she was asked to provide receipts for all expenditure and that it was not explained to her that this was unnecessary if the expenditure was what the girls had spent their pocket money on.

118. We also accept that when Mr Meryon had led a trip to Budapest he had not collected receipts for expenditure that the girls spent their pocket money on. He had simply obtained a signature when possible to show that pocket money had been given or alternatively simply ticked to indicate it had been given.

119. On 7 September 2018, Mrs Armstrong emailed the Claimant about expenditure on the trip. She asked her for "*The original receipt for the purchase of the CDs made with the school card. The scan isn't sufficient…Details of the total ticket sales (ticket price x number sold) and the location of this money. It should be with school either as cheques / cash or directly in the school account.*"

120. On 12 September 2018, Dr Brandon asked the Claimant for some further information about the finance of Edinburgh 2018. She also indicated that "*Once this is money is properly accounted for, the refunds that were agreed previously for parents can be calculated and processed.*"

121. The Claimant responded on the same day. Among other things she told Dr Brandon that she did not know the amount gained through ticket sales; this was something the venue would tell them at the end of September. She explained that the earnings from the ticket sales were with C-Venues who sold the tickets and they would be provided by cheque at the end of September. The Claimant also said *"Thanks again for the revised thinking re. reimbursing the parents*."

122. Mr Gray, who was copied into the chain responded to Mrs Armstrong and Ms Brandon and stated: "*Please note: There's no revised thinking on anything. What we are not doing is have this year's trip subsidised by last year's parents, or next year/this year etc. Refunding parents when a trip has a surplus after reconciliation is normal business."* Dr Brandon then made essentially this point in an email to the Claimant.

123. These responses were a harsh to the Claimant and certainly were very defensive:

    123.1. It was true that in general it was standard practice to reimburse parents if there was more than £20 per student left in the budget after a trip.
    123.2. However, ticket sales were a special case. There had been uncertainty as to what would happen with the profit from ticket sales.
    123.3. Mr Gray had said in his email on 24 January 2018 that strictly speaking the ticket sales would need to be paid into the Enterprises account for the benefit of the whole school.
    123.4. Ms Longstaff had later moved matters on by her email of 29 March 2018 in which she said "*We also agreed that the tickets sales (after VAT is paid) could be used towards the performance costs of the trip such as theatre hire, programme and production costs. Please liaise with Jane Brandon and Steph Upton on this".* However, that form of words did not expressly state that the money would be refunded to parents. One could deduce that that is what was meant because it was parents who initially funded the theatre hire, programme and production costs through the cost of the trip; but it was not obvious.

124. On 14 September 2018 the Claimant provided further details of her grievance.

125. On 25 September 2018, Ms Longstaff formally told Mr Gray that the Claimant had raised a grievance against him and the broad detail of it. She had informally told him of this previously.

126. On 27 September 2018, the Claimant sent Dr Brandon a letter regarding the Edinburgh trip and asked her to approve it so it could be sent to parents. Dr Brandon asked the Claimant to set the trip up on Evolve first and then she would approve the letter.

127. On 28 September 2018, Mr McMillan sent his investigation report to Ms Page-Roberts.

128. On 4 October 2018, Ms Page-Roberts reported to Ms Longstaff and Paul James (HR) that she had had a strange encounter with the claimant in which the claimant had said: *I am gathering information about Alistair, so if you know of anyone in the junior school who wants to pass on any information, they can come to me. We all know what he can be like. I am now of the age I do not care. When someone behaves in that way, I have no problem speaking up. So tell people there is a forum here if they need it. It is good there is someone independent coming isn't there?"*

129. Ms Page-Roberts had previously been lined up as the decision maker to consider Mr McMillan's report. The matter she reported was added to the scope of Mr Macmillan's investigation on the advice of Mr James who also advised that someone other than Ms Page-Roberts would need to consider the concluded investigation report.

130. On 5 October 2018, Ms Longstaff sent Ms Bethany Dawson (who had been assigned to investigate the Claimant's grievance) documentation relevant to the Claimant's grievance with a covering email that read:

> *I have many historic emails and have included just a few here which show the background and how much Alistair, the school and the GDST have actually tried to support Jo Nicholls through some very complicated areas which have implications for audit and safeguarding, even when she does not entirely accept the rules. The document called JN Grievance are my notes for you in a slightly unstructured form but hopefully useful enough.*

131. It is fair to say that this was not a neutral way of instructing Ms Dawson. Mrs Longstaff gave her view of the rights and wrongs of things.

132. On 20 October 2018, Mr McMillan completed an amended draft of his investigation report. He recommended that a disciplinary hearing take place. The report faithfully sets out the steps taken to investigate the issues. He recommended that the Claimant face a formal disciplinary hearing.

133. Ms Bethany Dawson produced a grievance investigation report on around 23 October 2018. She found the Claimant's complaints to be mainly unsubstantiated save that she found the following allegations partially substantiated:

133.1. Mr Gray had sent the Claimant an email that could be seen as derogatory on 8 September 2014 in its tone and the use of bold, underlining and capitalisation (this is the email set out above);

133.2. Mr Gray had spoken to the Claimant overly harshly in the summer of 2016 in relation to not displaying her lanyard (this is the incident described above as happening in 2017 – that being the year the evidence before us points to);

133.3. That Mr Gray had chased the Claimant down the stairs on 18 July 2018 in a way that could have been construed as physically threatening, but this had been mitigated by the context, principally the Claimant making a threatening comment to him.

134. Ms Dawson recommended informal action for Mr Gray in the form of training to avoid challenging staff in ways which could be considered overbearing or harsh. She also recommended mediation alongside this.

135. Ms Dawson's report was passed to Ms Crouch, Headmistress of Sutton High School, for decision. By a letter dated 6 November 2018, Ms Crouch essentially rejected the Claimant's grievance save that it was upheld in two respects:

135.1. That Mr Gray had inappropriately used bold, underlining and capitalised font in an email to the Clamant on 8 September 2014 which could be construed as sarcastic and demeaning;

135.2. In relation to the incident on the stairs the allegation was held to be partially made out. However, it was also held that there were mitigating circumstances principally that the Claimant had made a threatening remark to Mr Gray.

136. On 6 November 2018, Ms Crouch also wrote to Mr Gray. She conveyed the grievance outcome to him and stated that she was recommending that "*you extend your training on difficult conversations, particularly when reprimanding colleagues over breaking the rules… this should be carried out in a controlled manner with due regard to an individual's sensitivities and personal space".* She also stated that there was an urgent need for a policy review on Revenue Generating Trips from the GDST.

137. On 9 November 2018, the Claimant forwarded Ms Upton an anonymous note from someone who indicated that they were not an accountant but had been a corporate lawyer. Their view was that it was not right to view the performance on the trip as a trading activity.

138. On 9 November 2018, Ms Upton, having received correspondence from C-Venues, wrote to them stating that they had received the settlement statement showing £1,475.56 but stating it was being held on account. She asked who had authorised this because the Respondent had been expecting the money to be credited to their bank. C-Venues responded that the Claimant had asked for it to be held on account and put towards the first payment the following year. The Claimant who was copied into the chain responding stating "*we're sorting this out now internally so all is fine!*".

139. The Claimant had indeed authorised C-Venues to hold money on account. She had done this during the course of August 2018 whilst at the festival. She now accepts that she was not authorised by her employer to do so. In our view

this was a flagrant act of serious misconduct on the Claimant's part. After 12 July 2018 if not before, she could have been in no doubt that the instructions to her were that the proceeds of ticket sales had to be paid into the Enterprise account before anything else could be done with them.

140. That the Claimant was not disciplined for this misconduct showed considerable leniency on the Respondent's part. However, this was certainly a matter that contributed to a significant further deterioration of relations with the Claimant. At added to these that she could not be trusted in relation to the Edinburgh trips but was instead determined simply to do things her way.

141. On 13 November 2018, Mrs Armstrong wrote to the claimant inviting her to attend a disciplinary hearing on 21 November 2018 enclosing a copy of Mr McMillan's investigation report. The disciplinary hearing took place on that day. The claimant was accompanied by Monette Montagu.

142. On 19 November 2018, the Claimant submitted an appeal against the outcome of her dignity at work complaint.

143. On 27 November 2018, Mrs Armstrong gave the Claimant a final written warning in the following terms:

> *1) you directed what Alistair Gray reasonably perceived as an offensive comment towards him following a heated discussion regarding trip finances. Although you challenge the precise wording, you have confirmed that you made what I would reasonably believe would be taken as an inappropriate comment towards or certainly within earshot of Alistair. This is contrary to the Dignity at Work policy (a copy of which is enclosed with this letter). I believe it was reasonable for Alistair to feel threatened by your comment and this is unacceptable for any employee to be treated in this way.*
> *2) you subsequently and actively approached staff to collate evidence against Alistair Gray, with the purpose of illustrating his behaviour towards colleagues. In the hearing, you challenged your right to talk to other members of staff regarding Alistair's behaviour. As was indicated in the hearing, staff who wish to report incidences that they are concerned about should initially raise the matter informally and in confidence to their line manager, the Head or an appropriate member of staff at Trust Office in the first instance. There should always be someone that the employee can bring their concerns too, and the individual or another concerned employee, have no responsibility for investigating the matter themselves. I would therefore agree with the report's view that actively pursuing the collection of this information is evidence of a continued, planned set of actions which corroborate the action described in the first allegation detailed above.*

144. The Claimant's grievance appeal was heard on 12 December 2018 by the GDST's Director of Legal, David Boyd.

145. On 14 December 2018, the Claimant provided Mr Boyd with some evidence from a colleague Gloria Alexander. Ms Alexander had recently had a meeting with Mrs Armstrong to discuss a complaint she had about Mr Gray. Ms Alexander

complained that in the course of discussing an air quality issue which she said to Mr Gray was a health and safety issue, Mr Gray lost his temper. He pointed his finger at her saying "*You don't know who you are talking to"… "This will go further"…"You don't know who you are talking to"… "You don't know who I am and who you are messing with".* He then left the room. Ms Alexander's manager, Ms Oliviera, had also been present in the incident with Mr Gray and was present in the meeting with Mrs Armstrong. She reported being was shocked by Mr Gray's conduct. Ms Alexander wanted an apology and for Mr Gray to attend anger management support.

146. Ms Alexander also produced a statement for the purposes of the Claimant's grievance appeal in which she said that Mrs Armstrong told her that Ms Longstaff was aware of the incident. Mrs Armstrong, had told her that she had to deal with Mr Gray very carefully since "*he was so angry that he could have shattered the windows with his outburst"* at the suggestion he apologise to Ms Alexander. Mrs Armstrong also told Ms Alexander that Mr Gray would not apologise and would not entertain the prospect of attending an anger management course. We find that this is what Mrs Armstrong reported to Ms Alexander and that Mrs Armstrong was in turn telling Ms Alexander the truth.

147. On 17 December 2018, the Claimant appealed against her final written warning. On 9 January 2019, she provided additional grounds of appeal.

148. By a letter dated 21 December 2018, Mr Boyd did not uphold the grievance appeal. Mr Boyd not only declined to uphold the appeal, but he overturned Ms Crouch's partial substantiation of the complaint against Mr Gray. He found that Mr Gray was guilty only of an isolated, provoked, outburst, which the Dignity at Work policy allows for, recognising human nature. Mr Boyd excluded from consideration Mr Gray's conduct towards individuals other than the Claimant that being his understanding of how to apply the Respondent's policy.

*Chronological narrative: 2019*

149. On 9 January 2019, the Claimant emailed Dr Brandon asking her to approve a letter to parents in relation to Edinburgh 2019. The letter included a passage that essentially stated there was an account for the Edinburgh trips and that the profits from the previous year's trips could be used to fund and enhance Edinburgh 2019.

150. On 9 January 2019, Dr Brandon wrote to Mrs Armstrong stating that she had approved the Edinburgh 2019 trip in principle. However, she queried the passage from the Claimant's proposed letter to parents which suggested that the profits made from the Edinburgh 2018 trip could be used to enhance the Edinburgh 2019 trip. Mrs Armstrong's response to Dr Brandon was 'no, no, no'. They agreed that the Claimant must not send out the letter until it had been approved. This letter was later sent out and indicated that parents would be refunded the profits from the 2018 trip.

151. On 16 January 2019, the Claimant had an email exchange with Dr Brandon who had seen the contract with C-Venues for Edinburgh 2019 and the email to parents regarding finances (1365):

151.1. Dr Brandon queried why the Claimant had used her home address for her communication with C-venues; the Claimant said it was because the communications had come in the holidays. We do not think that Dr Brandon or more generally believed her. Rather they believed that the Claimant had used her home address to hide aspects of the arrangements she was making C-venues.

151.2. Dr Brandon queried whether the Claimant had obtained approval before asking the parents of Edinburgh 2018 whether they would agree to the profits from that trip being used to fund the Edinburgh 2019. The Claimant said that she did not have permission "*because I was in the middle of two very large grievances which have caused so much stress".* She went on to say that she thought this was a solution to the issues that had arisen the previous year. She also explained that this enabled C-Venues to keep money on account which in turn meant that theatre space could be secured, which was much sought after. The Claimant said that she did not have all of the parents' permission to use the funds in that way but that she went ahead with this arrangement with C-venues because she knew that if there was a problem she could sub-let the theatre space. Again this caused dismay for Dr Brandon, Mrs Armstrong and Ms Longstaff and a sense that the Claimant was simply determined despite everything to run the Edinburgh trip as she wanted.

152. It is clear is that the Claimant had no permission at all to carry money over from one year to the next at this point in time and she must have known that she was not permitted to do this. This was conduct that damaged the employment relationship yet further.

153. On 9 January 2019, the Claimant's then solicitors wrote to the Respondent. The letter alleged that the disciplinary allegations against the Claimant were part of an attempt to conceal Mr Gray's bullying and harassing conduct towards current and previous female colleagues which it described as 'gender based bullying'. It also set out a number of historical incidents alleging that they were examples of sex discriminatory bullying of the Claimant by Mr Gray. Under the heading of 'next steps' it asked the Respondent to overturn the disciplinary decision, failing which the Claimant would made a DSAR and commence tribunal proceedings for sex discrimination and potentially other claims. The Claimant then lodged additional grounds of appeal which her solicitors stated that they had assisted her to prepare.

154. Ms Longstaff found the tone of the solicitors' correspondence high-handed. She thought it unhelpful for the Claimant to involve lawyers and that it made it harder to communicate and resolve issues. We of course are not critical of the Claimant for instructing lawyers in relation to an employment problem – that was a matter for her.

155. On 16 January 2019, Mr Daniel Hall, the First Respondent's Director of IT Services and a member of the Senior Management Team and Executive Board, heard Ms Nicholls' appeal against her final written warning (1368). On 22 January 2019, Mr Hall wrote to the Claimant dismissing her appeal against her disciplinary warning.

156. On 7 March 2018, Mr Boyd wrote to the Claimant's solicitor as follows:

> *When your client returns to school next week, she will be invited to discuss the process for managing school trips and events to ensure that the impact on other staff is managed carefully, and that there is no misunderstanding of management instructions in the future. This will also be an opportunity to discuss the framework within which she must operate as a member of staff at Putney High, and she will be invited to participate in workplace mediation to address the strains in working relationships that are causing significant operational difficulties at the school.*
>
> *The GDST and school management greatly appreciate the huge contribution to the school that your client continues to make, and we hope that, with the aid of mediation, there will be many more successful trips and events in the future.*

157. We think this email is significant. It shows that, at this at this point in time, the First Respondent was acting in a conciliatory way. It wanted good relations with the Claimant to be restored and was proactively suggesting a mechanism for doing that.

158. On 18 March 2019 Mrs Armstong invited the Claimant to the meeting alluded to. The Claimant asked for details. On 20 March 2019, Mrs Armstrong told the Claimant:

> *"Please be assured that our meeting is not a formal meeting. It will be a general management meeting with yourself, Jane, Angus and I, to ensure there is clarity in all of the processes that you may be going through regarding to trips, events, etc. and that you understand the schools expectations, and where you can obtain support should you have any questions that are not covered by the policy framework."*

159. The Claimant refused to attend the meeting. In her email of 21 March 2019, which we think is highly significant, she said:

> *As you know, I am in the process of raising further grievance which will be made this evening and tomorrow by my lawyers. This is in response to the lack of co-operation thus far. The email I showed you that was written by David Boyd is not fair and not correct so while this is being challenged, and while the school and the Trust is being investigated by my lawyers and further, then it's not possible to repair the damage caused by members of the SLT. It is only ever going to be possible to repair damage once matters have been properly dealt with. Unfortunately, the opportunity to do this was given*

*to me in my appeals but no one took my side of the story and only supported Alistair at all costs.* [Emphasis added]

160. In our view, the Claimant gave the First Respondent a clear message in this email that could be summarised thus: the relationship with the Claimant could not and would not be repaired/ restored unless and until she was fully vindicated and recognised to be right in relation to all disputes.

161. In our view, a view we reached only after standing back from the evidence as a whole, this was the turning point. It was the moment that the First Respondent ceased to hope and expect relations with the Claimant to normalise. It understood that the Claimant was not for restoring the employment relationship unless and until she was fully vindicated. It did not think she was in the right and so it was not for vindicating her. We come to the consequences of this in due course.

162. The chronology now becomes very dense indeed. We retain a broadly chronological order but there is no good way of avoiding some back and forth.

163. ABRSM exams were external music grading exams that took place at the School. The exam board, the ABRSM, sent an examiner in to assess those who were put forward for exams. In any given exam window there were would be many slots with many students being examined by the external examiner. There was a fee payable for each exam. The fee payable depended upon the grade and the instrument. The fee was paid by parents of the girls entered into the exams. The fee was essentially non-refundable. It was a frequent experience that girls pulled out of their exam for one reason or another or changed from one slot to another. If a student pulled out then it was not be unusual for another student to take their slot. We find that the consistent practice at the School was that, in that event, the substitute would get the exam for free.

164. In a series of messages between 21 and 24 March 2019, the Claimant's daughter Bethany Reeves contacted Ms Pereira, the music department administrator, and asked her if there were any dropouts from the ABSRM exams and if so whether she could take a flute exam. In one of the messages she wrote "*My mum will write to the ABRSM to explain the substitution. She's done this loads of times and knows it's fine. She showed me the schedule and it seems that it might be possible to come when the examiner finishes – around 3.40? is that the right time? My mum can accompany me at that time."*

165. Ms Reeves was, by this stage, a former student of the school. However, she remained a friend of the School in the sense that she had been a gifted student and thereafter had continued to contribute to the life of the School by playing instruments at musical events the School ran from time to time without charge. Ms Reeves had an uncommon ability to pick up new instruments and musical pieces at incredibly short notice. This meant that if a slot became free in an exam window at short notice, she was able to fill it. She was so gifted that she could prepare for an exam, including in relation to an unfamiliar instrument, the night before. This was something that she enjoyed doing.

