



EMPLOYMENT TRIBUNALS

Claimant: Miss B Shiells

Respondents: 1. The Governing Body of Ripon Grammar School
2. North Yorkshire County Council

Heard at: Leeds **on:** 4 to 7 April 2022
13 May 2022 (reserved decision in chambers)

Before: Employment Judge Cox

Members: Mr Q Shah
Mr K Smith

Representation:

Claimant: Miss Aisha, counsel

Respondent: Miss Brewis, counsel

RESERVED JUDGMENT

1. The claim of detriment on the ground of a protected disclosure by Mrs Day complaining to the First Respondent about the Claimant is dismissed on withdrawal by the Claimant.
2. The remaining claim of detriment and the claim of unfair dismissal both fail and are dismissed.

REASONS

1. The Claimant worked for the First Respondent as Deputy Senior House Parent in the girls' boarding house at Ripon Grammar School ("the School") under a contract of employment with the Second Respondent from 23 March 2020 until her dismissal on 22 November 2020.
2. The Claimant brought a claim to the Tribunal alleging that she had been subjected to detriments on the ground of a protected disclosure and that she had been unfairly dismissed by reason of protected disclosures, contrary to Section 47B(1) and Section 103A of the Employment Rights Act 1996 (the ERA). (She had insufficient service to qualify to bring a claim of unfair dismissal under the general test of reasonableness in Section 98(4) ERA (Section 108(1) ERA).) The Second Respondent was the sole Respondent to the detriment claims. As the School has a delegated budget, the claim of unfair dismissal was against the First Respondent but the Second Respondent was made a party to the claim (Regulations 3, 4 and 6 of the Education (Modification of Enactments Relating to Employment (England) Order 2003).

The legal issues

3. At the Hearing, the Claimant withdrew one claim of detriment and that was dismissed under Rule 52 of the Tribunal's Rules of Procedure. The remaining claim of detriment was that on 2 December 2020, Mrs Caroline Day, Assistant Headteacher, Boarding, had made a complaint to the police that the Claimant was harassing her, and had done so on the ground that the Claimant had made a protected disclosure in an email she sent to Miss Marita Murray, Deputy Headteacher and the Respondent's Designated Safeguarding Lead, on 22 September 2020 (referred to in these reasons as disclosure A). In that email the Claimant had alleged that Mrs Day had failed to collect a prescription drug from a pupil, referred to in these reasons as Pupil A, on the pupil's return to the boarding house after a trip home, and had not collected that drug from the pupil's bedroom, which she shared with another pupil, when Pupil A had been taken to hospital after taking an overdose.
4. The Respondents accepted that this was a protected disclosure. They also conceded that Mrs Day had made a complaint to the police about Mrs Day on 2 December 2020 and that that amounted to a detriment. Although this act was committed after the Claimant's employment ended, a worker can complain of post-employment detriment on the ground of a protected disclosure if the detriment is linked to her former employment (Woodward v Abbey National plc (No. 1) (2006) EWCA Civ 822). The Second Respondent did not argue that Mrs Day's complaint was unconnected with the Claimant's former employment. Nor did it argue that Mrs Day's act was the act of a

worker committed outside the course of her employment (see Section 47B(1A) ERA). It therefore accepted that it could be potentially liable for this detriment. The sole issue for the Tribunal to decide was whether Mrs Day made her complaint to the police on the ground of disclosure A. It was for the Second Respondent to show the ground on which the complaint was made (Section 48(2) ERA). The claim would succeed if the protected disclosure materially influenced Mrs Day's decision to make the complaint (Fecitt v NHS Manchester [2012] ICR 372).