166. Ms Reeves thus came to take a flute exam at the school in March 2019. She filled a slot that was vacated by another student pulling out. That student did not get a refund and Ms Reeves took the exam for free.

167. On 20 March 2019, the Claimant emailed Dr Brandon regarding Edinburgh 2019 and in the email stated that "accommodation is available and paid for already".

168. On 21 March 2019, the Claimant had a departmental meeting with Dr Brandon and Mr Meryon. In the meeting there was a discussion of the proceeds of ticket sales in respect of the Edinburgh trips. Dr Brandon advised the Claimant that the proceeds of sale would have to be paid into the Enterprise Account and Ms Longstaff would then decide whether it should be refunded to parents or used for other school purposes.

169. On 23 March 2019, the Claimant emailed Ms Upton, Dr Brandon and others with an update on Edinburgh 2019. She explained that she had managed to get the money back from C-Venues for Edinburgh 2018 and it would come through shortly. She had decided to go with a different supplier this year, Gilded Balloon. However, this meant that there needed to be a 6 rather than 4 day run which would cost a little more.

170. On 25 March 2019, Dr Brandon responded noting that securing the venue was the most important thing. The exchange continued and Dr Brandon told the Claimant that "*Initially, the trip needs to break even taking the ticket sales out of the equation. Therefore, we will need to collect additional funds from parents via ParentPay in the usual way. Once the trip is complete, and ticket sales have been made and we know the amount gained, we can then refund parents.*"

171. On 26 March 2019, the Claimant sent Ms Upton, Dr Brandon and others a revised costing form for Edinburgh 2019. She also included a proposed letter to parents for Dr Brandon to consider and approve. This asked them for an extra £60. In the meantime the Claimant forwarded the proposed contract with Gilded Balloon to the finance team. She also stated that she had included a revised costing form with the adjusted prices and taking into account the venue refund from C-Venues. This meant that she was attempting to use the money from ticket sales in Edinburgh 2018 in the budget for Edinburgh 2019.

172. The revised costing form was not approved by the finance team. However, the contract with the Gilded Balloon was approved.

173. On 26 March 2019, the Claimant raised a written grievance. Among other things she said that:

> *I have been and continue to be legitimately concerned that the School could potentially be breaching performance rights laws in paying funds earned from the Edinburgh festival performances directly into its Enterprise Account, rather than to the pupils and their parents. Despite reasonably raising this issue on numerous occasions the School/GDST have simply ignored my reasonable*

*concerns. I can only therefore reasonably assume that the School/GDST are comfortable with breaching relevant laws and regulations*

174. The Claimant also suggested that Dr Brandon's email of 12 September 2018 was an attempt to hide the fact that Mr Gray had initially advised that the proceeds of ticket sales needed to be paid into the Enterprise account for the benefit of the whole school.

175. This grievance was in the first instance treated as a public interest disclosure and passed to Ms Hailstone to consider through that lens.

176. On 27 March 2019, Dr Brandon emailed the recent correspondence about Edinburgh 2019 to Ms Longstaff and Mrs Armstrong.

177. Thereafter the Claimant chased a response to her request for Dr Brandon to approve the letter to parents asking for additional funds several times including:

177.1. Email on 27 March 2019;
177.2. Email on 29 March 2019;
177.3. Email on 1 April 2019;
177.4. Emails on 2 April 2019;
177.5. Email on 4 April 2019 inviting a conversation. Dr Brandon agreed to a conversation and tried to speak to the Claimant over lunch but missed her;
177.6. Email on 16 May 2019.

178. On 1 April 2019, Ms Longstaff emailed Ms Hailstone with some detailed notes she had made about the financial aspects of the Edinburgh trips.

179. On 23 April 2019 there was an inset day at which staff were given safeguarding training. This included showing on a screen the provisions of the safeguarding policy that prohibited students of the School going to teacher's houses.

180. On 1 May 2019, Ms Hailstone produced an investigation report. She summarised the Claimant's complaints as follows:

180.1. Allegation 1: The school and/or the GDST have breached performance rights legislation in the treatment of ticket sales income on school trips.
180.2. Allegation 2: There is an inconsistent and unclear policy for the treatment of ticket sales income on school trips.
180.3. Allegation 3: There is inconsistent treatment of school trip expenditure and income, both within Putney High School and between other GDST schools.

181. In a carefully reasoned way, Ms Hailstone found:

181.1. Allegation1: Neither the school nor the GDST have breached performance rights legislation, nor the Children and Young Persons Act.

181.2. Allegation 2: There is no documented policy guidance specifically relating to the treatment of ticket sales income on school trips, either at a school or Trust Office level. However, the school was given clear guidance from the GDST Financial Controller by email in January 2018. However, she made a number of detailed policy recommendations.

181.3. Allegation 3: There was an inconsistency between schools on the treatment of the proceeds of ticket sales.

182. On 7 May 2019, The Claimant emailed Mrs Armstrong regarding her private piano teaching arrangements (p1515). She stated: "*Following the safeguarding guidance given at the Inset at the start of term, I am adjusting the arrangements for the handful of students I teach piano to out of school and am in the process of working out next steps."* She pasted a message that she had sent to all parents of her private piano students who taught at Putney. It read:

> *At the INSET teachers had on Tuesday, there was a clear message given to all staff about safeguarding which relates directly to my piano teaching. The instruction was that teachers aren't allowed to have any students in their own homes or go to students' homes.*
>
> *The message is still quite fresh. However, I need to act on the implications without causing any distress to your daughters or to myself as the teaching thus far has been such a positive experience. I will keep you informed shortly with future plans to ensure that I remain compliant with the GDST safeguarding policies.*

183. On 7 May 2019, the Claimant met with Mrs Armstrong to discuss concerns around her piano teaching arrangements and to discuss the fact that her daughter had taken up the ABRSM examination.

184. On 15 May 2019, the Claimant wrote to Ms Longstaff also forwarding to her the message she had sent to parents (and forwarded to Mrs Armstrong) of 28 April 2019. The email to Ms Longstaff stated "*With the exception of family friends, I have moved my current students to learning at school*."

185. On 16 May 2019, the Claimant emailed Mrs Armstrong. In this email she set out her understanding of an email Mrs Armstrong had sent her on 19 June 2016. The context of this email was that a rehearsal involving School students including the Claimant's daughter had taken place at the Claimant's house. Mrs Armstrong had said "*I know this is a very difficult situation and will, of course, not be relevant when Bethany has finished at PHS – as from then the rules will be very clear – no girl can be invited to your house"*. The Claimant's position was that Mrs Armstrong's email had related to rehearsals not to private piano tuition. She said in her email of 16 May 2019 "*is an agreement between me and parents*". The Claimant also said she had an agreement set up with Dr Lodge that she could teach students privately at home which followed a lengthy process.

186. Also on 16 May 2019, Dr Brandon emailed the Claimant thanking her for forwarding a letter to parents in relation to Edinburgh 2019 and stating: *"I have been provided with a copy of Kate Hailstone's recommendations and we need to consider this before any further communication is sent to parents"*. On 18 May 2019, Mrs Armstrong told the Claimant that she could communicate with parents.

187. There was an exchange of correspondence between the Claimant and Ms Giovanni, CEO of GDST over the course of early and mid-May 2019. Essentially it was agreed that, now that Ms Hailstone's report was completed, the Claimant's grievance of 26 March 2019 would be dealt with as a grievance.

188. On 17 May 2019, the Claimant wrote to Mrs Armstrong explaining some of the complexities and difficulties that arose out of her multi-faceted relationship with the school.

189. On 17 May 2019, the Claimant's claim was presented to the tribunal (it was later amended to included subsequent events).

190. On 20 May 2019, Mr Jonathan Crisp, gave Mr Gray and Ms Hailstone some additional guidance on the financial aspects of trips, ticket sales and pocket money:

190.1. As before the guidance was that the trip element and ticket sales elements should be accounted for separately. Income and expenditure for the trip element should go through the main school account. Ticket sales and expenditure that specifically relates to the performances(s) should go through GDST Enterprise Ltd account.
190.2. It was for the head to decide what the profits from the event could be used for.
190.3. The performance element of the trip could be run as a fundraising activity, to enable the ticket sales to be VAT exempt so long as the event complied with the Charity Commission guidance note CC35.
190.4. The initial letter to parents should explain:
190.4.1. How surplus funds from the trip element would be dealt with;
190.4.2. Details of the ticket sales and overall performance as a fundraising activity if applicable
190.4.3. Information as to what any funds raised would be used for.
190.4.4. Pocket money needed to come directly from parents not school funds. There needed to be an audit trail of that money with signatures when collecting the money from parents and subsequently when issues to parents;

191. The email was sent to the DHOs at all GDST schools. Mr Gray, on receipt of the email forwarded it to Ms Upton and Dr Brandon (1561), stating:

*Please see below some clear additional guidance for all trips involving ticket sales/income. There is also some very clear lines to take about pocket money. Please ensure these guidelines are shared with colleagues planning*

*trips where ticket sales and/or the distribution of pocket money may be involved.*

192. Dr Brandon responded that: *I will make sure trip leaders are aware of this, particularly in advance of Activities*.

193. Over the course of May 2019, a further issue unfolded. It related to the Claimant's private piano teaching of Pupil A:

193.1. Pupil A had a music exhibition with the School whereby the school reimbursed her parents for the cost of private music lessons outside of school. It was for Pupil A's family to find a teacher and to pay the teacher. They then presented the school with proof of the cost of the lessons and the cost was reimbursed to them up to a certain amount.
193.2. Pupil A's private music teacher was the Claimant.
193.3. In May 2019, Mr A, pupil A's father, sent Ms Upton a batch of the Claimant's invoices for the lessons to claim reimbursement. However, there were a number of discrepancies with the invoices. Ms Upton made inquiries of both pupil A's father and the Claimant and the discrepancies could not easily be resolved and in some respects deepened.

194. Ms Hailstone was asked to look into the issue. She did so and summarised her concerns by email dated 20 May 2019:

194.1. The rate charged for lessons increased from £15 to £27;
194.2. When the invoices were originally provided for the summer term of 2019, only 4 lessons were identified. Usually there were more like 10 lessons per term. This was queried and Mr A explained that pupil A was focussing on her GCSEs. However, the invoices were subsequently provided again and showed 10 lessons for the summer term of 2019.
194.3. The maximum amount of the award was £768 per annum. This was the amount claimed. The question was whether this had properly been claimed or whether the figures had been manipulated to claim the maximum amount.
194.4. There was a potential conflict of interest if the Claimant decided which pupil received the award and/or if she was a family friend of the A family.

195. On 23 May 2019, Mrs Armstrong contacted the Wandsworth Local Authority Designated Officer (LADO) in relation to the Claimant's home piano teaching. On 24 May 2019, Ms Armstrong met with the claimant and discussed the issues. On 29 May 2019, the LADO emailed Mrs Armstrong stating that the LADO threshold was not met and offering some detailed advice as to how to manage the situation.

196. On 24 May 2019, Mrs Armstrong had a meeting with Mr Meryon and the Claimant to discuss the allegations. Mrs Armstrong told the Claimant there would be a disciplinary investigation.

197. On 29 May 2019, the Claimant was told that Ms Gill Cross, Deputy Head at Streatham and Clapham High School would be investigating three disciplinary allegations:

197.1. Safeguarding issues surrounding teaching at home;
197.2. The issue of ABRSM exams and that it was inappropriate for family to benefit financially from others not attending their exams'
197.3. The matter of irregularities with regard to Pupil A's music exhibition invoices.

198. On 7 June 2019, the Claimant spoke to Dr Brandon and Ms Upton and stated that she did not want to ask parents for more money at that point in time as they were still waiting for a refund from Edinburgh 2018.

199. On 17 June the Claimant attended a grievance investigation meeting with Mr Mutton. On 18 June, Mr Mutton interviewed 6 witnesses. On 19 June 2019, the Claimant sent Mr Mutton amendments to the meeting notes.

200. On 20 June 2019, the Claimant attended an investigation meeting with Ms Cross. Ms Cross, produced a disciplinary report on 21 June 2019. She recommended that the matters progress to a disciplinary hearing.

201. On 28 June 2019, the Claimant was invited to a disciplinary hearing to consider the following allegations described as 'alleged gross misconduct':

201.1. Breaching safeguarding procedures by teaching pupils at your home;
201.2. Gaining unauthorised benefit for your daughter by allowing her access to free music examinations;
201.3. Discrepancies with the music award.

202. The hearing was initially scheduled for 5 July 2019. It was postponed at the claimant's request and heard on 5 September 2019. In the event, it was further postponed to 20 September 2019.

203. On 5 July 2019, Ms Upton forwarded the Claimant Mr Crisp's email of 20 May 2019.

204. On 12 July 2019, the Claimant emailed Ms Upton again, copying in Ms Brandon, essentially indicating that she had been very busy and was now finalising the budget and details of Edinburgh 2019. She realised she was short of money, that the letter requesting more money from parents had not been sent out. She stated, *"I am now realising that I could really do with the extra money from the parents. This will mean we can go out for one meal while we are in Edinburgh and we can go to a few shows too."*

205. The email trail was forwarded to Ms Longstaff on 16 July 2019. The Claimant also wrote to Ms Longstaff directly on 26 July 2019 expressing the same difficulties with the budget. Ms Longstaff was on holiday and initially unaware of the emails.

206. The Claimant was ultimately given permission to write to parents and ask for further money on 2 August 2019 (this is her pleaded case, has not been dispute and we accept it).

207. On 26 July 2019, the Claimant received some correspondence from the ABRSM in which it confirmed that they are content for students to be substituted and noted that candidates do not generally get a refund if *"someone else was swapped into their place"*.

*Music Director and Music Administrator Recruitment*

208. Mr Meryon, had handed in his notice at some stage in 2019 and the Respondent was therefore conducting interviews for a new Director of Music in the 2019 Spring / Summer terms for his successor, to start in September 2019. The Claimant applied, but was not invited for interview.

209. The reason the Claimant was given at the time was that she had a live final disciplinary warning. However, in fact that was not the only reason (though it was indeed part of the reason). There were two further reasons. Firstly, relations between the Claimant and the First Respondent had by this stage seriously broken down and the prosect of the Claimant being promoted to more senior managerial role was not a tenable one. Secondly, the Claimant had expressed deep opposition to the First Respondent's plans for the music department in a public survey.

210. The Claimant was also not asked to be on the interview panel for the Director of Music role nor on the interview panel for the Music Administrator role. The panels comprised the then current Director of Music, the Director of Music at the Junior section of the School and Dr Brandon. We find that this was because Ms Longstaff considered this to be the most appropriate panel. It would have been odd for the Claimant to sit on an interview panel for the Director of Music role given that she had been an unsuccessful applicant for the role. In principle it would not have been inappropriate for the Claimant to sit on the panel for the music administrator interviews. However, Ms Longstaff did not want her to because relations with the Claimant had broken down and because the outgoing music administrator had, we accept, informally raised some concerns about the Claimant whom she said could be 'vicious'.

211. On 20 June 2019, a candidate for the Director of Music role came in to teach a lesson as part of the recruitment process. Mr Meryon, Ms Burgess (a teacher from another GDST school) and Dr Brandon were present. Dr Brandon waved her hand at the Claimant to leave the room.

*August 2019 grievance and correspondence around disciplinary process*

212. The Claimant raised a further grievance on 9 August 2019. Among other things she complained of "*gender related victimisation*" as a result of lodging previous complaints.

213. On 12 August 2019, the Claimant's solicitors wrote to the Respondent making representations about the disciplinary allegations and asking for them to be postponed pending the resolution of Claimant's grievances. They disputed Ms Longstaff's appointment as the decision maker.

214. On 14 August 2019, Mr Mutton completed his grievance investigation report into the grievance of March 2019 .

215. On 16 August 2019, Mr James, responded to the solicitors' letter of 12 August 2019, indicating that the Respondent considered Ms Longstaff an appropriate chair and declining to postpone.

216. On 21 August 2019 the Claimant's solicitors wrote again essentially repeating their requests of 12 August 2019.

217. On 21 August 2019, the Claimant was invited to attend a grievance hearing on 30 August 2019. At her request this meeting was postponed to 18 September 2019. On 18 September 2019, the Claimant had a grievance hearing with Mr Finnermore. This related to the March 2019 grievance.

218. On 21 August 2019, Mr James responded to the Claimant's solicitors agreeing to postpone the disciplinary hearing until the outcome of the Claimant's grievance of *March 2019* was given.

219. On 3 September 2019, there was an informal meeting between the Claimant and Ms Longstaff to attempt a resolution of the August 2019 grievance. The meeting was unsuccessful.

220. On 13 September 2019, Ms Longstaff sent the Claimant a lengthy note setting out her understanding of what had happened in relation to additional funding and Edinburgh 2019.

221. On 13 September 2019 the Claimant forwarded Mr James some evidence in relation to the disciplinary charges:

221.1. Mr David Hansell, Director of Music at the School from 2003 to 2012, indicated that he was fully aware that the Claimant taught piano to School students at home;
221.2. Ms Archibald stated that between 2002 and 2017 it was always well known that the Claimant had taught students at her home;
221.3. Pupil A's father stated that all funds provided by pupil A's music exhibition award had been spent on music lessons

222. On 18 September 2019, the Claimant attended a grievance meeting with Mr Finnemore.

223. On 20 September 2019, the Claimant attended the disciplinary hearing chaired by Ms Longstaff.

224. On 22 September 2019 the Claimant sent further evidence to Mr Finnermore. Mr Finnermore promulgated his grievance outcome by letter of 30 September 2019. He rejected the grievance of March 2019 giving very detailed reasons.

225. On 2 October 2019, Mr James wrote to the Claimant regarding her grievance of ninth of August 2019. He noted that informal resolution had not succeeded and as such that the matter would be passed to Hilary Elkins, Deputy Head at Bromley High School to investigate.

*How did the disciplinary allegations arise and what was her defence to them?*

226. A significant issue in this case is how the three disciplinary allegations now under consideration arose. It is the Claimant's case that the Respondent was 'fishing' for a basis to dismiss her.

227. We found the Respondent's evidence as to how the first and second allegations (private piano teaching, Ms Reeves' music exam) came to light and to its attention opaque:

227.1. In her witness statement Ms Longstaff said: "…*at the beginning of May 2019, several further incidences of potential misconduct on the part of Ms Nicholls were brought to Heidi Armstrong's attention."* (Emphasis added to the date because it is significant).

227.2. In her witness statement Mrs Armstrong refers to the Claimant's email of 7 May 2019 regarding teaching piano students at home and states that she had "*only recently*" become aware of after it was raised by a member of the music department. In relation to the exam issue she simply said it was another issue which "*had arisen*".

228. Both accounts are curious because on 25 March 2019, Mrs Armstrong emailed Ms Longstaff on precisely these topics. The email clearly relates to these allegations:

228.1. It reproduces a grid and states "*these are the three pupils which we believe Jo teaches from home…".* This was a grid that was openly available in the music department that showed which peripatetic teachers taught which students private lessons and where. It also showed that the Claimant taught three students private lessons at her home.