5. The decision to dismiss the Claimant was made by Mr Jonathan Webb, the Headteacher, and was communicated to the Claimant in a letter dated 23 October 2020. It gave the Claimant one month's notice of the termination of her employment, bringing her contract to an end on 22 November 2020. The Claimant said that she was dismissed because of disclosure A and a further disclosure she made along similar lines to Mrs Elizabeth Jarvis, Chair of the School's Governing Body, and Mr Matthew Bean, Governor, in a meeting on 7 October 2020 held under the First Respondent's Whistleblowing Policy and Procedure. The Respondents accepted that this too was a protected disclosure. It is referred to in these reasons as disclosure B.
6. The sole issue for the Tribunal to decide in relation to the unfair dismissal claim was therefore whether the Respondents could show that the reason, or principal reason, for the Claimant's dismissal related, as they argued, to her capability and conduct, rather than one or both of the protected disclosures.

The evidence

7. On behalf of the Claimant, the Tribunal heard oral evidence from the Claimant herself and from Mrs Sarah Williams, who worked alongside the Claimant in the boarding house as House Tutor. The Claimant also submitted a witness statement from Mr Adrian Sloanes, an employee of the Second Respondent, about a conversation that the Claimant had with him that the Respondents said was one of the reasons for her dismissal. The Tribunal took this statement into account in its decision-making but gave it less weight than it would have done had Mr Sloanes been available for cross-examination.
8. For the Respondents, the Tribunal heard oral evidence from Mr Webb, Mrs Day and Mrs Jarvis.
9. In addition, the Tribunal considered those documents in the Hearing file to which the parties or the witnesses referred, and some additional documents that were produced during the course of the Hearing.
10. On the basis of that evidence, the Tribunal made the following findings on the facts and issues in the claim.

The background facts

11. In making these findings of fact, the Tribunal has identified where there was a conflict of evidence between Mrs Day and the Claimant. In these cases, the Tribunal has preferred the evidence of Mrs Day. The Respondents invited the Tribunal to doubt the Claimant's credibility generally because she had given false information about previous employment when she applied for her job at the School. The Tribunal accepts that there were substantial inaccuracies in the information the Claimant gave the School about the length of her employment at two previous schools and that the reason she gave at the Hearing for those inaccuracies, namely that these previous periods of employment were a long time ago, was unconvincing. The Tribunal accepts that the Claimant knowingly gave false information in her job application. It does not, however, consider it safe to assume that all her evidence to the Tribunal was unreliable for that reason. Rather, it has preferred Mrs Day's evidence to the Claimant's in areas where they conflicted because Mrs Day's evidence was clear, unequivocal and fully supported by the documentary evidence to which the Tribunal was referred, including emails and notes of meetings.
12. On the day on which the Claimant began her employment at the School, the first national lockdown in response to COVID-19 began. There were no pupils at the School at this time and the Claimant spent her time making changes to the girls' boarding house where she was to work to make it more comfortable. Mrs Day did not begin her employment at the School until 1 September 2020. She was not only Deputy Headteacher, Boarding, but also the Housemistress in both the girls' and the boys' boarding houses and had teaching duties.
13. Mrs Day visited the School before her employment began and first met the Claimant on 15 July 2020, when the Claimant showed her round the boarding house. Over the next weeks they exchanged friendly and positive WhatsApp messages about changes the Claimant was making in the house to make it more welcoming and comfortable for the pupils. On 4 August Mrs Day met the Claimant and Dr Martino, the Deputy Senior Houseparent at the boys' boarding house, to make preparations. It was agreed that Dr Martino and the Claimant would work together on a new staff handbook. The following day, the Claimant told Mrs Day that she was not happy with Dr Martino's ideas and that she could no longer work on the documents because she was too busy.
14. Mrs Day and her husband and her son, who has a substantial disability, moved into their flat in the boarding house on 14 August. The Claimant's initial evidence was that her relationship with Mrs Day was very positive and that things did not start to become difficult between them until she made disclosure A. In answer to questions in cross-examination she accepted that, from Mrs Day's perspective at least, the relationship had begun to deteriorate

well before that. The Tribunal accepts Mrs Day's evidence that the relationship in fact began to deteriorate as soon as Mrs Day moved into the boarding house. On 14 August, Dr Martino was already reporting to Mrs Day that the Claimant was saying that Mrs Day was not capable of doing the job. Dr Martino said she had received "odd" messages from the Claimant to her mobile 'phone but did not want to share these with Mrs Day as she did not want to damage the new relationship she had with the Claimant.