228.2. It refers to the fact the Claimant was emailing parents over the weekend and asks "*should we read these emails if we can access them to see what J is promising them and what financial deals she seems to be proposing?";*

228.3. It reads: *"ABRSM exam – should we address with Trust the fact that J called her daughter to take grade 5 flute exam for free when another pupil was unable to take the exam?"*

228.4. It is also clear from the email exchange that they were considering cancelling Edinburgh 2019.

229. There is more than hint in this email that the Respondent is, to use the Claimant's terminology, fishing for disciplinary allegations to use against her.

230. Under cross examination, Mrs Armstrong said that Mr Meryon had come to her at around the time of the ABRSM exams in March 2019 and told her about Ms Reeves taking an exam for free. He had also informed her about the grid at around the same time. Her evidence was that Mr Meryon had wished to remain anonymous because he feared the Claimant. Mrs Longstaff in her evidence suggested that Mr Meryon had been a whistleblower in relation to the Claimant.

231. As noted above, on 24 May 2019, Mrs Armstrong had a meeting with Mr Meryon and the Claimant to discuss the allegations. Mrs Armstrong told the Claimant there would be a disciplinary investigation. On 29 May 2019, Mrs Armstrong emailed Mr James stating *"as confirmed on the telephone yesterday, I told Jo that these matters would be investigated but did not mention that it would lead to disciplinary action"* [emphasis added].

232. This strongly implies that decisions had been taken (a) that there would be disciplinary action and (b) not to tell the Claimant this. This email predated the investigation report later produced by Ms Gillian Cross on 21 June 2019 by over three weeks. The investigator was yet to interview anyone.

233. There are further curiosities. On 30 June the Claimant emailed Mr Meryon (p1709) regarding the disciplinary allegations. She set out her perspective and stated:

> *I will try to defend my case as all 3 are out of order but I am fairly certain that they have a mission they are trying to accomplish and they can do more or less whatever they want to employees, regardless of whether it's right. How immensely stupid it all is.*

234. Mr Meryon responded as follows:

> *Do let me know what I can do this week to help you out – nothing too small (or hopefully too big!). I realise it'll be a turbulent week, all things considered – immensely stupid, certainly. No one has asked me to comment on any of the issues below beyond being asked at some point if you were teaching Pupil A to which I said Yes you were. Not sure what else to say, really….*

235. This email strongly implies that Mr Meryon was, for want of a better expression, on the Claimant's side and thought the First Respondent's actions were "stupid". The Claimant responded further on 1 July 2019. Mr Meryon forwarded this email to *Mrs Armstrong* and asked to discuss it with her.

236. It is not easy to make sense of all of the above, but we must do our best to do so. In our view:

> 236.1. It hard to see why Mr Meryon would, in March 2019, have spontaneously blown the whistle on the Claimant teaching private

piano lessons at home. It is something that he had long since been aware of. Not only had it been openly stated on the grid in the music department it was simply a longstanding, known fact in the music department. Further he had been a party to an email chain on 24 and 27 March 2017 in which this had been referred to in terms (indeed Mrs Armstrong herself had been copied to the later email – discussed below).

236.2. It is also hard to see why Mr Meryon would have spontaneously blown the whistle on the Claimant about Ms Reeves' exam. On 9 May 2019, he said to the Claimant in an email: "*Still can't work out who made that complaint about Bethany slipping in to fill a wasted payment with a bit of harmless fun. Worries me a bit…".*

236.3. Whilst it is possible that Mr Meryon was being 'two-faced' and actually did think the Claimant was doing something seriously wrong, we think this unlikely. He was very aware of how much Ms Reeves had done and did for the school. It is implausible that he would have considered her taking an exam slot that would have gone to waste as such an injustice that he needed to blow the whistle on it.

237. Thus while we accept that the basic information came from Mr Meryon, we do not think he spontaneously raised concerns about the Claimant with Mrs Armstrong/Ms Longstaff.

238. On balance we think it is more likely in fact that Mrs Longstaff and/or Mrs Armstrong were looking for material that could be used against the Claimant it having become clear that there was no realistic prospect of normal relations with her being restored. The email between Mrs Longstaff and Mrs Armstrong of 25 March 2019 post-dated the Claimant's email of 21 March 2019 (referred to above as a turning point) by just four days.

239. We think that Mr Meryon was probably asked if there was anything on the Claimant. He supplied some information. He then felt, and was, very conflicted and did his best to stay out of the dispute. This version of events is also broadly corroborated by and helps explain the wording of Mrs Armstrong's email: "*I told Jo that these matters would be investigated but did not mention that it would lead to disciplinary action*".

240. These conclusions are also informed, fortified and corroborated by an analysis of the disciplinary allegations themselves.

241. There is compelling evidence that the fact the Claimant taught private piano lessons at home to students had been very well known, including by the SLT, all the while:

241.1.1. The teaching arrangement was openly identified on the grid in the music department;

241.1.2. On 24 March 2017, the Claimant emailed among others, Ms Britten (Head of 6th form, member of SLT), Mr Meryon (line manager) and

Dr Brandon (member of the SLT). In her email she said in terms *"I have PHS students coming to my house for piano lessons each week anyway…."*.

241.1.3. Ms Britten responded, copying in Mr Meryon, Dr Brandon and Mrs Armstrong stating: "*From a safeguarding perspective meeting X in school is the best and only right option. Whilst I appreciate you meet other pupils for piano lessons, this is as your private students not as PHS pupils"* [the context makes plain that the students having the private piano lessons were students at the School].

242. In our view, the Claimant was always open and transparent that she taught School students piano lesson privately at home. This was known to the SLT and no recent issue was taken about it until 4 days after the Claimant's email of 21 March 2019. That is despite it being, for many years, a breach of the Respondent's Safeguarding Policy.

243. In ordinary circumstances, we do not think that this matter would have been treated as a serious disciplinary issue. At most the Claimant would simply have been instructed to stop doing it. She in any event indicated that she would stop doing it following the inset day in April 2019.

244. In relation to the ABRSM exams, we accept the Claimant's evidence that substituting students without a charge when another student dropped out was a common practice which the exam board were content with. We also accept her evidence that this is something Mr Meryon was well aware of. As above, we find it implausible that he would have been exercised about Ms Reeves filling the slot. This is because he was well aware of the value she continued adding to the school by playing for free at school performances. The SLT were also, in our view, aware of Ms Reeves ongoing assistance to the school not least since she continued performing publicly at school performances.

245. In ordinary circumstances, we do not think that this matter would have been treated as a serious disciplinary issue. At most the Claimant may have been directed not to allow her daughter to fill vacant slots again. And perhaps a policy guiding staff not do things like this may have been developed.

246. In relation to the accounting for tuition of Pupil A, nobody seems to have seriously considered that the Claimant was acting fraudulently. Such a case was not and we do not think could plausibly have been maintained. It looked like what it was: an issue of poor paperwork administration. In ordinary circumstances, we do not think that this matter would have been treated as a serious disciplinary issue.

247. However, as we now see, all three of those matters were treated with the utmost seriousness.

*Dismissal on notice*

248. On 11 October 2019, the Claimant met Ms Longstaff in her office to give her the outcome of the disciplinary process. Ms Longstaff found all three allegations

to be proven. She stated that the first two allegations were gross misconduct. The third she considered less serious but nonetheless to have justified dismissal given that the Claimant was on a final written warning. However, she decided not to summarily dismiss the Claimant, but instead to dismiss her on notice. She said this was because of the length and quality of the Claimant's service.

249. The Claimant had a long notice period. Her employment would not have terminated until 19 April 2020. The dismissal on notice was said to be conditional upon the Claimant carrying out her notice period in accordance with her contract of employment, school and GDST policies and reasonable management instructions.

*Events during notice period*

250. On 11 October 2019, having been notified of dismissal, the Claimant took home a large amount of sheet music from her office. This was music that was needed for various choirs due to sing at open day events scheduled for the following week. The Claimant was seen doing this including by Mr Meryon.

251. On the 11 and 12 October 2019, Ms Elkins and the Claimant had some correspondence about setting up a grievance interview. The Claimant declined to meet Ms Elkins at that time because she said she was unwell.

252. On 12 October 2019, Mr Meryon emailed Ms Longstaff complaining that the claimant had taken the music that was needed for the open days home. He described this as an act of sabotage, which we agree, it was.

253. On 14 October 2019, the Claimant submitted an appeal against Mr Finnermore's grievance outcome.

254. Also on 14 October 2019, the Claimant emailed Mr Clarkson. He had represented her at her disciplinary hearing. With regard to the open days the Claimant's email said this:

> *I don't want them [year 8 choir] to sing as they haven't rehearsed properly and shouldn't do it without me there to guide them. This isn't something which can be covered. Is Jane going to conduct while Angus plays the piano? No. The maximum disruption the better. I took the music home anyway - to check through and sort out. You can just say you expect it's cancelled and leave it like that. The SLT running the Open Day presentation should be hit with disruption.*

255. On 14 October 2019 the Claimant was assessed by her GP as being unfit for work for one month.

256. We acknowledge that the Claimant did offer to return the sheet music. But this was much later: 28 October 2019. By then the music had already been missed and its absence had caused disruption to planned events. In our view this is what the Claimant had intended.

257. After being given notice of dismissal the Claimant decided to directly contact some of her students whom she knew would be very upset that she was not at school. At this point, the Respondents had kept the Claimant's dismissal private. These emails including the following:

257.1. On 13 October 2019, an email to Pupils D and E stating: *"I want you both to know that I will not let the school destroy the relationship I have built up with you or others I feel close to… Please don't try to cover for me Pupil E. The school have made this mess and there will be knock on effects… Keep thoughts in your head that that are definitely more nice people than nasty people in the world. Putney High is full of so many nice kids, and you two are two of the best of these – though not really kids any more….*

257.2. On 14 October 2019 the Claimant emailed Pupil B: *"I am sorry about what has happened from the bottom of my heart. You're the only one in your year who knows at the moment…. You know I care about you and we have a special bond. Pupil C knows too and also Pupil D and Pupil E. That's all. Look after Pupil C if you can. I'm liaising with the guy who owns the apartment in Edinburgh to book the dates for the Fringe and putting a deposit down today. I'll definitely do Chrisjingle too. Take care, xx"*

257.3. On 14 October 2019, the Claimant wrote to pupil C stating: *"I'm ok, but am really quite sad and I am already missing all of you – well not all of the whole school, but the special ones… A big hug you and the other special people; you'll know who they are… Miss Nicholls xx"*

258. The Claimant's emails referred to above came to Ms Longstaff's attention (through monitoring of the Claimant's email account), and on the 16 and 17 October 2019 she was in contact with the LADO. The LADO set out her advice to Ms Longstaff in an email.

259. On 16 October 2019, Dr Brandon emailed the Claimant notifying her that she was going to contact parents that day to tell them that the concert and rehearsals for a performance at the Royal Hospital of Neuro-disability which the claimant had been preparing for were cancelled. This was an event that the School, through the Claimant, was running.

260. On 18 October 2019, the Claimant emailed Mr Meryon with a letter from her GP stating *"this lady has been seen by me this morning she feels fit to return to her full-time work as a music teacher. This letter is therefore to revoke the fit note from 14.10.19*".

261. On 18 October 2019, the Claimant was suspended with immediate effect. She was advised of this by letter. The letter also stated that on the Lado's advice the school had blocked her email account. She was told that she must not have any contact with students from the school from a private email, telephone or via social media. The letter also told the Claimant that the concert at the Royal Hospital for Neuro-disability was cancelled. It noted the Claimant's position that this was not a school event but stated that it was (and we agree it was) and that the parents had

been told the concert was cancelled. In essence this was because the Claimant had been unwell so the necessary preparations had not taken place.

262. The Claimant, however, then wrote to students telling them to ignore the School's position that the concert was cancelled and told them that it was still taking place.

263. On 22 October 2019 the claimant submitted an appeal against her dismissal with notice page.

264. On 4 November 2019, a job for a Music Teacher at the School was advertised on a recruitment website. We accept Ms Longstaff's evidence, which we found credible, that this was an error by the recruitment agency. The School had not instructed them to post such an advert.

*Summary dismissal and subsequent events*

265. The claimant was summarily dismissed by letter dated 8 November 2019. In summary the reasons for the dismissal were given as follow:

265.1. The Claimant' emails with students were deeply concerning and inappropriate. They blurred professional boundaries and were overly-familiar, affectionate and emotional. They were also sent very late at night (after midnight) in several cases. They were altogether a breach of the safeguarding procedures;
265.2. The Claimant ignored instructions that the concert at the RHN was cancelled and continued to email parents and students to say that the event would continue;
265.3. The Claimant had taken GDST property (music) without authority;
265.4. That the Claimant had breached the ICT Acceptable Use agreement through her communications with students, parents and staff.

266. In the letter Ms Longstaff told the claimant that the ongoing grievance processes in respect of the March 2019 August 2019 grievances would be discontinued on the basis that it was not clear what resolution the claimant sought and she did not feel devoting further time and resources would serve any constructive purpose. She told the Claimant that if she wished to make any representations in respect of the findings in the letter she could raise them in her appeal against dismissal.

267. On 15 November 2019, Ms Upton resigned from her employment. The reason she gave was that Mr Gray had reprimanded her in a way she thought was unfair and unjust. She went on "*I feel his manner, and the way he conducts himself, is inappropriate and the way he spoke to me was intimidating and I told him so."* She had raised the matter with Ms Longstaff whom she thought had responded inadequately.

268. On 20 November 2019, Ms Longstaff had a meeting with Mr Gray in which she asked him about an incident with Vikki Filsell. Ms Filsell had complained to Mrs Armstrong that Mr Gray had confronted her inappropriately about propping

open a fire door and had done so in front of students. Ms Longstaff said to Mr Gray "*in her opinion [he] had made an error of judgement by addressing the matter in the way reported."* By the end of the meeting Mr Gray acknowledged that this may be the case. However, in his evidence to the tribunal Mr Gray was unrepentant and considered that Ms Filsell was the one who had been in error. He disagreed with Ms Longstaff's analysis of the incident.

269. In December 2019, the Claimant had correspondence with the LADO. The LADO cautioned her against teaching students the piano in her home. The Claimant noted the points the LADO made about teaching students at home but indicated that so far as she was concerned the arrangements were satisfactory to her, to the parents and to the children. The LADO responded on 4 December 2019 stating: "*It is at your peril if you neglect to follow my advice around safe practice".*

270. The Claimant's appeal against dismissal was heard on 9 December 2019 by Ms Beine (2230). Ms Beine wrote to Ms Nicholls on 13 December 2019 to advise that her appeal had not been upheld.

271. The Respondent referred the Claimant to the Teachers Regulatory Authority. Initially the TRA considered that there was a case to answer. However, on 26 January 2021, the TRA wrote to the Claimant indicating that on review it considered that the matter should be closed with no further action. The letter to the Claimant does not appear to deal with the allegations that led to her summary dismissal.

# Law

## *Direct discrimination*

272. Section 13 Equality Act 2010 is headed "Direct discrimination". So far as relevant it provides:

> *"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."*

273. *Section 23 (1) provides:*

> *"On a comparison of cases for the purposes of section 13, … or 19 there must be no material difference between the circumstances relating to each case."*

274. The phrase 'because of' has been the subject of a significant amount of case-law. In *Page v NHS***,** Underhill LJ said this:

> *29. There is a good deal of case-law about the effect of the term "because" (and the terminology of the pre-2010 legislation, which referred to "grounds" or "reason" but which connotes the same test). What it refers to is "the reason why" the putative discriminator or victimiser acted in the way complained of, in the sense (in a*

*case of the present kind) of the "mental processes" that caused them to act. The line of cases begins with the speech of Lord Nicholls in Nagarajan v London Regional Transport [2000] 1 AC 501 and includes the reasoning of the majority in the Supreme Court in R (E) v Governing Body of the JFS ("the Jewish Free School case") [2009] UKSC 15, [2010] 2 AC 728. The cases make it clear that although the relevant mental processes are sometimes referred to as what "motivates" the putative discriminator they do not include their "motive", which it has been clear since James v Eastleigh Borough Council [1990] UKHL 6, [1990] 2 AC 751, is an irrelevant consideration: I say a little more about those terms at paras. 69-70 of my judgment in the magistracy appeal, and I need not repeat it here.*

275. In ***Page v Lord Chancellor*** [2021] ICR 912, Underhill LJ said this:

*69. … is indeed well established that, as he puts it, "a benign motive for detrimental treatment is no defence to a claim for direct discrimination or victimisation": the locus classicus is the decision of the House of Lords in James v Eastleigh Borough Council [1990] ICR 554; [1990] 2 AC 751 . But the case law also makes clear that in this context "motivation" may be used in a different sense from "motive" and connotes the relevant "mental processes of the alleged discriminator" ( Nagarajan v London Regional Transport [1999] ICR 877 , 884F). I need only refer to two cases:*

*(1) The first is, again, Martin v Devonshires Solicitors [2011] ICR 352 . There was in that case a distinct issue relating to the nature of the causation inquiry involved in a victimisation claim. At para 35 I said: "It was well established long before the decision in the JFS case that it is necessary to make a distinction between two kinds of 'mental process' (to use Lord Nicholls' phrase in Nagarajan v London Regional Transport [1999] ICR 877 , 884F)—one of which may be relevant in considering the 'grounds' of, or reason for, an allegedly discriminatory act, and the other of which is not." I then quoted paras 61–64 from the judgment of Baroness Hale of Richmond JSC in the Jewish Free School case and continued, at para 36: "The distinction is real, but it has proved difficult to find an unambiguous way of expressing it … At one point in Nagarajan v London Regional Transport [1999] ICR 877 , 885E–F, Lord Nicholls described the mental processes which were, in the relevant sense, the reason why the putative discriminator acted in the way complained of as his 'motivation'. We adopted that term in Amnesty International v Ahmed [2009] ICR 1450 , explicitly contrasting it with 'motive': see para 35. Lord Clarke uses it in the same sense in his judgment in the JFS case [2010] 2 AC 728, paras 137–138 and 145 . But we note that Lord Kerr uses 'motivation' as synonymous with 'motive'—see para 113—and Lord Mance uses it in what may be a different sense again at the end of para 78. It is evident that the contrasting use of 'motive' and 'motivation' may not reliably convey the distinctions involved—though we must confess that we still find it useful and will continue to employ it in this judgment …"*

> *(2) The second case is Reynolds v CLFIS (UK) Ltd [2015] ICR 1010 . At para 11 of my judgment I said:*
> *"As regards direct discrimination, it is now well established that a person may be less favourably treated 'on the grounds of' a protected characteristic either if the act complained of is inherently discriminatory (e g the imposition of an age limit) or if the characteristic in question influenced the 'mental processes' of the putative discriminator, whether consciously or unconsciously, to any significant extent: … The classic exposition of the second kind of direct discrimination is in the speech of Lord Nicholls of Birkenhead in Nagarajan v London Regional Transport [1999] ICR 877 , which was endorsed by the majority in the Supreme Court in R (E) v Governing Body of JFS [2010] 2 AC 728 . Terminology can be tricky in this area. At p 885E Lord Nicholls uses the terminology of the discriminator being 'motivated' by the protected characteristic, and with some hesitation (because of the risk of confusion between 'motivation' and 'motive'), I will for want of a satisfactory alternative sometimes do the same."*
>
> *70. As I acknowledge in both those cases, it is not ideal that two such similar words are used in such different senses, but the passages quoted are sufficient to show that the distinction is well known to employment lawyers, and I am quite sure that when Choudhury J (President) used the term "motivation" he did not mean "motive".*

276. In ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** [2003] ICR 337 at [11-12], Lord Nicholls:

> *'[…] employment Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the Claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will usually be no difficulty in deciding whether the treatment, afforded to the Claimant on the proscribed ground, was less favourable than was or would have been afforded to others.*
>
> *The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case. There will be cases where it is convenient to decide the less favourable treatment issue first. But, for the reason set out above, when formulating their decisions employment Tribunals may find it helpful to consider whether they should postpone determining the less favourable treatment issue until after they have decided why the treatment was afforded to the Claimant […]'*

277. Since ***Shamoon***, the appellate courts have broadly encouraged Tribunals to address both stages of the statutory test by considering the single 'reason why' question: was it on the proscribed ground, or was it for some other reason?