15. On 25 August Mrs Day met with the Claimant and Dr Martino to discuss the preparations for the boarding provision. During the meeting the Claimant was rude and abrasive and tried to undermine Dr Martino on a number of occasions. In her evidence to the Tribunal, the Claimant denied that she had been rude or abrasive, but Mrs Day's evidence was clear and unequivocal and supported by an email Dr Martino later sent to Mrs Keelan-Edwards (see below).
16. On 1 September, the first official day of her employment, Mrs Day held a meeting with the whole of the boarding staff as an induction meeting to discuss preparations. She and Mr Hogg, the School Premises Manager, gave a presentation on safety measures within the boarding houses to respond to COVID-19. The Claimant interrupted Mrs Day's presentation on several occasions to disagree with the contents of the staff handbook. Mr Hogg gave a presentation on other health and safety matters but the Claimant left the meeting while he was delivering his presentation, saying that she had somewhere to be. She had already discussed with Mrs Day that she was having problems with Mr Hogg.
17. Pupils started to arrive at the boarding house on 7 September.
18. On that day, during a whole school training session, the School's Special Needs Co-ordinator gave a presentation to all relevant staff, including the Claimant, which included the information that one of the boarders, Pupil A, had social, emotional and mental health needs and had a General Anxiety Disorder.
19. On 8 September, Mrs Day met with Mr Webb and Ms Murray, Deputy Head Teacher and the School's Designated Safeguarding Lead. The meeting was to discuss various concerns Mrs Day had about the Claimant's unprofessional behaviour, including her behaviour at the boarding staff training day. Mrs Day said that the Claimant was avoiding contact with her and questioning her status. It was agreed that there needed to be a discussion with the Claimant about her role and her relationship with Mrs Day. Mr Webb said he would come to the boarding house for dinner to observe the dynamic between Mrs Day and the Claimant.

20. On 12 September, Mrs Day emailed boarding staff with a summary of her observations about the first week of term. The Claimant responded with comments, including wanting to point out what she considered to be grammatical errors in the staff handbook.
21. On 14 September, Dr Martino emailed Ms Keelan-Edwards, Deputy Headteacher with responsibility for staff welfare issues. She said:

I have worked in a boarding school before, and I know how attentive and sensitive [senior leadership team] staff is to welfare issues, therefore, I am assuming you are aware of the general situation caused by [the Claimant's] behaviour in the our first week of term (and before that). There have been a couple of episodes where her behaviour was not in line with the highest possible standards of service to pupils and fellow employees. She has repeatedly shown lack of empathy, an aggressive and unfriendly behaviour towards both myself and other member of staff (Ruth Hong) and in front of the girls in [the boarding house]; this behaviour has caused unnecessary anxiety and fear....after the episodes caused by [the Claimant] last week, and the direct experience of her anger, I feel fearful and threatened when walking out and about and when I am on duty in both Houses, a feeling I have never experienced before on the job. [The Claimant] has consistently been unfriendly and unprofessional in my presence. I consider myself a strong person, but for the first time in my professional life, I feel threatened.