Underhill J summarised this line of authority in ***Martin v Devonshire's Solicitors*** [2011] ICR 352 at [30]:

> *'Elias J (President) in Islington London Borough Council v Ladele (Liberty intervening) [2009] ICR 387 developed this point, describing the purpose of considering the hypothetical or actual treatment of comparators as essentially evidential, and indeed doubting the value of the exercise for that purpose in most cases-see at paras 35–37. Other cases in this Tribunal have repeated these messages- see, e.g., D'Silva v NATFHE [2008] IRLR 412, para 30 and City of Edinburgh v Dickson (unreported), 2 December 2009 , para 37; though there seems so far to have been little impact on the hold that "the hypothetical comparator" appears to have on the imaginations of practitioners and Tribunals.'*

278. Where A is the ultimate decision-maker but has been influenced by others, when assessing 'the reason why' Tribunal's enquiry should be limited to A's own mental processes ***(CLFIS (UK) Ltd v Reynolds*** [2015] ICR 1010), save that the Reynolds decision should not be allowed to become a means of "escaping liability by deliberately opaque decision-making which masks the identity of the true discriminator" (***The Commissioner of Police of the Metropolis v Denby*** (UKEAT/0314/16/RN)).

279. The circumstances in which it is unlawful to discriminate against an employee are, so far as relevant, set out in s.39 Equality Act 2010. In that regard something will constitute a 'detriment' where a reasonable person would or might take the view that the act or omission in question gave rise to some disadvantage (see ***Shamoon v Chief Constable of the RUC*** [2003] IRLR 285, §31-35 per Lord Hope). There is an objective element to this test. For a matter to be a detriment it must be something which a person might reasonably regard as detrimental.

*Harassment*

280. Section 26 EQA 2010 provides:

> (1) A *person (A) harasses another (B) if –*
> *(a) A engages in unwanted conduct related to a relevant characteristic, and*
> *(b) the conduct has the purpose or effect of –*
> *(i) violating B's dignity, or –*
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B [for short we will refer to this as a "proscribed environment"].*
> *…*
> *(4) In deciding whether conduct has the purpose or effect referred to in subsection*
> *(1)(b), each of the following must be taken into account –*
> *(a) the perception of B;*
> *(b) the other circumstances of the case;*
> *(c) whether* it is reasonable for the conduct to have that effect."

281. *The meaning of 'related to' is distinct from and broader than the 'because of' formulation under s.13. It is not, however, to be reduced to a but-for test and it is not enough to point to the relevant characteristic as the mere background to the events. As the Court of Appeal held at §79-80 in* ***UNITE the Union v Nailard*** *[2019] ICR 28:*

> *'… The necessary relationship between the conduct complained of and the claimant's gender was not created simply by the fact that the complaints with which they failed to deal were complaints about sexual harassment — or, in the case of Mr Kavanagh, that part of the situation that led him to decide to transfer the claimant was caused by such harassment.'*

282. In considering whether a remark that is said to amount to harassment is conduct related to the protected characteristic, the Tribunal has to ask itself whether, objectively, the remark relates to the protected characteristic. The knowledge or perception by the person said to have made the remark of the alleged victim's protected characteristic is relevant to the question of whether the conduct relates to the protected characteristic but is not in any way conclusive. The Tribunal should look at the evidence in the round (per HHJ Richardson in ***Hartley v Foreign and Commonwealth Office Services*** UKEAT/0033/15/LA at [24-2].)

283. In considering whether the conduct is related to the protected characteristic, the Tribunal must focus on the conduct of the individuals concerned and ask whether their conduct is related to the protected characteristic (***Unite the Union v Nailard*** [2018] IRLR 730 at [80]).

284. In ***Tees Esk and Wear Valleys NHS Foundation Trust v Aslam*** [2020] IRLR 495 HHJ Auerbach gave further guidance:

> *[21] Thirdly, although in many cases, the characteristic relied upon will be possessed by the complainant, this is not a necessary ingredient. The conduct must merely be found (properly) to relate to the characteristic itself. The most obvious example would be a case in which explicit language is used, which is intrinsically and overtly related to the characteristic relied upon. Fourthly, whether or not the conduct is related to the characteristic in question, is a matter for the appreciation of the Tribunal, making a finding of fact drawing on all the evidence before it and its other findings of fact. The fact, if fact it be, in the given case that the complainant considers that the conduct related to that characteristic is not determinative.*
>
> *[24] However, as the passages in Nailard that we have cited make clear, the broad nature of the 'related to' concept means that a finding about what is called the motivation of the individual concerned is not the necessary or only possible route to the conclusion that an individual's conduct was related to the characteristic in question. Ms Millns confirmed in the course of oral argument that that proposition of law was not in dispute.*
>
> *[25] Nevertheless, there must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case*

*where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be.*

285. In ***Weeks v Newham College of Further Education*** UKEAT/0630/11/ZT, Langstaff J said this at [21]:

*"An environment is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the office or staff-room concerned. We cannot say that the frequency of use of such words is irrelevant."*

286. In ***Richmond Pharmacology v Dhaliwal*** [2009] IRLR 336 (at ¶15), Underhill J (as he was) said:

15…*A Respondent should not be held liable merely because his conduct has had the effect of producing a proscribed consequence: it should be reasonable that that consequence has occurred. That…creates an objective standard….Whether it was reasonable for a Claimant to have felt her dignity to be violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question. One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt."*

*22…We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase…"*

287. In ***Grant v Land Registry*** [2011] IRLR 748, Elias LJ said at para 47:

*"Furthermore, even if in fact the disclosure was unwanted, and the claimant was upset by it, the effect cannot amount to a violation of dignity, nor can it properly be described as creating an intimidating, hostile, degrading, humiliating or offensive environment. Tribunals must not cheapen the significance of those words. They are an important control to prevent trivial acts*

*causing minor upsets being caught by the concept of harassment. The Claimant was no doubt upset that he could not release the information in his ow way, but that is far from attracting the epithets required to constitute harassment. In my view, to describe this incident as the tribunal did as subjecting the claimant to a 'humiliating environment' when he heard of it some months later is a distortion of language which brings discrimination law into disrepute."*

288. A finding that it is not objectively reasonable to regard the conduct as harassing is fatal to a complaint of harassment. That point may not be crystal clear on the face of s.26 Equality Act 2010 but see the *obita dicta* of Underhill LJ in ***Pemberton v Inwood*** [2018] IRLR 557 at [88] and the ratio of ***Ahmed v The Cardinal Hume Academies***, unreported EAT Appeal No. UKEAT/0196/18/RN in which Choudhury J held that ***Pemberton*** indeed correctly stated the law [39].

*Victimisation*

289. Section 27 EqA provides as follows:

*"(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
*(a) B does a protected act, or*
*(b) …".*
*(2) Each of the following is a protected act—*
*(a)-(c) …*
*(d) making an allegation (whether or not express) that A or another person has contravened this Act.*
*(3)-(5) …"*

290. We have already considered the concept of 'detriment' above.

291. We considered the meaning of 'because of' above. The guidance of Underhill LJ in ***Page v Lord Chancellor*** at [69] is relevant here too. So to is the following passage which explains a distinction first made in ***Martin v Devonshires:***

***55*** *The essential point in that reasoning is encapsulated in the sentence which I have italicised in para 22: dismissal (or any other detrimental act) in response to a complaint of discrimination does not constitute victimisation if the reason for it was not the complaint as such but some feature of it which can properly be treated as separable. Mr Diamond's use of the terms 'severance' or 'severability' is not an apt paraphrase because it brings in unhelpful echoes of completely different areas of the law.*

***56****The principle recognised in Martin has since been applied in a number of decisions of the EAT, most notably Panayiotou v Kernaghan [2014] UKEAT 0436/13,* [2014] IRLR 500*. Although it has not so far been approved in this court, an analogous principle was applied in Morris v Metrolink RATP Dev Ltd* [2018] EWCA Civ 1358*,* [2018] IRLR 853*,* [2019] ICR 90*, which was a case concerning dismissal for taking part in trade union activities: see paras*

*19–21 of my judgment. For my part I believe that it is correct. In a case where it applies, the making of the complaint is the context in which the reason for dismissal (or other detriment) arises, but it is not the reason itself.*

***57** Mr Diamond did not seek to challenge the correctness of the decision in Martin, but he did draw our attention to the decision of the EAT in Woodhouse v West North West Homes Leeds Ltd (2013)* UKEAT/0007/12*,* [2013] IRLR 773*, [2013] EqLR 796. In that case the respondent's attempt to rely on Martin was rejected. At paras 101–102 of his judgment Judge Hand QC expressed what he described as 'a further note of caution', saying that the circumstances in Martin were 'exceptional' and that if it was followed indiscriminately where complainants acted in an irrational way it would undermine the protection provided by the anti-victimisation provisions. I agree with him that it is important that that should not occur; but I do not, with respect, believe that it is necessary to go beyond what I said in paras 22 and 23 of my judgment Martin as quoted above. As I say there, employment tribunals can be trusted to recognise the circumstances in which the distinction there described can be properly applied, and I do not believe that it is useful to apply a requirement that those circumstances be exceptional: I note that Lewis J made the same point in Panayiotou (see para 54 of his judgment).*

292. In ***Scott v London Borough of Hillingdon*** [2001] EWCA Civ 2005 the Court of Appeal held that knowledge of the protected act on the part of the alleged discriminator is a precondition to liability. The burden of proving knowledge lies on the Claimant. Where the protected act is an allegation of discrimination made in the context of a broader complaint, the allegation of discrimination must be a material factor in the reason for the treatment in order for victimisation to be made out (***JJ Food Service Ltd v Mohamud*** (EAT 0310/15)).

*Time limits in discrimination law*

293. S.123(1)(a) EqA provides that a claim must be brought within three months, starting with the date of the act to which the complaint relates.

294. The three-month time limit is paused during ACAS early conciliation: the period starting with the day after conciliation is initiated, and ending with the day of the ACAS certificate, does not count (s.140B(3) EqA). If the ordinary time limit would expire during the period beginning with the date on which the employee contacts ACAS, and ending one month after the day of the ACAS certificate, then the time limit is extended, so that it expires one month after the day of the ACAS certificate (s.140B(4) EqA).

295. S.123(3)(a) EqA provides that conduct extending over a period is to be treated as done at the end of the period. In ***Hendricks v Commissioner of Police of the Metropolis*** [2003] ICR 530, the Court of Appeal held that Tribunals should not take too literal an approach: the focus should be on the substance of the complaint that the employer was responsible for an ongoing situation or a continuing state of affairs, in which an employee was treated in a discriminatory manner.

296. S.123(1)(b) EqA provides that the Tribunal may extend the three-month limitation period, where it considers it just and equitable to do so. That is a very broad discretion. In exercising it, the Tribunal should have regard to all the relevant circumstances, which may include factors such as: the reason for the delay; whether the Claimant was aware of his right to claim and/or of the time limits; whether he acted promptly when he became aware of his rights; the conduct of the employer; the length of the extension sought; the extent to which the cogency of the evidence has been affected by the delay; and the balance of prejudice (***Abertawe Bro Morgannwg University Local Health Board v Morgan*** [2018] ICR 1194).

*The burden of proof*

297. The burden of proof provisions are contained in s.136(1)-(3) EqA:

> (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.

298. The effect of these provisions was summarised by Underhill LJ in ***Base Childrenswear Ltd v Otshudi*** [2019] EWCA Civ 1648 at [18]:

> *'It is unnecessary that I reproduce here the entirety of the guidance given by Mummery LJ in Madarassy. He explained the two stages of the process required by the statute as follows:*
>
> *(1) At the first stage the Claimant must prove "a prima facie case". That does not, as he says at para. 56 of his judgment (p. 878H), mean simply proving "facts from which the Tribunal could conclude that the Respondent 'could have' committed an unlawful act of discrimination". As he continued (pp. 878-9):*
>
> *"56. … The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal 'could conclude' that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.*
> *57. 'Could conclude' in section 63A(2) [of the Sex Discrimination Act 1975] must mean that 'a reasonable Tribunal could properly conclude' from all the evidence before it. …"*
>
> *(2) If the Claimant proves a prima facie case the burden shifts to the Respondent to prove that he has not committed an act of unlawful discrimination – para. 58 (p. 879D). As Mummery LJ continues: "He may prove this by an adequate non-discriminatory*

> *explanation of the treatment of the complainant. If he does not, the Tribunal must uphold the discrimination claim." He goes on to explain that it is legitimate to take into account at the first stage all evidence which is potentially relevant to the complaint of discrimination, save only the absence of an adequate explanation.'*

299. In ***Deman v Commission for Equality and Human Rights*** [2010] EWCA Civ 1279, Sedley LJ observed at [19]: *'the "more" which is needed to create a claim requiring an answer need not be a great deal. In some instances it will be furnished by a non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred.'*

300. In ***Hewage v Grampian Health Board*** [2012] ICR 1054 at [32], the Supreme Court held that the burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

301. The Court of Appeal in ***Anya v University of Oxford*** [2001] ICR 847 at [2, 9 and 11] held that, in a discrimination case, the employee is often faced with the difficulty of discharging the burden of proof in the absence of direct evidence on the issue of the causative link between the protected characteristics on which he relies and the discriminatory acts of which he complains. The Tribunal must avoid adopting a 'fragmentary approach' and must consider the direct oral and documentary evidence available and what inferences may be drawn from all the primary facts.

*Public interest disclosure*

302. A protected disclosure is a qualifying disclosure made by a worker in accordance with any of sections 43C to 43H. A qualifying disclosure is defined by section 43B, as follows:

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

303. In ***Williams v Michelle Brown AM***, UKEAT/0044/19/OO at [9], HHJ Auerbach identified five issues, which a Tribunal is required to decide in relation to whether something amounts to a qualifying disclosure:

*'It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.'*

304. As for what might constitute a disclosure of information for the purposes of s.43B ERA, in ***Kilraine v London Borough of Wandsworth*** [2018] ICR 1850 CA, Sales LJ provided the following guidance:

*'30. the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. Langstaff J made the same point in the Judgment below at [30], set out above, and I would respectfully endorse what he says there. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other […]*

*31. On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1), not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision.*

*[…]*

*35. In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1).*

*[…]*

*36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a Tribunal in the light of all the facts of the case.*

*[…]*

*41. It is true that whether a particular disclosure satisfies the test in section 43B(1) should be assessed in the light of the particular context in which it is made. If, to adapt the example given in in the Cavendish Munro case [at paragraph 24], the worker brings his manager down to a particular ward in a hospital, gestures to sharps left lying around and says "You are not complying with health and safety requirements", the statement would derive force from the context in which it was made and taken in combination with that context would constitute a qualifying disclosure. The oral statement then would plainly be made with reference to the factual matters being indicated by the worker at the time that it was made. If such a disclosure was to be relied upon for the purposes of a whistleblowing claim under the protected disclosures regime in Part IVA of the ERA, the meaning of the statement to be derived from its context should be explained in the claim form and in the evidence of the Claimant so that it is clear on what basis*

*the worker alleges that he has a claim under that regime. The employer would then have a fair opportunity to dispute the context relied upon, or whether the oral statement could really be said to incorporate by reference any part of the factual background in this manner.'*

305. The issues arising in relation to the Claimant's beliefs about the information disclosed were reviewed by Linden J in ***Twist DX Ltd***, from which the following principles emerge.

305.1. Whether the Claimant held the belief that the disclosed information tended to show one or more of the matters specified in s.43B(1)(a)-(f) ('the specified matters') and, if so, which of those matters, is a subjective question to be decided on the evidence as to the Claimant's beliefs (at [64]).
305.2. It is important for the ET to identify which of the specified matters are relevant, as this will affect the reasonableness question (at [65]).
305.3. The belief must be as to what the information 'tends to show', which is a lower hurdle than having to believe that it 'does show' one of more of the specified matters. The fact that the whistleblower may be wrong is not relevant, provided his belief is reasonable (at [66]).
305.4. There is no rule that there must be a reference to a specific legal obligation and/or a statement of the relevant obligations or, alternatively, that the implied reference to legal obligations must be obvious, if the disclosure is to be capable of falling within section 43B(1)(b). Indeed, the cases establish that such a belief may be reasonable despite the fact that it falls so far short of being obvious as to be wrong (at [95]).

306. The Court of Appeal considered the 'public interest' test in ***Chesterton Global Ltd v Nurmohamed*** [2018] ICR 731. The following principles emerge.

306.1. The Tribunal must ask: did the worker believe, at the time he was making it, that the making of the disclosure was in the public interest (at [27])? That is the subjective element.
306.2. There is then an objective element: was that belief reasonable? That exercise requires that the Tribunal recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest (at [28]).
306.3. 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 (at [30]).
306.4. 'Public interest' involves a distinction between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest (at [31]).
306.5. It is still possible that the disclosure of a breach of the Claimant's own contract may satisfy the public interest test, if a sufficiently large number of other employees share the same interest (at [36]).

307. S.47B(1) ERA provides:

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

308. Care must be taken to establish the 'reason why' the employer acted as it did. The 'reason why' is the set of facts operating on the mind of the relevant decision-maker, it is not a 'but for' test. The correct test is whether 'the protected disclosure materially influences (in the sense of being more than a trivial influence on) the employer's treatment of the whistleblower (***Fecitt v NHS Manchester*** [2012] IRLR 64 at [45]).