22. On the evening of 15 September, Pupil A reported to Mrs Day that the Claimant had gone into her bedroom to ask whether she was OK now, after an incident of self-harm. (Pupil A had also self-harmed on 13 September.) Pupil A had said "yes" and the Claimant had responded: "good as I've more important things to be dealing with than this." Mrs Day emailed Ms Murray with her concerns about the Claimant's response, as she believed it was inappropriate, lacked empathy and was unprofessional.
23. Also on 16 September, Mrs Day became aware that the Claimant had given six pupils a sanction of an early morning run for talking the previous evening. This was in breach of the School's behaviour policies. Mr Webb was concerned that the Claimant had applied a sanction that she would have known was in breach of School policy and asked Mrs Day to prepare a timeline of her concerns about the Claimant. She did so and sent it to him. It ran to two pages and included numerous incidents of what Mrs Day considered to be unprofessional conduct by the Claimant and failures to respond to Mrs Day's requests to meet. Mr Webb also took advice from the Second Respondent's Human Resources (HR) department regarding the difficulties the School was having in managing the Claimant's behaviour and her reluctance to engage with her line manager, Mrs Day.

24. Pupil A was taking anti-depressant medication which her parents had given consent to her self-administering. The lock on the safe in her bedroom was not working, however, so her drugs were kept in the main medical safe and given to her by the Claimant so she could take them. She went home for the weekend and the Claimant gave her the drugs to take with her. When she returned to the School on 20 September, her drugs should have been collected from her by a member of staff but were not. Both Mrs Day and the Claimant were on duty that evening. Early on the morning of 21 September, Pupil A came to Mrs Day and told her that she had taken an overdose. Mrs Day rang for an ambulance, collected Pupil A's shoes from her bedroom by the light of a torch so as not to disturb her room-mate and accompanied her to hospital. She did not collect the drugs, and nor did the Claimant, who checked on the room-mate once Pupil A and Mrs Day had left for the hospital.
25. On the morning of 21 September, Ms Murray checked Pupil A's room and found her medication boxes. She spoke to Mr Webb about this and they agreed that the medication should have been secured by Mrs Day or the Claimant. They agreed that further investigation might be required and that the matter should probably be reported to the Local Authority Designated Officer (LADO) responsible for child safeguarding issues. Ms Murray told Mrs Day the following day that a referral was to be made. She also told her that the LADO had informed her that another referral had been made, anonymously through the National Society for the Prevention of Cruelty to Children, and that this anonymous referral related to the failure to collect Pupil A's medication and the School's failure to inform her parents that she had self-harmed earlier in the week. Mrs Day thought this anonymous complaint had come from Pupil A's parents, who she knew had asked for a meeting with Ms Murray.
26. On 22 September, the Claimant sent an email (disclosure A) about Mrs Day's failure to collect the medication to Ms Murray, who forwarded it to Mr Webb. Mrs Day was not aware of this email having been sent at the time. She found out about it much later, when she received a letter at a meeting with Ms Murray and Mr Webb on 26 November giving her details of the safeguarding allegations that had been made against her. At that point, she realised that the allegation must have been made by the Claimant because it included an allegation that Mrs Day had not shared information about Pupil A's incidents of self-harm with boarding house staff.
27. On 23 September, Mr Hogg told Mrs Day that the Claimant had discussed the overdose incident with a gardener. The gardener is Mr Sloanes, who works for the Second Respondent as a Grounds Operative on the School grounds but not for the School. In her evidence to the Tribunal, the Claimant accepted that she had spoken to Mr Sloanes on 21 September and told him that there had been an incident the previous night when a girl had taken an overdose. In his witness statement, Mr Sloanes confirmed that the Claimant had told him