309. S.48 ERA provides:

*(1A) A worker may present a complaint to an employment Tribunal that he has been subjected to a detriment in contravention of section 47B.*
*[…]*
*(2) On a complaint under subsection […](1A)[…] it is for the employer to show the ground on which any act, or deliberate failure to act, was done.*

310. It is unlawful for another worker of the employer to subject the Claimant to a detriment during the course of their employment, on the ground that they made a protected disclosure (s.47B(1A) ERA). This may include deciding to dismiss an employee as well as steps prior to dismissal (***Timis v Osipov*** [2019] ICR 655 at [68 and 77]). The employer is vicariously liable for any such detriment (s.47B(1B) ERA).

311. We agree with and are able to adopt Miss Davis' submissions on the applicable law in respect of time limits in PID cases:

311.1. A claim for detriment under s.47B ERA 1996 must be presented "before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them" (s.48(3)(a) ERA 1996.
311.2. In deciding whether a detriment case is brought in time, the Tribunal must focus on the date of the act giving rise to a detriment, not the consequences that follow: ***Unilever UK Plc v Hickinson & Anor*** (UKEAT/0192/09).
311.3. For alleged acts of detriment to form part of "a series of similar acts" there must be some relevant connection between the acts: Arthur v London Eastern Railway [2007] ICR 193. Further, each of the acts forming part of the alleged series must, in itself, be unlawful: ***Oxfordshire County Council v Meade*** (UKEAT/0410/14).
311.4. The Tribunal can extend time for submitting a detriment claim where it is satisfied that it was "not reasonably practicable" for the claim to be presented in time provided that the claim was still presented "within such further period as the tribunal considers reasonable" (s.48(3)(b)).

*Unfair dismissal*

312. There is a statutory right not to be unfairly dismissed. There is a limited range of potentially fair reasons for dismissal (s.98 Employment Rights Act 1996). It is automatically unfair to dismiss an employee for making a protected disclosure (s.103A).

313. The 'reason' for dismissal is the factor operating on the decision-maker's mind which causes him/her to take the dismissal decision (**Croydon Health Services NHS Trust v Beatt** [2017] ICR 1420). The net could be case wider if the facts known to, or beliefs held by, the decision-maker had been manipulated by another person involved in the disciplinary process with an inadmissible motivation, where they held some responsibility for the investigation. That person could also have constructed an invented reason for dismissal to conceal a hidden reason (***Royal Mail Ltd v Jhuti*** [2020] All ER 257.)

314. If there is a potential fair reason for a dismissal, the fairness of the dismissal is assessed by applying the test at s.98 (4) ERA.

315. In ***BHS v Burchell*** [1980] ICR 303, the EAT gave well known guidance as to the principal considerations when assessing the fairness of a dismissal purportedly by reason of conduct. There must be a genuine belief that the employee did the alleged misconduct, that must be the reason or principal reason for the dismissal, the belief must be a reasonable one, and one based upon a reasonable investigation.

316. However, the ***Burchell*** guidance is not comprehensive, and there are wider considerations to have regard to in many cases. For instance, wider procedural fairness, the severity of the sanction in light of the offence and mitigation are important considerations.

317. In ***Iceland Frozen Foods v Jones*** [1982] IRLR 439, the EAT held that the tribunal must not simply consider whether it personally thinks that a dismissal was fair and must not substitute its decision as to the right course to adopt for that of the employer. The tribunal's proper function is to consider whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted.

318. The range of reasonable responses test applies to all aspects of dismissal. In ***Sainsbury's v Hitt*** [2003] IRLR 23, the Court of Appeal emphasised the importance of that test and that it applies to all aspects of dismissal, including the procedure adopted.

319. Live final warnings can be taken into account by the employer even where they relate to a different type of conduct to the matter currently under investigation: ***August Noel Ltd v Curtis*** [1990] IRLR 326.

320. In the ordinary course of events, an employer considering dismissal is not required to re-open the circumstances in which a live final written warning was given. The essential principle is that it is legitimate for an employer to rely on a final warning provided that (***Davies v Sandwell Metropolitan Borough Council*** [2013] EWCA Civ 135 (at paragraphs 20 and 21) and ***Wincanton Group Plc v Stone & Anor*** [2013] IRLR 178 as per Langstaff P):

320.1. It was issued in good faith;
320.2. There were at least prima facie grounds for imposing it; and
320.3. It was not manifestly inappropriate to have issued it.

321. In some, rare cases, it will be within the band of reasonable responses for an employer to dismiss without any procedure. This is usually where it would be futile to follow a procedure. ***Gallagher v Abellio***, unreported UKEATS/0027/19/SS, was such a case. The employment relationship had broken down and it was plain that the employee was not inclined to retrieve the situation.

**Discussion and conclusions**

322. Before reaching a conclusion, we stood back from the detailed findings of fact and looked at the evidence as a whole. We did so with a view to being ready and able to draw inferences if and where they properly fell to be drawn. We reminded ourselves that the type of unlawful conduct alleged in this case is usually hidden and that we should not expect to see direct evidence of it.

323. The sub-headings below are references to the List of Issues. The reader will need a copy of the List of Issues to hand to follow what is said below. Many of the allegations are put in more than one way (e.g. as direct discrimination, victimisation and PID detriment). Careful attention is therefore needed to the sub-headings.

*Direct discrimination (and where concurrently raised victimisation and PID detriment)*

*Issue 8.1 (and 20.2): formal disciplinary proceedings and final warning*

324. The reason why the Claimant was subjected to disciplinary proceedings was because Mrs Longstaff believed that the content of Mr Gray's dignity at work complaint about the Claimant, in which he set his version of the Claimant's conduct on12 July 2018, and then the account of what the Claimant had said to Ms Page-Roberts, merited disciplinary investigation. That was a wholly unsurprising and rational decision given the nature of the allegations.

325. Mrs Armstrong decided that the Claimant should receive a final written warning. She did so because it was her view that the disciplinary allegations merited that sanction.

325.1. It is very easy to see why Mrs Armstrong did so in relation to the Claimant's comment on 12 July 2018. It was a gratuitous and very unpleasant threat to Mr Gray's employment. It was obvious serious misconduct.

325.2. In relation to the second charge of actively approaching staff to collate evidence against Mr Gray, we accept that Mrs Armstrong thought this was serious misconduct. Essentially, her reasoning was that the context was important. It was not a matter of reporting observed misconduct by Mr Gray. Rather, it was the Claimant pursuing a concerted campaign that she had signalled with her comment on 12 July 2018. The campaign arose out of and was motivated by the disagreement with Mr Gray in his office on 12 July 2018. She did not think that was the right mechanism for any concerns that may exist in relation to Mr Gray to be stated. Rather, anyone with a complaint should make it themselves.

326. The reasons for the treatment are as stated and we have no doubt that a male comparator in the Claimant's position would have been treated identically.

327. We do not see any cogent basis at all to draw inferences that any part of the reason for the Claimant's treatment by Mrs Armstrong or Ms Longstaff on this or any matter was sex. In our view this was an organisation in which being female was no barrier to thriving and indeed rising to the top. We did not see any reason to consider the Claimant would have been treated differently had she been a man.

328. We also reject the comparison that is made here with Mr Gray in so far as it relates to conduct on 12 July 2018 itself:

328.1. In this case there was compelling evidence of wrongdoing on the Claimant's part, namely, a factual finding that she had said words to the effect that she would get rid of Mr Gray like she had got rid of Denise Lodge. She had said something of comparable meaning even based on her own contemporaneous account. This was a gratuitous threat she made in response to not getting her way with funds on the Caxton card.

328.2. We see material differences between this and Mr Gray then chasing the Claimant down the stairs asking her to repeat the threat. Certainly that was not a sensible thing for him to do but there is no doubt that it was the result of a severe provocation on the Claimant's part.

329. We also see a material difference between Mr Gray asking colleagues to give an account of an event that had happened to him and that they may have witnessed (the events of 12 July 2018) and the Claimant generally searching for evidence of Mr Gray bullying other people whether or not the incident had affected her or been in her direct knowledge.

330. We do however see some relevant difference of treatment more generally in that there were several occasions on which Mr Gray was alleged to have done something that was serious enough to justify a formal disciplinary investigation but the same did not follow. That contrasts to the Claimant's case in which,

following 12 July 2018, she was the subject of a formal disciplinary investigation. Of course this gave us pause for significant thought – should we infer that the reason for the difference of treatment was sex? We do not think we should. We explain this view in our analysis of issue 8.2 which is squarely about the reasons for the lack of formal action against Mr Gray. We do also note here that, as our findings of fact show, there were multiple occasions on which the Claimant was also was treated very leniently from a disciplinary perspective. And indeed on some of those occasions, as indicated in our findings of fact, she had done serious misconduct.

331. Issue 8.1 predated the putative protected disclosure and cannot have been because of it.

*Issue 8.2: no formal action against Mr Gray*

332. As we have indicated above, a large number of complaints were made against Mr Gray. Given the nature of some of those complaints and the way that they tended to corroborate each other, there is a real concern that no formal disciplinary investigation was ever opened in relation to him particularly once the complaints began to accumulate. We use the term 'disciplinary investigation' rather than 'action' advisedly, since the appropriate action for the First Respondent to take, if any, would have depended on the findings of the process.

333. Given the number of complaints made against Mr Gray and the nature of them, we think it is fair to say that Mr Gray was, as the Claimant alleges, in a meaningful sense protected from formal disciplinary investigations. The difficult questions to answer are 'why?' and did this have anything to do with sex?

334. Ultimately, having considered the evidence as whole and stepped back from it, we do not think this was because of sex in any way. We think there was a combination of reasons:

334.1. Ms Longstaff thought Mr Gray was, substantively, doing a good and effective job;
334.2. Ms Longstaff thought that the nature of Mr Gray's role – compliance and enforcement of policies - meant that conflict with other members of staff was inevitable and could explain some of the complaints against him. She would not expect someone in his role to be popular: quite the reverse;
334.3. Ms Longstaff herself did not believe that Mr Gray's conduct towards others was in any way discriminatory because of sex or otherwise;
334.4. Ms Longstaff did recognise that there were some problems with Mr Gray's behaviour but thought they could be managed informally.
334.5. Ms Longstaff preferred to manage the complaints informally. This was because Mr Gray was a key ally of hers. This made her reluctant to manage allegations against him formally. It would have been very disruptive for the SLT and Mrs Longstaff's relationship with Mr Gray for

there to be disciplinary investigations against Mr Gray. Mr Gray's personality meant that he likely have taken a decision to investigate formally very hard and personally.

334.6. In relation to the complaints made about Mr Gray by the Claimant herself in her internal grievances: these were almost all found to be unsubstantiated. The decisions of the grievance decision makers have not been seriously impugned. We think they were the respective decision makers' best assessments of the available evidence. On each occasion detailed, reasoned reports and outcome letters were produced which we accept truthfully state the decision makers reasons.

334.7. Two aspects of Mr Gray's conduct were impugned through the internal grievance process:

334.7.1. Mr Gray chasing the Claimant down the stairs. However, essentially the finding in the internal grievance process was that there was very substantial mitigation for what had happened in that the Claimant had said to Mr Gray she would get rid of him like she had Dr Lodge.

334.7.2. Mr Gray's email of 8 September 2014.

This resulted in informal action against Mr Gray in the form of him having to undertake further training in respect of difficult conversations including when reprimanding colleagues over breaking rules. We accept that this is the level of response that Ms Crouch considered to be a reasonable and proportionate one. We find her position rational and coherent given the evidence she had.

335. We do not see is any cogent reason to infer that the reason or part of the reason that Mr Gray was not the subject of formal disciplinary action/investigation is that he is a man. Although there was lenient treatment here of a man, we really see no basis to infer or conclude it was *because* he was a man. This was simply not an institution, and these were simply not decision makers who, gave preferential treatment on gender based grounds. We also note that Mr Gray was not the only person who was treated leniently. The Claimant herself, as we have set out in our findings of fact, was treated leniently a number of times. Of course that lenient treatment ultimately came to an end but, as set out below, for reasons unrelated to sex.

*Issue 8.3: collecting receipts for pupil expenditure Edinburgh 2018*

336. The factual complaint is true. We accept that the Claimant was asked to collect receipts for pupils' expenditure on the Edinburgh 2018 trip. On the other hand Mr Meryon was not asked to do that on the trip to Budapest that had taken place a few months previously.

337. In our view, however, this had nothing whatsoever to do with sex. The evidence shows that there was a lack of written policy guidance on the financial aspects of trips. In the absence of the same we find it unsurprising that there were inconsistent practices.

338. The reason the Claimant was asked for receipts for pupil expenditure in respect of Edinburgh 2018, in our view, was because there had been a range of problems identified with the financial aspects of Edinburgh 2017 by KPMG and then Ms Lowson. As a consequence the Edinburgh 2018 trip came in for a higher level of scrutiny than it would otherwise have done and than Mr Meryon's trip (which the Claimant was also on) did.

339. We see no cogent reason at all to infer that the reason for the difference of treatment was because the Claimant was a woman and Mr Meryon was a man. A hypothetical comparator would have been treated in the same way as the Claimant.

*Issue 8.4 (and 16.6/20.3): On 26 March 2019, the Claimant prepared a draft letter to parents asking for additional funds for the 2019 Edinburgh Festival trip. Despite sending numerous follow up emails to the School between March and July 2019, the Claimant continued not to receive any clarity. It was only when the Claimant confirmed that the trip might have to be cancelled that the School confirmed on 2 August 2019 that the Claimant could contact parents.*

340. As set out in our findings of fact, it is true that the Claimant prepared a letter on 26 March 2019 and asked for it to be sent to parents requesting additional payment of about £60 for the Edinburgh trip. She did this because a bigger budget was probably needed as a result of the change from C-Venues to the Gilded Balloon which meant an extended run from 4 to 6 day. It is true that the Claimant chased this many times with little response and true that the matter was left unresolved and was only resolved over the summer holidays.

341. In our view the reason why this happened was *initially* for two reasons.

341.1. Firstly, because the First Respondent was unsure whether it would allow the Edinburgh 2019 trip to go ahead or not. There is clear evidence of this in point 4 of Mrs Armstrong's email of 25 March 2019 to Ms Longstaff and in Ms Longstaff's reply to that email. At this time Ms Longstaff and Mrs Armstrong had just found and were in the process of assessing and progressing two of the three disciplinary allegations that later led to the Claimant's dismissal on notice. It would not have been apparent how quickly those matters would come to a head. If they came to a head before the summer holidays and resulted in the Claimant's dismissal she presumably would not have been allowed to lead the Edinburgh 2019 trip.

341.2. Secondly, because Ms Hailstone was investigating the Claimant's putative protected disclosure which, although not about asking parents for further funds for the trip to Edinburgh 2019, was about the finances of the Edinburgh trips and what was done with the ticket sales. It made sense to see what Ms Hailstone had to say before finalising the arrangements for

Edinburgh 2019. It was conceivable that she may raise a red flag that required a fundamental rethink of the Edinburgh trips, for instance if she found that the Claimant was right and that it would have been a breach of performance rights laws for ticket sales to be paid into the Enterprise Account. It was thus sensible to take a pause for Ms Hailstone to complete her report and to consider it.

342. In our view these are the reasons why the Claimant's chasers in respect of her proposed email to parents were essentially unrequited through April and May 2019.

343. Matters then moved on. On 7 June 2019 the Claimant spoke to Dr Brandon and Ms Upton and stated that she did not want to ask parents for more money whilst they were still waiting for a refund from Edinburgh 2018. Thereafter, it was not until the beginning of the summer holidays in July 2019 that the Claimant revisited the issue and her position. The Claimant stated in her email of 12 July 2019 *"I am now realising that I could really do with the extra money from the parents. This will mean we can go out for one meal while we are in Edinburgh and we can go to a few shows too."*

344. The email of 12 July 2019 brought the issue of the budget back to life. Ms Longstaff was, however, on holiday and there was a delay in this message reaching her. The Claimant also wrote to Ms Longstaff directly on 26 July 2019 expressing the same difficulties with the budget. The correspondence eventually reached Ms Longstaff's attention. It is the Claimant's case own case that on 2 August 2019 she got the permission she required to contact parents to ask for additional money.

345. Thus the reasons for the delay in dealing with the Claimant's request to write to parents was:

345.1. Initially because the First Respondent was effectively stalling:

345.1.1. it was unsure whether the Edinburgh 2019 would be going ahead because it was unsure whether the Claimant's employment would be ongoing. We discuss this further in issues 8.10 and 8.13 and explain there why we do not think that the search for a reason to dismiss the Claimant and the decision to dismiss her on notice were because of sex, any protected act or the protected disclosures.

345.1.2. It wanted to pause for Ms Hailstone to produce her report. We explain in our consideration of issue 8.5 why in our view this was unrelated to sex, any protected act or the putative protected disclosure.

345.2. Subsequently because by 7 June 2019 the Claimant indicated that she preferred not to ask parents for more money at that time.

345.3. The issue was not raised again until the summer holidays on 12 July 2019. It then took time to deal with because it was the summer holidays and because Ms Longstaff was on holiday.

346. For completeness in relation to direct discrimination: we do not see any relevant comparison here with the Second Respondent and consider that a hypothetical male comparator would have been treated in the same way.

347. These matters were not because or partly because of sex, the protected acts or the putative protected disclosure.

*Issue 8.5 (and 16.6/20.3): On 16 May 2019, Ms Brandon informed the Claimant that she was unable to send any further communications to parents concerning the 2019 Edinburgh Festival trip.*

348. On 16 May 2019, Dr Brandon replied to an email from the Claimant stating:

> *Many thanks for forwarding the Pitch Purple letter on to me. I have been provided with a copy of Kate Hailstone's recommendations and we need to consider this before any further communication is sent to parents.*

349. The letter from the Claimant was a version of the one in which she proposed to ask parents for an additional contribution to the cost of Edinburgh 2019.

350. We are satisfied that the reason Dr Brandon said what she did to the Claimant was that she wanted to consider any learning points from Ms Hailstone's report of 1 May 2019 before this letter was sent to parents. This was, in our view, a rational approach. Although the letter to parents was just a request for some more money for the trip, it made sense to take time to consider what Ms Hailstone had said in her report before finalising the arrangements for Edinburgh 2019. Ms Hailstone's report made some important findings (as set out in the findings of fact) that Dr Brandon would obviously need, with others, to think through given her role. This was clearly in train as on 20 May 2019, Mr Crisp produced the Additional guidance for trips, ticket sales and pocket money.

351. We find it totally implausible that Dr Brandon took this approach because of the Claimant's or anyone's sex. Sex simply did not come into it at all. Likewise we do not accept that the reason for the treatment was because the Claimant did a protected act. We do not think there is anything cogent to link this conduct to the protected acts. There is nothing at all to suggest that Dr Brandon, also a women, was in any way moved by the Claimant's protected acts or that they did anything that might motivate her to stop the Claimant from writing to parents.