- on 21 September that she had been up all night because of an incident where a pupil had either talked about, or had attempted, suicide, he could not now recall which. Mrs Day emailed Mr Webb about this to share her concern that, if it were true that the Claimant had discussed the incident with the gardener, it would be unacceptable and a breach of trust.
28. Also on 23 September, Mrs Day emailed the Claimant asking to meet her to discuss the COVID-19 situation and the need to update her. The Claimant did not respond.
 29. Mrs Day emailed Mr Webb on various occasions during the month to raise her concerns that the Claimant was claiming for overtime to which she was not entitled because the tasks involved could be carried out during the Claimant's normal working hours.
 30. Mrs Day asked the Claimant not to use numbers for students at registration, rather than using their name, but the Claimant did not comply. She said that she had used numbering in a previous school and it was quicker.
 31. On 29 September, Mrs Day met Mr Webb and Ms Keelan-Edwards to discuss Mrs Day's concerns about the Claimant's conduct. They discussed strategies to deal with the concerns. On the same day, Mrs Day met the Claimant and Mrs Williams to iron out daily issues. During this meeting, the Claimant got up and left saying she had other things to do.
 32. It was also on 29 September that Ms Murray telephoned the LADO to refer Mrs Day's failure to collect Pupil A's medication. In addition, she sent the LADO a referral form in relation to the comment the Claimant was alleged to have made to Pupil A on 15 September. The following day, she told the Claimant she had done so.
 33. On 29 September Mr Webb met the Claimant and her union representative to discuss several concerns he had about her behaviour, including the alleged comment to Pupil A, the run sanction she had given the boarders and the overtime claim she had made for administering that sanction. He concluded that the run sanction was draconian, outdated and against the School's behaviour policy, which the Claimant had signed on 7 September. He refused to approve her claim for overtime. On accepting the Claimant's assurance that she would not use a similar sanction again, he issued a file note to remain on the Claimant's personnel file. He considered this lenient but felt that a more severe sanction would disrupt his then current plan to work to overcome the difficulties between the Claimant and Mrs Day.
 34. On 30 September Mrs Day asked to meet with the Claimant but the Claimant declined, saying she was seeing her doctor and felt she needed the time off. On 1 October the Claimant began a period of sick leave that continued until

her dismissal. The med3 forms from her GP stated that she was unfit for work due to “anxiety state” and “stress related problem”.

35. On 30 September Mrs Day sent Mr Webb an email that included this passage:

[The Claimant] is refusing to meet with me at present despite giving her multiple options. I have just requested advice from Helen. I also think it appropriate to let you know that following my meeting with [Ms Murray] this morning about the LADO referral, I am seriously considering my position here. I cannot put home career and family at risk over someone that is actively wanting me out of the school, altering documents and withholding information from her handover with Sue Rowe. [Mrs Williams] stated last night that WE felt it would be better if I didn't live on site and should get a house in Knaresborough as I'm only on duty two nights a week and [the Claimant] should be SHP [Senior House Parent] and could move into the SHP flat.

36. At the Hearing, the Claimant argued that the fact that Mrs Day had referred in one sentence to the LADO referral and in the next to “someone” (whom Mrs Day confirmed in evidence meant the Claimant) wanting her out indicated that Mrs Day already knew that the Claimant had made disclosure A. The Tribunal does not accept that. It considers that the email is recording Mrs Day's general concerns about the Claimant's behaviour which was causing her to consider whether she should resign.

37. On 4 October Mrs Day emailed Ms Keelan-Edwards with a request for management support in relation to the Claimant's behaviour. She recorded that the Claimant was not willing to follow her management instructions nor meet with her. She had ignored Mrs Day's request not to be amongst students and staff in communal areas whilst she was on sick leave. She said that she felt unsafe in her own flat and that the boarding house was an unpleasant place to be. She concluded:

I am not sure how to move forward but I am unwilling to put my professional integrity at risk due to the behaviour of a member of staff whose behaviour, in my opinion, is unstable in the workplace at present. I have spoken to [Mr Webb] about my position here possibly becoming untenable if this were to continue. I have to consider my own career – numerous staff members telling me to 'watch my back' is not something I expected to be dealing with when I accepted the job at RGS.