352. We also do not think Dr Brandon's treatment was on the ground/because of the putative the protected disclosure in the relevant sense. It is true that Ms Hailstone's report was a report about the Claimant's putative protected disclosure. However, the reason for Dr Brandon's approach here was not the putative disclosure itself, but rather to consider Ms Hailstone's investigation into it to see if there were any learning points or matters that might influence how and whether the Edinburgh 2019 should proceed. That is plainly a distinct ground for the treatment from the putative disclosure itself. It would be absurd if the law

prohibited an employer from taking a breath to consider the implications of an investigation into a protected disclosure and we are satisfied that it does not.

353. For completeness in relation to direct discrimination: we do not see any relevant comparison here with the Second Respondent and consider that a hypothetical male comparator would have been treated in the same way.

354. For the avoidance of doubt, we do not think that Dr Brandon herself was aware at this stage that moves were afoot to find a way to dismiss the Claimant.

*Issue 8.6 (and 16.6/20.3): Mr Gray failed to send the Claimant Mr Crisp's email*

355. It is true that the email from Mr Crisp of 20 May 2019 was not sent to the Claimant by Mr Gray. However, there was no reason for Mr Gray himself to send the email to the Claimant. He sent the email to Dr Brandon and Ms Upton stating: "*Please ensure these guidelines are shared with colleagues planning trips where ticket sales and/or the distribution of pocket money may be involved."* Mr Gray did all he needed and reasonably could be expected to do to disseminate the document. It was not his job to email the document to the Claimant and every other person that was planning trips. That is why he did not do so; it had nothing whatsoever to do with sex, any protected act or the putative protected disclosure.

356. The Claimant was eventually sent the email by Sue Upton on 5 July 2019. In the meantime, it would have been helpful if Dr Brandon had sent the email to the Claimant (though the pleaded complaint is about Mr Gray). She did not do so but this had nothing at all to do with sex, any protected act or the putative protected disclosure. Dr Brandon's evidence which we accept was that she thought that the information in the email would be formalised into a school level trips policy and was waiting for that to happen.

357. We do not see that there was really anything in Mr Crisp's email that was embarrassing to Dr Brandon (or indeed to anyone potentially relevant such as Mr Gray, Ms Upton, Mrs Armstrong and Ms Longstaff). Mr Crisp's email was largely consistent with Mr Shearer's before him. The fundamental points were the same: there had to be a sharp line between the cost of the trip generally and ticket sales; ticket sales had to be paid into the Enterprise Account; it was up to the Headteacher how that money was then spent. There was a nuance on VAT. Mr Shearer thought it was payable on ticket sales; Mr Crisp thought there was a potential exemption that could be relied upon. Even so, however, Mr Crisp's advice was that ticket sales must be paid into the Enterprise Account which was the original significance in Mr Shearer's advice of VAT being payable. Mr Crisp also made the point that parents should be told in advance how the funds from ticket sales were going to be used. That was a sensible addition. Having considered Mr Crisp's email in its proper context we do not think it is something anybody – including Dr Brandon - wanted to deliberately hide from the Claimant.

358. For completeness in relation to direct discrimination: we do not see any relevant comparison here with the Second Respondent. Given his role it is obvious he needed first sight of this email from Mr Crisp. We also consider that a hypothetical male comparator would have been treated in the same way.

*Issue 8.7 (and 16.6/20.3): The Claimant was not shortlisted for the role of Director of Music*

359. The facts of the allegation are true however we do not accept that the Claimant's sex was in any way relevant. The reasons why the Claimant was not shortlisted were that:

359.1. She had a live final written warning;
359.2. She had voiced vociferous opposition to the plans to remodel part of the School that involved relocating the music department – plans the First Respondent was committed to;
359.3. The relationship between the Claimant and the First Respondent had broken down irretrievably and Ms Longstaff did not see that the Claimant had a long-term future with First Respondent.

360. We do not think this matter had anything at all to do with sex. The First Respondent is an institution in which the preponderance of staff are women and in which the preponderance of the SLT are women. We do not think sex is a barrier to appointment in managerial roles including this one.

361. We have given careful thought to whether the Claimant's protected acts and/or putative protected disclosure were part of the reason for this treatment. We do not think that they were. In our view, in Ms Longstaff's mind the barrier to the Claimant having a long-term future with the First Respondent was not that she had done protected acts and/or made the putative disclosure. Rather it was her view that the relationship with the Claimant was irretrievably damaged. The thing that made the damage irretrievable was not that the Claimant had made the complaints that formed the basis of the protected acts/disclosure, but another distinct and separable factor: that nothing short of complete and unambiguous vindication of the Claimant's positions would be sufficient for the Claimant to be willing to restore her relationship with the School's senior management.

362. The evidence shows that by 20 March 2019, the Claimant and her solicitors had made many allegations of discrimination and complaints about Mr Gray. These had at times been made in high handed terms that included threatening litigation. The Claimant had also by this stage (in her email to Mr Shearer on 27 January 2017) suggested that the Respondent's approach to ticket sales was "in effect child labour".

363. However, and critically, the evidence also shows that as at 20 March 2019, the Respondent was actively seeking to restore good employment relations in a way that plainly envisaged the Claimant having a long-term future with First

Respondent. It did this in the full knowledge of the Claimant's allegations of discrimination, complaints about Mr Gray, and stated concerns about child labour. This, we think, is good evidence that the Claimant's complaints themselves were not the issue for Ms Longstaff or the First Respondent generally – at most they were background. It was something else, and we think the something else was the Claimant's position that nothing short of complete and unambiguous vindication of her positions would be sufficient for her to restore the badly fractured employment relationship with the SLT. We think she (whether intentionally or not) made that position clear in her correspondence of 21 March 2019. It was almost immediately after this that, as our findings of fact show, the First Respondent changed tack and began to look for a way of ending the employment relationship.

364. For completeness in relation to direct discrimination: we do not see any relevant comparison here with the Second Respondent and consider that a hypothetical male comparator would have been treated in the same way.

*Issue 8.8 (and 16.6/20.3): Claimant not on interview panels for Director of Music and Music Administrator roles*

365. The Claimant was also not asked to be on the interview panel for the Director of Music role nor on the interview panel for the Music Administrator role. The panels comprised, the then current Director of Music, the Director of Music at the Junior section of the School and Dr Brandon.

366. We find that this was because Ms Longstaff considered this to be the most appropriate panel. It would have been very odd for the Claimant to sit on an interview panel for the Director of Music role given that she had been an unsuccessful applicant for the role. In principle it would not have been inappropriate for the Claimant to sit on the panel for the Music Administrator interviews. However, Ms Longstaff did not want her to because of the factors referred to in the analysis of issue 8.7, and because there was a plan afoot to dismiss the Claimant as discussed in the analysis of 8.10. Further, because the outgoing music administrator had, we accept, informally raised some concerns about the Claimant.

367. The Claimant's sex did not come into these decisions in any way. We do not think that either the protected acts or the putative protected disclosure were or contributed the reason for the treatment. In that regard we repeat the analysis from issue 8.7 and rely on the analysis in 8.10 below.

368. For completeness in relation to direct discrimination: we do not see any relevant comparison here with the Second Respondent and consider that a hypothetical male comparator would have been treated in the same way. Mr Meryon's circumstances were materially different to the Claimant's. He was the Director of Music and as such needed to be on the panel.

*Issue 8.9 (and 16.6/20.3): asked to leave room during trial lesson*

369. On 20 June 2019, a candidate for the Director of Music role came in to teach a lesson as part of the recruitment process. Mr Meryon, Ms Burgess (a teacher from another GDST school) and Dr Brandon were present. Dr Brandon waved her hand at the Claimant to leave the room.

370. We find that Dr Brandon did this because the Claimant did not have a role in assessing the candidate. That seems to us the most likely explanation. There is not the slightest reason to think that Dr Brandon did this because or in part because the Claimant was a women. She herself is a woman and Ms Burgess who was present and indeed invited to attend is also a woman. We think it is highly unlikely that Dr Brandon waved the Claimant away because of any protected act or the putative protected disclosure. There is no logical link between those things and this matter and it is far more likely that Dr Brandon simply did not think the Claimant needed to be there.

371. For completeness in relation to direct discrimination: we do not see any relevant comparison here with the Second Respondent and consider that a hypothetical male comparator would have been treated in the same way. Mr Meryon's circumstances were materially different to the Claimant's. He was the Director of Music, was assessing the candidate and as such needed to be in the room.

*Issue 8.10 (and 16.6/20.3): notifying Claimant she will be subject to further disciplinary proceedings on 14 June 2019*

372. The facts of this allegation are true. The Claimant was notified of the allegations because the Respondent was intending to put her through a disciplinary process and indeed to discipline her. The reason it had decided to do that, in our view, was nothing to do with sex. Nor was any protected disclosure/the putative protected act any part of the reason why.

373. The reason why this happened is that it had become clear to Ms Longstaff and to Mrs Armstrong that relations with the Claimant had not only broken down but, and this was the important bit, that there was no real prospect of them ever normalising again. The Claimant had made clear in her correspondence of 21 March 2019 that normal relations could only be restored in the event of her being fully vindicated. They therefore checked to see if there were any disciplinary issues that would give them leverage. They found the three matters discussed in the findings of fact and commenced a disciplinary process.

374. In our view, while Ms Longstaff and Mrs Armstrong genuinely considered that the three issues the Claimant was ultimately charged with disclosed wrongdoing on her part, those were matters which - absent a separate powerful reason to dismiss the Claimant - they would not have viewed as serious disciplinary issues. The separate powerful reason was the view that the employment relationship had broken down but more over, and this is the operative part, that it was irretrievable because of the Claimant's approach. We repeat the analysis from issue 8.7.

375. For completeness in relation to direct discrimination: we do not see any relevant comparison here with either Mr Gray or Mr Meryon. The relations with those employees were not strained and there were no comparable employment issues. We are satisfied a hypothetical male employee in like circumstances would have been treated like the Claimant.

*Issue 8.11 (and 16.6/20.3): continuing with disciplinary process despite challenge, Ms Longstaff not independent or impartial*

376. The disciplinary process was eventually postponed pending the outcome of the grievance of March 2019. However, the disciplinary process was not suspended pending the outcome of the Claimant's grievance of August 2019. The reason for this was that the First Respondent wanted to progress the disciplinary process to a conclusion rather than for it to be further delayed.

377. As to Ms Longstaff being the decision maker, it is true that she was not independent or impartial. She approached the disciplinary hearing with an agenda, namely to bring to an end the Claimant's employment. Her reasons for wanting to do this are explained above. There was further particular reason for Ms Longstaff being the decision maker: ending the Claimant's employment would be a huge decision which would inevitably be litigated. As the leader of the School Ms Longstaff wanted to take responsibility for the decision. Those are the reasons she was and remained the decision maker.

378. The treatment was not because of sex, nor any protected acts nor the putative protected disclosure.

379. For completeness in relation to direct discrimination: we do not see any relevant comparison here with either Mr Gray or Mr Meryon. The relations with those employees were not strained and there were no comparable employment issues. We are satisfied a hypothetical male employee in like circumstances would have been treated like the Claimant.

*Issue 8.12 (and 16.6/20.3): delay in outcome of disciplinary hearing*

380. The disciplinary hearing took place on 20 September 2019 and the timescale for an outcome identified in the Disciplinary Policy (5 days) was not met. The reason for this was simply that the issues that the outcome letter had to deal with were complicated and it took time to produce it.

381. There is no cogent basis to think that the delay was because of sex, any protected act or the putative protected disclosure.

382. For completeness in relation to direct discrimination: we do not see any relevant comparison here with Mr Gray. We are satisfied a hypothetical male employee in like circumstances would have been treated like the Claimant.

*Issue 8.13 (and 16.6/20.3): dismissal on notice*

383. The Claimant was indeed dismissed on notice on 11 October 2019 to expire on 19 April 2020.

384. As set out above when considering issue 8.7 and 8.10 particularly, this was because Ms Longstaff had taken the view that the relationship with the Claimant had broken down and, the operative vital bit: could not be repaired because the Claimant did not want it to be/would not allow it to be unless and until she was fully vindicated in all respects. We find that she reached this view at an early stage, shortly after the Claimant correspondence of 21 March 2020. Nothing that happened subsequently could possibly have changed her mind.

385. Again we emphasise that Ms Longstaff did think that the three allegations relied upon showed misconduct on the Claimant's part. However, as explained in our findings of fact, we do not think that they were matters the Claimant would have been dismissed for had Ms Longstaff not already taken the view that the relationship with the Claimant could not be repaired because of the Claimant's position.

386. The decision to dismiss the Claimant on notice, rather than summarily, notwithstanding the express findings of gross misconduct reflects, we think, a degree of discomfort on Ms Longstaff's part about the decision to dismiss. This is understandable given our findings.

387. For the reasons given above, the treatment was not because of sex, nor any protected acts nor the putative protected disclosure.

388. For completeness in relation to direct discrimination: we do not see any relevant comparison here with either Mr Gray or Mr Meryon. The relations with those employees were not strained and there were no comparable employment issues. We are satisfied a hypothetical male employee in like circumstances would have been treated like the Claimant.

*Issue 8.14 (and 16.6/20.3): suspension during notice period*

389. The Claimant was suspended during her notice period. However, we do not accept that this was unfair or that it was in any way related to sex.

390. The reason that Claimant was suspended was that it became clear that she was acting deliberately to harm the interests of the First Respondent. She had taken steps to deliberately sabotage some open days at the School. She did this by taking home the sheet music that was needed for the performances. Further, it became clear that the Claimant was emailing some of the Schools students in terms that were highly inappropriate and blurred the boundary between teacher and student.

391. Suspension in these circumstances was entirely unsurprising and indeed it would have extremely surprising if the Claimant had not been suspended.

392. The suspension had nothing whatsoever to do with the Claimant's sex, any protected disclosure or any protected act.

393. For completeness in relation to direct discrimination: we do not see any relevant comparison here with either Mr Gray or Mr Meryon. The relations with those employees were not strained and there were no comparable employment issues. We are satisfied a hypothetical male employee in like circumstances would have been treated like the Claimant.

*8.15 (and 16.6/20.3): delay in dealing with grievance of March 2019*

394. It did take a long time to deal with the Claimant's grievance of 26 March 2020. However, there is no remotely cogent reason to consider that this had anything to do with gender and the Claimant has not seriously advanced such a case. The grievance took a long time to deal with because:

394.1. It was initially considered under two processes. Firstly as a whistleblowing complaint and secondly once that had completed as a grievance;
394.2. There was a large number of people to interview and this could not be done until late June 2019;
394.3. The summer holidays then intervened;
394.4. There were a lot of issues to consider and they were quite complicated so this inevitably took time;
394.5. The Claimant provided further information a later stages;
394.6. The other pressures of work.

395. To the extent that the delay was caused by initially dealing with the grievance of 26 March 2019 under the whistleblowing procedure, we do not think that this was a detriment to the Claimant. She could not have any justified sense of grievance about it. Given the nature of the concerns expressed it was perfectly sensible to deal with the letter of 26 March 2019 in that way in the first instance. The complaint of 26 March 2019 was also sent by the Claimant to the Respondent's dedicate email account for making whistleblowing disclosures. It was also perfectly sensible to defer dealing with the matter as a grievance until that whistleblowing process had been completed.

396. The further delays were not because of any protected act/the putative protected disclosure in the relevant sense. They were rather because of the practicalities identified above.

397. For completeness in relation to direct discrimination: we do not see any relevant comparison here Mr Gray. We are satisfied a hypothetical male employee in like circumstances would have been treated like the Claimant.

*8.16 (and 16.6/20.3): failure to deal with grievance of August 2019 formally*

398. The grievance of August 2019 was initially dealt with informally. However, there is nothing untoward about that and it was in accordance with good practice to try and deal with it informally. Given the circumstances pertaining at the time it was a particularly good idea to attempt this. We are satisfied that Ms Longstaff did her best to resolve this grievance informally. However, she was not, of course, impartial by this point given what we have said above.

399. When informal resolution failed, the First Respondent began dealing with the grievance formally. However, it ceased to deal with the grievance at all upon the Claimant's summary dismissal. This was because Mrs Longstaff considered it pointless at that stage for the grievance process to continue. The Claimant's employment had ended and relations between the parties had completely and utterly broken down. There was no prospect of any kind of internal resolution to the dispute.

400. We find that this had nothing to do with the Claimant's sex, the putative protected disclosure or any protected act.

401. For completeness in relation to direct discrimination, we do not see a relevant comparison with Mr Gray here. In the Claimant's case so much management time had been spent managing her and matters had become so acrimonious there was every reason to attempt an informal resolution. Ms Longstaff was never in that position with Mr Gray. Later the Claimant was summarily dismissed. Those circumstances also never applied to Mr Gray. In our view a hypothetical male comparator in the Claimant's position would have been treated in the same way.

*Summary dismissal*

402. We consider this under the heading of 'unfair dismissal' but do from the perspective not only of unfair dismissal but also discrimination, victimisation and PID detriment.

*Victimisation*

403. In our view the Claimant did the following protected acts:

403.1. Her grievance dated 12 September 2018. This was largely about bullying and had little emphasis on sex discrimination. However it did include an allegation as follows: *"I am concerned that AG seems to treat women with disrespect. This can be backed up by other members of staff."* We think this is an allegation of workplace sex discrimination;

403.2. Solicitors' letter of 9 January 2019 and the letter of appeal against final written warning (undated but written in January 2019). These in terms made allegations of sex discrimination.

403.3. The grievances of March and August 2019. These in terms made allegations of sex discrimination.

404. We do not think that the Claimant appeal letter (undated but from around October/November 2018) against the outcome of her first grievance was a protected act. It does not make any allegation of discrimination or otherwise meet the criteria at s.27 Equality Act 2010.

*Issue 16.1 (and 20.3): Between September 2018 and January 2019, the First Respondent called into question the reasonable decisions the Claimant had made concerning funds connected with a performance at the Edinburgh Fringe Festival in 2018*

405. This allegation we understand to relate to the following paragraph of the Claimant's statement:

> *181 iii) In September 2018 and 2019, the school accused me of not giving them the money from the ticket sales. KH's report states that the teacher didn't know how much money ticket sales raised and that there was no way of the school finding out how much money was raised. However, the school was fully aware that the money was held on account at the theatre and would be returned in October/ November. [p.472] AGY signed the contract which clearly stated this. In addition, this is what happened with the Drama Trip to Edinburgh.*

406. To be clear, the reference in the above passage "*KH's report states that the teacher didn't know how much money ticket sales raised and that there was no way of the school finding out how much money was raised"* is a reference to an inquiry Ms Hailstone made on 26 April 2019 of KPMG. Ms Hailstone was not in fact making an allegation herself but rather quoting from KPMG's audit of Edinburgh 2017. She did this in order to ask KPMG if it had had a view on how the profits from Edinburgh 2017 should have been spent.