38. On 5 October the Claimant contacted Mr Bean and Mrs Jarvis asking to have an informal confidential chat with them. The three met on 7 October and the Claimant raised various concerns that Mrs Day was not running the boarding house professionally. She also raised her concern that Pupil A's medication

- had not been collected when she went to hospital. She described how she had gone into the pupil's room after the ambulance had left and seen boxes that she thought were medication. When asked why she had not removed the boxes herself the Claimant said that it was not her responsibility. The Claimant did not mention that she had also sent an email to Ms Murray on 22 September (disclosure A), Rather, she said that she had not been able to raise her concerns. Mrs Jarvis typed up her notes of the meeting and sent them to the Claimant for her to check.
39. The Claimant added comments on the notes to the effect that she was not sure at the time she went into Pupil A's room that the boxes she saw were medication boxes and assumed they were medication boxes only after hearing from Mrs Day the following day that she had not collected the medication. Mrs Jarvis viewed this as an attempt by the Claimant to minimise her own responsibility for the incident. (In answer to questions in cross-examination and re-examination at the Tribunal Hearing, the Claimant's position was different again: the boxes she had seen were on the desk in Pupil A's room but the medication was on the pupil's bedside table, which the Claimant could not see from where she was standing when she went to check on the room-mate, so she had definitely not seen the medication. She did not know what was in the boxes she saw on the desk.)
40. With the Claimant's consent, Mrs Jarvis copied the notes of the meeting to Mr Webb, together with the Claimant's comments on them. Mrs Jarvis contacted the LADO herself to ensure that the issues raised by the Claimant were being investigated.
41. The Tribunal accepted Mrs Day's evidence that she did not know about the Claimant's protected disclosure to the Governors at the 7 October meeting until she became aware of the content of the Claimant's Tribunal claim. There was no evidence before the Tribunal to indicate otherwise.
42. On 5 October, Mr Webb had had an exchange of emails with the Claimant about a query she had raised with him about who was on duty in the boarding house on 2 to 3 October. Mr Webb forwarded this to Mrs Day, who replied to the Claimant. Mr Webb told the Claimant that she should have raised this with Mrs Day direct, but she replied that she did not think Mrs Day would have given her an accurate reply. Mr Webb's email in response made it clear that he did not regard the Claimant's conduct as professional: she had been trying to uncover an inconsistency by asking him about staffing on the night in question rather than Mrs Day. He told the Claimant to remain out of the communal areas of the boarding house until she had recovered from her illness. He also included the following passage:

You have made reference to further concerns in your email below. I have your email dated the 24th and have worked through those points with [Mrs

Day] and Marita Murray. As you may be aware Marita is undertaking a review of the circumstances around the incident on Sunday 20th

43. The reference to the email dated the 24th is to an email the Claimant sent Mr Webb on that date which repeated the content of disclosure A. The Tribunal does not accept that this indicates that Mr Webb had informed Mrs Day that the Claimant's had sent him an email on 24 September raising a protected disclosure. The Tribunal accepts Mr Webb's evidence that he was merely confirming that he had discussed all the points the Claimant had raised in her email with Mrs Day and Ms Murray.
44. The staff of the boarding house kept a computer log of events and information that other staff might need to know. On 7 October Mrs Day emailed Mr Webb expressing her concern that the Claimant had made numerous changes to the log as it related to events in the boarding house in the week of 14 September.
45. Mr Webb took further advice from the Second Respondent's HR department.

The decision to dismiss

46. On 21 October, Mr Webb's personal assistant, Mrs Hargraves, emailed the Claimant to invite her to a meeting with Mr Webb to discuss her probationary period. Mr Webb's intention was to tell the Claimant at the meeting that she was dismissed. The Claimant asked what format the meeting would take and asked Mrs Hargraves to inform Mr Webb that she had not had any probationary meetings or one-to-one meetings with her line manager. She asked if the meeting was to be a formal or an informal one. Mrs Hargraves stated that it would be an informal conversation only but if she would like to bring a workplace colleague with her for support she was welcome to do so. The Claimant replied that as she was currently off sick she was unable to attend the meeting.
47. On 23 October Mr Webb wrote to the Claimant informing her that she had not reached the required standards during her probationary period and that a decision had been made to terminate her employment on grounds of conduct, capability and concerns about a breakdown in her relationship with her line manager which could undermine the smooth operation of the boarding house.
48. The Tribunal accepts Mr Webb's evidence that the reasons for the Claimant's dismissal were those summarised in his letter. Mr Webb believed that the Claimant had behaved unprofessionally in the imposition of the run sanction and in her email correspondence with Mr Webb about who was on duty in the boarding house on 2 October. She had also behaved inappropriately by discussing the fact that a pupil had taken an overdose with a member of the grounds staff. (The Tribunal found it surprising that the Claimant still did not