407. In any event, the Claimant was criticised in the reconciliation of Edinburgh 2018 for failing to be able to account for the amount of the ticket sales generated. She did not herself have any record of the amount of tickets sold and thus the profits made from the enterprise. We do not agree with that criticism of the Claimant. We do not see that she did anything wrong in leaving it to C-Venues to deal with the box-office for the girls' performances.

408. However, we do not see anything at all to link the criticism with the Claimant's protected acts. The original concern of this genus was that raised by KPMG in relation to Edinburgh 2017. That predated all of the Claimant's protected acts. The concern was repeated the following year, this time internally. It is clear that the finance team continued to struggle to get their heads around the arrangements which the Claimant made with C-Venues. They were out of the ordinary. They thought she ought to personally know the amount of profits the

girls' shows raised. We think this was harsh for the reasons given but see nothing at all to link it to any protected act.

409. This matter predates the putative protected act and for that and the reasons above cannot have been on the ground of it.

*Issue 16.2 (and issue 20.3): Dr Brandon's email of 12 September 2018. This contradicted instructions to pay the income into the Enterprise account.*

410. In her email of 12 September 2018, Dr Brandon indeed said (of the proceeds for tickets sales at Edinburgh 2018) "*Once this is money is properly accounted for, the refunds that were agreed previously for parents can be calculated and processed."* In context this meant that the money would be paid into the Enterprise account in the first instance, accounted for as required, then the remainder refunded to parents. There was thus no contradiction.

411. In any event, this had nothing to do with any of the Claimant's protected acts. Dr Brandon's email predated knowledge of the Claimant's first protected act. Although the details of the Claimant's grievance, which constitute the first protected act, were dated 12 September 2018, the Claimant did not send the grievance to the First Respondent until 14 September 2018. Even if that is wrong, there no evidence that Dr Brandon was aware of the protected act and still less that it had any bearing on her email of 12 September 2018. In truth there is no rational connection between any protected act and the email of 12 September 2018.

412. Further, the Claimant welcomed the now impugned aspect of Dr Brandon's email of 12 September 2018. She did not have any sense of grievance about it never mind a justified one. It was not a detriment.

413. This matter predates the putative protected act and for that and the reasons above cannot have been on the ground of it.

*Issue 16.3 (and issue 20.3): Dr Brandon's email of 13 September 2018*

414. It is true that in response to an email from the Claimant dated 12 September 2018, in which the Claimant suggested she was grateful for the rethink on refunding ticket sales to parent, Dr Brandon emailed the Claimant on 13 September 2018 stating that there had not been a re-think of policy. She purported that it was simply standard, existing policy to refund parents in the event of an excess after a trip.

415. The list of issues complains that Ms Brandon's email was an attempt to hide the fact that the Claimant had previously received confirmation that the Edinburgh Fringe Festival performance-related earnings should be paid into the Enterprise Fund to be spent on other school items.

416. If that was the reason for the email, the complaint to the tribunal, which is of victimisation, would fail given that such a reason, though perhaps reflecting poorly, is not one proscribed by s.27 Equality Act 2010.

417. In fact, we do not think that the true reason is either the one alleged in the text of the list of issues or any protected act.

418. Mr Gray, who was copied into the chain responded to Mrs Armstrong and Dr Brandon upon seeing the Claimant's email. He said: "*Please note: There's no revised thinking on anything. What we are not doing is have this year's trip subsidised by last year's parents, or next year/this year etc. Refunding parents when a trip has a surplus after reconciliation is normal business. Please advise her of this, or we'll have issues in future if there's a mistaken belief the agreed policy and process have been bent to her will".*

419. Dr Brandon emailed the Claimant in the terms that she did in order to give effect to the concern that Mr Gray raised. The reason for the treatment complained of, in other words, was that Dr Brandon and the other SLT members in the chain, did not want the Claimant to think that a policy had bent to her will since it was anticipated that if she did get that impression it would encourage her to try and get her way again in future.

420. This matter predates the putative protected act and for that and the reasons above cannot have been on the ground of it.

*Issue 16.4 (and issue 20.3): Dr Brandon gave the Claimant conflicting advice in relation to funds from the Edinburgh performances.*

421. At the departmental meeting on 21 March 2019, Dr Brandon's advice was that the funds from ticket sales at professional performances should be paid into the Enterprise Account and the headmistress of the School would then decide what should be done with them.

422. The advice given at the meeting essentially reverted to the position taken by Mr Gray in his email of 24 January 2018. In between that email of 24 January 2018 and the departmental meeting:

422.1. There was Ms Longstaff's email of 28 March 2018 which stated at point 5 "*We also agreed that the tickets sales (after VAT is paid) could be used towards the performance costs of the trip such as theatre hire, programme and production costs. Please liaise with Jane Brandon and Steph Upton on this."* In other words she gave an assurance that the ticket sale money would be used for this purpose and not the general good of the School.

422.2. Then there was Dr Brandon's email of 12 September 2018 in which she said "*Once this is money is properly accounted for, the refunds that were agreed previously for parents can be calculated and processed.*" In

other words she gave an assurance that the ticket sale money would be used for this purpose and not the general good of the School.

422.3. There was the correspondence of 13 September 2018, in which it was suggested that it was simply normal practice to refund excess funds following a trip and that this obviously applied to ticket sales.

423. All in all, we can certainly understand why the Claimant was confused by what is fair to describe as the mixed messages she was receiving.

424. However, we do not see the any link with any protected act done by the Claimant. In our view there simply is no evidence of any such link and there is no basis for inferring one. We think there is not even a remote possibility that the complaints of discrimination that the Claimant had made acted on Dr Brandon's mind so as to cause her to say what she said about ticket sales.

425. This matter predates the putative protected disclosure which cannot have been the ground of it.

*Issue 16.5 (and issue 20.3): invitation to meeting on 18 March 2019*

426. This is a reference to a meeting originally foreshadowed by Mr Boyd in correspondence with the Claimant's solicitors on 7 March 2018. The purpose of the meeting was clearly stated as set out in our findings of fact. Mrs Armstrong then invited the Claimant to the meeting on 18 March 2019. The Claimant asked her for an explanation for the meeting and she gave her one that was broadly consistent with Mr Boyd's and we have set out fully in our findings of fact.

427. We do not accept, as the Claimant suggests, that the meeting was characterised as being to address strains in the relationship with Mr Meryon. Nor do we accept that the Claimant could reasonably have interpreted that as the meaning of what either Mr Boyd or Mrs Armstrong said was the purpose of the meeting. Nor do we accept the Claimant's pleaded case that the only person she had a strained relationship was Mr Gray. It is clear that the Claimant's relations with Ms Longstaff, Mrs Armstrong and Dr Brandon at the very least had also been severely strained.

428. The Claimant's own email of 21 March 2019 and the fact she would not attend this meeting are themselves good evidence that her relations with the First Respondent where much more widely strained than simply the relationship between her and Mr Gray. She wrote:

> *"The email I showed you that was written by David Boyd is not fair and not correct so while this is being challenged, and while the school and the Trust is being investigated by my lawyers and further, then it's not possible to repair the damage caused by members of the SLT. It is only ever going to be possible to repair damage once matters have been properly dealt with…"*

429. We find that the meeting which Mr Boyd/Mrs Armstrong intended be held with the Claimant was just as they described. Further, this meeting was clearly an excellent idea. The employment relationship had become very strained and having an informal meeting of the sort envisaged was just what was needed. It gave the best chance of normalising relations. We reject any suggestion that the meeting was intended to be punitive or front for advancing some agenda adverse to the Claimant. It was an attempt to make peace.

430. We do not think that the invitation to this meeting was, in the relevant sense, because of any protected act by the Claimant. There were separate processes in place for dealing with the Claimant's correspondence identified at paragraph 15 of the list of issues (three of which had been made at this point, of which two were protected acts): disciplinary and grievance processes. The purpose of this meeting was distinct. It was to try and normalise relations between the Claimant and her employer following a period of significant friction in which relations had been strained. And it was to try and put the relationship on a good footing again to avoid history repeating itself and problems in the employment relationship recurring. The complaints that the claimant had made that are embodied in the correspondence at paragraphs 15.1-15.3 of the list of issues, were part of a background factual matrix but they were not the reason why this meeting was proposed.

431. The putative protected disclosure had not yet been made and thus cannot have been the ground of the treatment complained of.

432. In light of the nature of the meeting as described above, we are satisfied that being invited to it was not in any way a detriment to the Claimant. It was not a matter which she could have a justified sense of grievance about.

433. This matter predates the putative protected act and for that and the reasons above cannot have been on the ground of it.

*Issues 16.6*

434. Dealt with above in the course of issue 8.4 – 8.16.

*Public interest disclosure*

435. The Amended Particulars of Claim refers at times to protected disclosures (in the plural). However, the only matter it actually identifies as a protected disclosure is the letter of grievance of 26 March 2019.

436. The List of Issues only identifies one putative protected disclosure, namely that made in the Claimant's complaint of 26 March 2019. It left scope for the Claimant to identify further protected disclosures. However, at the outset of this hearing it was confirmed that the List of Issues as drawn by Employment Judge Short identified the issues for the tribunal to adjudicate on, save for some

additional comparator information which the Claimant had provided. This is the basis upon which the trial proceeded and upon which we proceed.

437. The essence of, what then is the only putative protective disclosure before us, is the statement that the Respondent may be "*breaching performance rights laws in paying funds earned from the Edinburgh festival performances directly into its Enterprise Account, rather than to the pupils and their parents… I can only therefore reasonably assume that the School/GDST are comfortable with breaching relevant laws and regulations. "*

438. We are satisfied that this was a disclosure of information (the information being that the Respondent was requiring funds from ticket sales to be paid into the Enterprise Account) and that it alleged that the Respondent may be in breach of a legal obligation, namely an unspecified performance rights law.

439. While we accept that the Claimant had a believe that the Respondent might be in breach of performance rights laws we do not accept that this was a reasonable belief. The Claimant was cross examined about the basis of the belief that the First Respondent may have been acting unlawfully in breach of performance rights laws by paying money into the Enterprise account rather than to pupils and their parents. From that cross-examination it was plain that both at the time that the disclosure was made and now, there was very little behind the Claimant's belief. The height of her evidence was that in the past she had been required to get a license from a local authority for a youth music performance in a public place. That was a performance that did not involve any money. We do not think that conferred a reasonable basis for the relevant belief. The past experience referred to a rather different topic that did not have anything to do with ticket sales still less what should be done with the proceeds of ticket sales.

440. All PID complaints must fail because there was no PID as well as for the reasons given where the specific detriments are considered.

*Issues 20.1 – 20.3*

441. These are dealt with in the course of issues 8.1 – 8.2 and 8.4 – 8.16 and 13.1.

*Harassment related to sex*

*Issue 13.1 (and issue 20.1): Mr Gray chasing the Claimant down the stairs and shouting at her*

442. Our findings of fact in respect of this incident on 12 July 2018 are set out above in our findings of fact.

443. It is plain that Mr Gray's conduct was unwanted on the Claimant's part. It is also plain that it had the effect of creating a hostile and intimidating environment for her. We accept the Claimant's evidence that this is subjectively how she felt.

We also accept, having regard to what is objectively reasonable and all of the circumstances of the case, that a hostile and intimidating environment was created. In particular, being chased down a steep flight of stairs by a man in the context of a dispute is something that obviously created such an environment.

444. The more difficult issue is whether this conduct was related to sex. That is of course as we have identified in our legal directions quite a broad test. In answering this question we have at the front of our mind the fact that there is a long history of complaints, primarily by women, about Mr Gray's conduct. We also note that he once made a gender related comment about the payment of school fees. We have summarised these above. However, though that is relevant background from which we can in principle draw inferences, the task for us is to analyse whether Mr Gray's conduct towards the Claimant on this occasion was related to sex. We do not think that it was:

444.1. The content of the actual disagreement between Mr Gray and the Claimant was entirely unrelated to sex;
444.2. In the argument in Mr Gray's office both sides became heated and deeply exasperated each other with their respective positions in the disagreement. This again was entirely unrelated to sex;
444.3. The thing that made Mr Gray lose his temper and chase the Claimant down the stairs was her comment that he, correctly, interpreted as a threat to his employment, to the effect that she would get rid of him like she had got rid of the former headteacher;
444.4. The comment the Claimant made was unrelated to sex. Mr Gray's reaction to it, was also unrelated to sex. He was stunned and furious that the comment had been made and wanted to see if the Claimant would repeat it. That is why he chased the Claimant down the stairs. It was not because of her sex (we think he would have treated a man in just the same way) or more importantly for any reason related to sex.
444.5. Mr Gray was generally known to be short-tempered when challenged.

445. We think these factors gives a complete and compelling explanation for what happened. We do not see any basis to find whether through interference or otherwise that the conduct was related to sex.

446. This event predated the putative protected disclosure and cannot have been because of it.

*Issue 13.2: conduct towards Claimant in June 2017, 12 July 2018 and during 2018*

447. These complaints relate to three events the first two of which are these:

447.1. In June 2017 the incident with the Claimant's lanyard on the staff lawn;
447.2. On an occasion in 2018: reprimanding the Claimant for trying to take a plate out of the cafeteria.

448. We have made detailed findings of fact about each of these incidents above. Based on those findings we conclude that on each of these occasions Mr Gray's treatment of the Claimant was obviously unwanted. The Claimant also perceived the treatment to create a hostile and intimidating environment. In all the circumstances of the case including what is reasonable we agree that a hostile and intimidating environment was created. Mr Gray approached the matters in a high-handed way that involved an unnecessarily public reprimand for what were at most very minor infractions.

449. The more difficult issue is whether the conduct complained of related to sex. We again have at the front of our mind the fact that there is a pattern of complaints against Mr Gray the preponderance of which is from women; we also note that he once made a gender related comment about the payment of school fees. We have summarised these above. However, though that is relevant background from which we can in principle draw inferences, the task for us is to analyse whether Mr Gray's conduct towards the Claimant on either of these occasions was related to sex. We do not think that it was:

449.1. What is clear from the evidence is that Mr Gray was an absolute stickler for rules. He did not hesitate to try to enforce them wherever he thought they were being breached.

449.2. Mr Gray's communication style was very blunt when he went about enforcing rules. One of the traits of his style was that he was by conventional modern standards sometimes overly direct and frankly a bit rude in the way he spoke to people. He did not intend to be and did not recognise his behaviour as such. But it is how he was.

449.3. Mr Gray also had a tendency, when enforcing rules, of adopting body language that others found intimidating whether by standing too close or pointing his finger or the like.

449.4. We are satisfied that Mr Gray treated both men and women in this way. For instance, the complaint that Mr Riley made about Mr Gray echoes exactly the sort of body language, tone and communication style that the Claimant complains of here.

449.5. His priority was always to enforce the rules; he did that in his particular style to both men and women.

449.6. We do not, in all the circumstances think it would be right to infer that the treatment of the Claimant on these occasions was in some way related to sex. We do not think it was.

450. The third event is that of July 2018 in which Mr Gray was critical of the Claimant for arranging for her pupils to organise refreshments at an event rather than using the school catering. In respect of this disagreement, although Mr Gray's conduct was unwanted on the Claimant's part ,we do not think it would be reasonable to regard it as creating a proscribed environment or violating the Claimant's dignity. There was a heated conversation but it was a conversation in which both sides were heated and in which both sides exasperated each other. It did not, however, cross the threshold into harassment. (We are aware that the

conversation on 12 July 2018 developed further and ultimately led to the chasing down the stairs incident. However, those further exchanges between the Claimant and Mr Gray are the subject of other specific complaint that we have dealt with).

451. We do not accept that Mr Gray's conduct here was related to sex. Rather the reason for his conduct was that he was of the, perhaps overly simplistic view, that the school caterers were there to provide catering and it was therefore them that should provide it. Mr Gray tended to see things in black and white and therefore it is not surprising that this was his view. We accept that in the past, the event under discussion had been run by male teachers and that Mr Gray had not been critical of them for not using the school caterers but rather students to provide catering. However, that was because Mr Gray had no involvement in the running of the event in preceding years. If he had, we think he would have taken the same view.

*Issue 13.3: Mr Gray manipulated his position to instigate disciplinary proceedings against the Claimant on 21 November 2019*

452. This complaint fails on the facts. We do not accept that Mr Gray manipulated the School / First Respondent / anyone to instigate disciplinary proceedings against the Claimant.

453. Mr Gray did raise a grievance about what the Claimant said to him on 12 July 2018 and he did ask colleagues to give an account of what the Claimant had said. However, this was not manipulative. He raised the grievance because he was deeply upset by what the Claimant had said (to the effect that she would get rid of him like she had the previous Headmistress) and this was plainly and obviously something that he was well within his rights to make a complaint about. He asked colleagues for an account of the events but he did not tell them what to say. It would not be fair to describe any of that as manipulative. Nor was it in any way related to sex.

454. It was Ms Longstaff's decision to instigate a disciplinary process and Mrs Armstrong's to impose a final written warning. We have analysed this in the course of issue 8.1. They were not manipulated by Mr Gray. Nor in any event was their conduct related to sex.

*Unfair dismissal*

455. The starting point in this case is to correctly identify the dismissal. In this case, a decision was made to dismiss the Claimant on notice. That decision was made on around 11 October 2019 and would have taken effect on 19 April 2020. However, that dismissal never in fact happened. Instead, the dismissal on notice was rescinded and replaced by a summary dismissal on 8 November 2019. There was only one dismissal, the summary dismissal, and it is the reasons for that dismissal that fall to be analysed when identifying the reason for the dismissal.

456. In our view the reasons why Ms Longstaff summarily dismissed the Claimant were as follows:

456.1. The Claimant' emails with students which blurred professional boundaries, were overly-familiar, affectionate and emotional. We have identified the most significant ones in our findings of fact. These were additionally considered to be a breach of the ICT Acceptable Use Agreement;
456.2. The Claimant taking School property (music) without authority and with the intention to harm the First Respondent;
456.3. Ignoring instructions that the concert at the RHN was cancelled and emailing students to say that the event would continue.

457. There was compelling evidence that the Claimant had done the above and it is not at all surprising that someone would be summarily dismissed for them. We readily find that these were the reasons for her dismissal. These reasons were of a different order to, eclipsed and entirely superseded all that had gone before. They were exactly the kind of thing that one would expect to lead to summary dismissal and they did in this case. The appropriate statutory label for these reasons is 'conduct'.

458. The next issue is the fairness of the dismissal. As set out in the findings of fact, there was overwhelming evidence before Ms Longstaff that the Claimant had acted in the ways set out above. Largely this was in the form of her own email correspondence which was self-impugning. Ms Longstaff certainly had a reasonable belief that the Claimant was guilty.

459. The summary dismissal was not, however, preceded by a disciplinary hearing or any investigation in which the Claimant's response to the charges was taken. To that extent it was highly unusual. The Claimant was given a right of appeal and an opportunity to make representations in the appeal but that of course would post-date the summary dismissal.