accept that that conversation had been inappropriate even when giving evidence at the Tribunal Hearing.) Mr Webb believed that the Claimant had edited entries in the boarding house's computer log relating to Pupil A. She had ignored instructions from Mrs Day and Mr Webb to maintain an appropriate boundary between home and work by not coming into the communal areas of the boarding house whilst she was off sick: Mr Webb had received oral reports from various students and House Tutors that she continued to go into communal areas of the house such as the sixth form kitchen, and not just to access the laundry. There were also safeguarding concerns in relation to the comments she had allegedly made to Pupil A on 15 September. Finally, her relationship with Mrs Day had broken down.

49. In the light of the clear and convincing nature of Mr Webb's evidence and the fact that it was supported by a substantial number of emails and meeting notes to which the Tribunal was referred, it accepts that Mr Webb had a significant amount of evidence before him to support all these conclusions. The Tribunal accepts Mr Webb's evidence that it was unprecedented in his experience that so many concerns about an employee's behaviour, attitude, professionalism and ability should be raised by a number of staff so early in the employee's employment. There were a number of ways in which the Claimant had fallen far below the standards of conduct and capability the School required. Although he had initially wanted matters to be resolved and the Claimant's relationship with Mrs Day to be repaired, he had concluded that he could not allow the situation to continue, since it might lead to reputational damage to the School and, more importantly, it might compromise the safety and welfare of the students in the boarding house.
50. Mr Webb and Ms Murray had already decided that a safeguarding referral might be necessary before the Claimant's email of 22 September was sent. By the time Mr Webb made his decision to dismiss the Claimant, the School had referred Mrs Day to the LADO and conducted its own investigation. It is difficult to see what advantage there would be to Mr Webb or the School to dismiss the Claimant because she had made protected disclosures about Mrs Day in these circumstances. Further, the Tribunal accepts Mr Webb's evidence that it would be completely contrary to his moral and professional standards to act in that way.
51. The School's probationary procedure provides for a probationary period of six months for new employees, with a series of meetings between the probationer and their line manager during this period. At the end of the six months, there should be a review to decide whether employment should be made permanent. In cross-examination, Mr Webb said that the School should probably have dealt with the Claimant's case under the probationary procedure, but that would still have resulted in the termination of her employment. For almost all of the first six months of the Claimant's employment there had been no pupils in the boarding house, because of the

national lockdown. She had also shown considerable resistance to meeting with Mrs Day. The Tribunal does not consider that the School's failure to follow the normal probationary procedure in these extraordinary circumstances is at all surprising or casts doubt on Mr Webb's evidence on the reasons for the Claimant's dismissal.