460. The task for us is to assess whether the dismissal was in the band of reasonable responses.

460.1. A good starting point is the seriousness of the matters that the Claimant was dismissed for. In our view, the matters that the Claimant was dismissed for were each obvious gross misconduct. They were extremely serious matters.

460.1.1. The emails with students were totally inappropriate in parts and indeed evidenced a blurring of boundaries that must exist between teachers and pupils. It is not appropriate for a teacher to openly designate certain pupils as their favourites,

or to tell the students that they have a special relationship with them or to sign emails with kisses (in the form of 'x').

460.1.2. Taking the sheet music was, and was understood to be, a calculated effort to make life difficult for the SLT by sabotaging the musical performances at the open days. The Respondent did not accept (and nor do we) that the Claimant simply took the music home to organise it. That was a cloak for the real reason and her correspondence with Mr Clarkson was revealing.

460.1.3. The Claimant's conduct in relation to the event at RNH was a clear act of defiance of reasonable management instructions. It was aggravated by the fact it involved direct contact with students in which the management instructions were directly contradicted.

460.2. It is also vital to take into account the background to the Claimant's conduct: she was provoked into acting as she did by the dismissal on notice. Moreover, she correctly perceived that the dismissal on notice had arisen as a result of a concerted effort to find something to dismiss her for. That is plainly a relevant consideration in assessing the fairness of her actual dismissal. However, we also note that the dismissal on notice was not intended by Ms Longstaff to provoke the Claimant into doing something that would enable her to be summarily dismissed. On the contrary, Ms Longstaff was certainly hoping for a peaceful separation at the end of the Claimant's notice period. That is also relevant background.

460.3. There was undoubtedly significant mitigation, principally:

460.3.1. The length and quality of the Claimant's service;

460.3.2. The Claimant had just been dismissed on notice from employment which she had been in for most of her adult life;

460.3.3. As just noted, she suspected, correctly, that she had been dismissed on notice following a concerted effort to find something to dismiss her for. This was a provocation.

460.3.4. The Claimant's world, not just her work, was deeply intertwined with the School. These things therefore hit her even harder.

460.3.5. The Claimant found the position she was in, of being dismissed but upon a notice period in which she was expected to work, untenable. It was certainly extremely awkward.

460.3.6. In relation to the emails with the school student the Claimant was essentially trying to comfort them.

460.3.7. In relation to concert at RNH, the Claimant's objective was for this concert to go ahead which was important to her for various reasons including that other schools were involved.

461. Another important factor is the absence in this summary dismissal of anything like a conventional disciplinary process that gave effect to, for instance, the principles of the *ACAS Code of Practice: Disciplinary and Grievance Procedures*. The tribunal is of course required to and does take that Code into account in accordance with s.207 TULR(C)A 1992.

462. The Respondent seeks to answer this lack of procedure by pointing to the fact that it was a condition of the Claimant's dismissal on notice that she comply with the terms of her contract and school policies. We do not think that is answer at all. Firstly, there was not a proper basis for the dismissal on notice; secondly, even if there were, ordinarily the reasonable employer would carry out a fresh fair process in relation to further acts of misconduct; thirdly, we do not accept that matters that led to the dismissal on notice played any part in the reason for the Claimant's actual dismissal. Once she committed the three acts of gross misconduct that she did in her notice period, as we have said, they eclipsed and entirely superseded all that had gone before. They provided the complete and comprehensive reasons for the dismissal in Ms Longstaff's mind. In order for the dismissal to be fair, then, there would need to be another basis to explain the lack procedure. In our view there is such an explanation.

463. In our view this was a case in which the decision to dismiss was in accordance with s.98(4) ERA and the band of reasonable responses:

463.1. *Procedurally*: this was a case in which it would have been futile to go through a disciplinary process of the sort envisaged by the ACAS code or similar. Firstly, there was overwhelming and incontrovertible evidence that the Claimant had conducted herself in the manner alleged. Secondly, it could not have been more plain that there was no prospect of this employment relationship continuing. The relationship had utterly and irretrievably broken down. A disciplinary process would have served no real purpose. It was plain that not even the Claimant wanted the relationship to be restored.

463.2. *Substantively*: although the Claimant had significant mitigation for her conduct, on the facts of this case in our view it does not take dismissal outside of the band of reasonable responses. The conduct was and remained extremely serious. It involved harming the interests of the School, taking School property away in order to do so, gross insubordination in directly contradicting reasonable instructions and doing so directly with students, and corresponding with students in a wholly inappropriate way that show that professional boundaries had been crossed. Further, as stated it could not have been plainer that the employment relationship had utterly and irretrievably broken down and could not continue even for the notice period. There was no cogent reason to think, going forwards, that if the Claimant's employed continued that she would have refrained from repetition of the kind of

behaviour that was impugned in the summary dismissal. The Claimant evidently was and remained vengeful. In short, no sanction short of dismissal was in any way viable.

464. Given the circumstances Ms Longstaff was faced with come 8 November 2019 it simply cannot be said that the decision to dismiss the Claimant was outside of the band of reasonable responses. There was really no sensible option but summarily dismissal at this point and altogether the dismissal was fair within the meaning of s.98(4) ERA.

465. For completeness: we have stated in this section the reasons for the Claimant's summary dismissal. Those reasons were not related in any way to sex, protected acts or the putative protected disclosure.

## Conclusion

466. The Claimant's claims have not succeeded, but we think it is important to record the following points:

466.1. We found this a difficult and in some areas finely balanced case;

466.2. We have found some central planks of the Claimant's case to be true, most notably:

466.2.1. There were a large number of bullying complaints against Mr Gray and he was in a meaningful sense shielded from formal disciplinary *investigation* when in the ordinary course it would be expected;

466.2.2. The instructions the Claimant was given in relation to the financial aspects of the Edinburgh trips were not always consistent and were sometimes unclear;

466.2.3. There was not a proper basis for the decision to dismiss the Claimant on notice (albeit that the dismissal on notice was later retracted and replaced by a summary dismissal for which there were good reasons).

**Employment Judge Dyal**

Date 18.01.2022

Corrected on 11.02.2022

# Appendix to Reserved Judgment & Reasons: Agreed List of Issues extract from Case Management Orders of Employment Judge Shore

## Jurisdiction – Discrimination: s.123 Equality Act 2010

1. In respect of each act of discrimination, did the Claimant present her complaint to the Tribunal within three-months starting with the date of the act (or omission) about which the Claimant complains?
2. To what extent, if any, do each of the acts of discrimination about which the Claimant complains form part of a continuing act extending over a period and what is the end date of that period?
3. In the event that the alleged acts of discrimination were presented by the Claimant out of time, would it be just and equitable for the Tribunal to extend time?

## Jurisdiction – Protected Disclosures: s.48 Employment Rights Act 1996

4. In respect of each alleged protected disclosure, did the Claimant present her complaint to the Tribunal within three-months starting with the date of the detriment, or where the alleged detriment is part of a series of detriments, within three-months of the last of the detriments?
5. If not, was it reasonably practicable for the Claimant to present her complaint to the Tribunal within time?
6. If it was not reasonably practicable, did the Claimant present her complaint within

   a reasonable period of time thereafter?

## Direct Sex Discrimination: s.13 Equality Act 2010

7. Did the First and/or Second Respondent treat the Claimant less favourably than it/he either did or would have treated a man in directly comparable circumstances?
8. The Claimant alleges that the following events occurred, and in each instance, amounted to less favourable treatment because of the Claimant's sex:

8.1. In October/November 2018, the First Respondent subjected the Claimant to formal disciplinary proceedings which resulted in an unwarranted final written warning [paragraphs 28 and 18 of the Amended Particulars of Claim].

8.2. The First Respondent failed to take formal disciplinary action against the Second Respondent in relation to his behaviour which amounted to bullying and harassment [paragraphs 28 and 7 to 15 of the Amended Particulars of Claim].

8.3. The First and/or Second Respondent asked the Claimant to collect receipts for all expenses incurred by pupils in respect of the 2018 Edinburgh Fringe Festival trip. This was in contrast to Angus Meryon who was not required to collect receipts during a trip to Budapest some two months later [paragraph 29 of the Amended Particulars of Claim].

8.4. On 26 March 2019, the Claimant prepared a draft letter to parents asking for additional funds for the 2019 Edinburgh Festival trip. Despite sending numerous follow up emails to the School between March and July 2019, the Claimant continued not to receive any clarity. It was only when the Claimant confirmed that the trip might have to be cancelled that the School confirmed on 2 August 2019 that the Claimant could contact parents [paragraph 26(d) of the Amended Particulars of Claim].

8.5. On 16 May 2019, Ms Brandon informed the Claimant that she was unable to send any further communications to parents concerning the 2019 Edinburgh Festival trip. On 18 May 2019, the School confirmed that the Claimant could correspond with parents [paragraph 26(e) of the Amended Particulars of Claim].

8.6. On 20 May 2019, Jonathan Crips, Head of Finance at the First Respondent sent an email to the Second Respondent entitled 'Additional Guidance for Trips, Ticket Sales and Pocket Money'. The Second Respondent deliberately failed to send the guidance to the Claimant [paragraph 26(f) of the Amended Particulars of Claim].

8.7. On or around 18 June 2019, the School confirmed to the Claimant that she had not been shortlisted for the Director of Music position due to a live disciplinary warning on her record [paragraph 26(g) of the Amended Particulars of Claim].

8.8. On 20 June 2019, the Claimant was deliberately excluded from the new Music Administrator and Music Director interviews on 20 June 2019 [paragraph 26(h) of the Amended Particulars of Claim]. 8.9. On 20 June 2019, the Claimant was required to leave the room when she attempted to sit in a music lesson carried out by the new Music Director [paragraph 26(i) of the Amended Particulars of Claim].

8.10. On 14 June 2019, the First Respondent notified the Claimant that she would be subjected to further disciplinary proceedings [paragraph 26(j) of the Amended Particulars of Claim].

8.11. The First Respondent continued with the disciplinary process instigated on 14 June 2019 notwithstanding that the Claimant challenged its fairness. Further, the First Respondent refused to suspend the disciplinary process pending determination of the Claimant's grievance and the disciplining officer, was neither independent nor impartial [paragraph 26(k) of the Amended Particulars of Claim].

8.12. The First Respondent failed to notify the Claimant of the outcome of the disciplinary hearing on 20 September 2019 within the time frame identified, or within a reasonable time frame, thereby subjecting the Claimant to further delays and uncertainty concerning her continued employment [paragraph 26(l) of the Amended Particulars of Claim].

8.13. On 11 October 2020, the First Respondent informed the Claimant that her employment would terminate on 19 April 2020 [paragraph 26(m) of the Amended Particulars of Claim].

8.14. During her period of notice, the Claimant was unfairly suspended [paragraph 26(n) of the Amended Particulars of Claim].

8.15. The First Respondent unreasonably delayed concluding the Claimant's grievance dated 26 March 2020 [paragraph 26(p) of the Amended Particulars of Claim].

8.16. The First Respondent failed to treat the Claimant's grievance of 9 August 2019 as a formal grievance. Instead it was dealt with informally and in a manner that lacked impartiality [paragraph 26(o) of the Amended Particulars of Claim].

9. The Claimant relies on the following comparators:

9.1. the Second Respondent;

9.2. Angus Meryon, and;

9.3. a hypothetical comparator of a man in materially the same circumstances as the Claimant.

[THE CLAIMANT IS TO IDENTIFY WHICH COMPARATOR RELATES TO WHICH ALLEGATION.]

## Harassment related to Sex: s.26 Equality Act 2010

10. Did the Second Respondent subject the Claimant to unwanted conduct related to her sex?

11. If so, did the unwanted conduct have the purpose or effect of violating the Claimant's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

[THIS LIST OF ISSUES SHOULD BE CONFINED TO ALLEGATIONS THAT HAVE BEEN PLEADED IN THE AMENDED PARTICULARS OF CLAIM. IN THE EVENT THAT THE CLAIMANT CONSIDERS THAT THERE ARE FURTHER ALLEGATIONS OF DIRECT DISCRIMINATION TO BE ADDED TO THIS LIST OF ISSUES, SHE MUST IDENTIFY THEM BY REFERENCE TO SPECIFIC PARAGRAPHS OF THE AMENDED PARTICULARS]

11.1. In relation to allegations 8[x] to [x] above,

11.2. In relation to allegations 8[x] to [x] above,

11.3. In relation to allegations 8[x] to [x] above,

12. If so, was it reasonable for the conduct to have that effect?

13. The Claimant asserts that the following conduct occurred and is to be regarded as harassment related to her sex:

13.1. On 12 July 2018, the Second Respondent chased the Claimant down three-flights of stairs and shouted at her [paragraph 15 of the Amended Particulars of Claim].

13.2. The Second Respondent spoke to the Claimant in a disrespectful, intimidating and undermining manner in June 2017, on 12 July 2018 and during 2018 [paragraphs 8(a) to (c) of the Amended Particulars of Claim].

13.3. The Second Respondent used his senior position within the school to unfairly manipulate the school and the First Respondent to instigate disciplinary proceedings against the Claimant on 21st

November 2018 [paragraph 7 of the Amended Particulars of Claim].

## Victimisation: s.27 Equality Act 2010

14. Did the First and/or Second Respondent subject the Claimant to detriments because she had done a protected act?

15. The Claimant asserts that the following events occurred and amounted to protected acts within the meaning of s.27 Equality Act 2010 [paragraph 26 of the Amended Particulars of Claim]:

15.1. The Claimant's grievance dated 12 September 2018;

15.2. The Claimant's grievance appeal lodged in or around October/November 2018;

15.3. The Claimant's disciplinary appeal requests in January 2019;

15.4. The Claimant's grievance dated 6 March 2019. 15.5. The Claimant's grievance dated 9 August 2019.

16. The Claimant asserts that the following events occurred and amounted to detriments:

16.1. Between September 2018 and January 2019, the First Respondent called into question the reasonable decisions the Claimant had made concerning funds connected with a performance at the Edinburgh Fringe Festival in 2018 [paragraph 27a of the Amended Particulars of Claim].

16.2. On 12 September 2018, the Claimant received an email from Jane Brandon (Director of Co-Curricular Activities) confirming that performance-related earnings should be refunded directly to parents. This directly conflicted with the previous instructions that had been given to the Claimant to pay the income into the First Respondent's Enterprise Account [paragraph 27(b)(i) of the Amended Particulars of Claim].

16.3. On 13 September 2018, in response to an email from the Claimant dated 12 September 2018, Ms Brandon emailed the Claimant that there had not been a re-think of policy, but an enactment of the usual policy. Ms Brandon's email was an attempt to hide the fact that the Claimant had previously received confirmation that the Edinburgh Fringe Festival performance-related earnings should be paid into the Enterprise Fund to be spent on other school items [paragraph 27(b)(ii) of the Amended Particulars of Claim].

16.4. On 21 March 2019, Ms Brandon provided the Claimant with conflicting advice in relation to the funds from

professional performances [paragraph 27(b)(iii) of the Amended Particulars of Claim].

16.5. On 18 March 2019, the Claimant was invited to attend a 'general management meeting' by Heidi Armstrong. No details were provided to explain why the meeting had been called and why the Claimant had been singled out to attend the meeting. The explanation subsequently provided to the Claimant, that the meeting was to discuss her *"line management and how strains in working relationships can be addressed*" was inaccurate [paragraph 26(c) of the Amended Particulars of Claim].

16.6. The Claimant also asserts that the allegations of direct discrimination identified at paragraph 8(d) to (p) above also amount to victimisation detriments.

## Detriment following Protected Disclosures: s.47B Employment Rights Act 1996

17. Did the First and/or Second Respondent subject the Claimant to detriments on the grounds that she made protected disclosures?

18. The Claimant asserts that the following amounted to protected disclosures within the meaning of s.43A to 43C of the Employment Rights Act 1996:

18.1. The Claimant's email to Suzanne Longstaff on 26 March 2019 [paragraph 22 of the Amended Particulars of Claim].

TO THE EXTENT THAT THE CLAIMANT WISHES TO RELY ON OTHER ALLEGED PROTECTED DISCLOSURES, THE CLAIMANT MUST IDENTIFY: (1) THE DATE OF THE PROTECTED DISCLOSURE, (2) TO WHOM IT WAS MADE, (3) THE INFORMATION THAT IT DISCLOSED AND WHAT IT TENDED TO SHOW, AND (4) THE PARAGRAPH OF THE AMENDED PARTICULARS OF CLAIM IN WHICH IT IS PLEADED.

19. In relation to each alleged protected disclosure, did the Claimant have a reasonable belief that that the information tended to show one of the matters identified in s.43B of the Employment Rights Act 1996 and was in the public interest?

20. The Claimant asserts that she was subjected to detriments because of the protected disclosures. The Claimant relies on the following alleged detriments:

[THIS LIST OF ISSUES SHOULD BE CONFINED TO ALLEGATIONS THAT HAVE BEEN PLEADED IN THE AMENDED PARTICULARS OF CLAIM. IN THE EVENT THAT THE CLAIMANT CONSIDERS THAT THERE

ARE FURTHER ALLEGATIONS OF VICTIMISATION TO BE ADDED TO THIS LIST OF ISSUES, SHE MUST IDENTIFY THEM BY REFERENCE TO SPECIFIC PARAGRAPHS OF THE AMENDED PARTICULARS OF CLAIM.]

20.1. On 12 July 2018, the Second Respondent aggressively chased the Claimant as she ran down three flights of stairs and shouted at her [paragraphs 25(a) and 15 of the Amended Particulars of Claim.]

20.2. The First Respondent issued her with an unwarranted final written warning [paragraphs 25(b) and 18 of the Amended Particulars of Claim].

20.3. The Claimant repeats each of the detriments set out at paragraph 16 above (the 'victimisation' detriments).

## Unfair Dismissal: s.98 Employment Rights Act 1996

21. Was the claimant dismissed?

22. What was the reason or principal reason for dismissal? The respondent says the reason was conduct [or some other substantial reason]. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

23. If the reason was misconduct, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

23.1. there were reasonable grounds for that belief;

23.2. at the time the belief was formed the respondent had carried out a reasonable investigation;

23.3. the respondent otherwise acted in a procedurally fair manner;

23.4. dismissal was within the range of reasonable responses.

24. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

25. If so, should the claimant's compensation be reduced? By how much?

26. If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?

27. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

28. What basic award is payable to the claimant, if any?

29. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

## Remedy for unfair dismissal

30. Does the claimant wish to be reinstated to their previous employment?

31. Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

32. Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

33. Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

34. What should the terms of the re-engagement order be?

35. If there is a compensatory award, how much should it be? The Tribunal will decide:

35.1. What financial losses has the dismissal caused the claimant? 35.2. Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

35.3. If not, for what period of loss should the claimant be compensated?

35.4. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

35.5. Did the respondent or the claimant unreasonably fail to comply with it?

35.6. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

35.7. Does the statutory cap of fifty-two weeks' pay apply?