52. The Tribunal notes that the Claimant was not told that the meeting Mrs Hargraves was trying to arrange with her was to inform her that she was dismissed. The Tribunal accepts that that was not fair on the Claimant. In his evidence to the Tribunal, Mr Webb accepted that it could have been handled better. The Tribunal does not consider, however, that this unfairness in the procedure Mr Webb followed in any way undermines the credibility of his evidence as to his reasons for dismissing the Claimant.
53. Mr Webb included the Claimant's allegedly inappropriate comment to Pupil A on 15 September as part of his reason for dismissing the Claimant. He accepted in cross-examination that that was perhaps an error. The Tribunal notes that, as at the date of the Claimant's dismissal, Ms Murray had not completed her investigation into this comment and eventually concluded that there was insufficient evidence to substantiate it. Again, the Tribunal does not accept that this procedural unfairness undermines Mr Webb's evidence that he dismissed the Claimant because of a large number of concerns he had about her conduct.
54. The Claimant submitted that she was a newly-appointed employee and so was Mrs Day. Both had been the subject of a safeguarding referral in relation to Pupil A but only the Claimant had been dismissed. She argued that that was because she had made protected disclosures but Mrs Day had not. The Tribunal finds that argument unconvincing. As Mr Webb said when this was put to him in cross-examination, there was no valid comparison to be made between the Claimant's conduct, about which he had many concerns, and that of Mrs Day, even though the referral in relation to Mrs Day was found to be substantiated and she received management advice as a result.
55. At various points in cross-examination, the Claimant's representative suggested that Mrs Day did not like the Claimant and had been trying to get the Claimant dismissed. In her submissions, the Claimant did not go so far as to allege that this was a situation like that discussed by the Supreme Court in Royal Mail Group Ltd v Jhuti (2020) ICR 731 where Mrs Day, as the Claimant's line manager, was manipulating Mr Webb to dismiss the Claimant because of her protected disclosure. In any event, the Tribunal heard no evidence that would have supported such an argument. Mr Webb had a number of reasons for concluding that the Claimant should be dismissed, based on evidence that he had received from various sources, not just Mrs Day, about the Claimant's conduct over a period that began before either

protected disclosure. In any event, Mrs Day was not aware of either of the protected disclosures until after Mr Webb had made his decision.

56. In summary, the Tribunal finds that not only were the Claimant's protected disclosures not the principal reason for the Claimant's dismissal, they formed no part of Mr Webb's decision-making. The Claimant's claim that she was unfairly dismissed therefore fails.

Subsequent events and the police report

57. As mentioned above, on 26 November Mrs Day received the letter that indicated to her that the Claimant had raised a safeguarding concern about her conduct. Mrs Day accepted that she had knowledge of disclosure A at this point.

58. On 9 November Ms Murray told the Claimant that she had found insufficient evidence to prove or disprove the allegation relating to the alleged conversation between herself and Pupil A on 15 September. However on 23 November Ms Murray and Mr Webb decided that, as the Claimant had confirmed in her meeting with the Governors that she had seen Pupil A's medication in her room, it was appropriate for the Claimant to be referred to the LADO in relation to her own failure to remove the medication. Ms Murray emailed the Claimant to inform her that the School would be conducting an investigation. On 7 December Ms Murray wrote to the Claimant confirming that this allegation had been found substantiated.

59. Mr Webb had decided to allow the Claimant to continue to occupy her flat until her appeal against dismissal was heard. The appeal was scheduled for 9 December. He continued to have concerns about the Claimant's behaviour in using the communal areas of the boarding house, contrary to his instructions, and her behaviour in relation to Mrs Day. This resulted in him writing to the Claimant on 27 November asking her to vacate the flat immediately.

60. On various occasions after she was notified of her dismissal, the Claimant behaved in a way that Mrs Day found threatening and upsetting. Although the Claimant denied in her evidence that she was guilty of any of this behaviour, the Tribunal preferred the evidence of Mrs Day, which it found clear and convincing. It was also consistent with Dr Martino's earlier email (set out above) in which she recorded that she found the Claimant's behaviour threatening.

61. These incidents included one on the evening of 24 October after 11.30pm when the Claimant was outside Mrs Day's flat staring through her bedroom and kitchen windows. On 25 October and 3 November Mrs Day found dog excrement left on the ramp to her back door. She did not know that this excrement was from the Claimant's dog but she did know that the Claimant

was the only person with a dog who had access to the garden other than herself and she knew that it was not her own dog's excrement because her dog had been with her. On 10 November the Claimant walked back and forth outside Mrs Day's flat on three occasions holding a hockey stick. (In her statement to the police, the Claimant denied even owning a hockey stick but the Tribunal finds this unlikely. As Mrs Williams confirmed in her evidence to the Tribunal, the Claimant had skills in hockey and Mrs Day had been enthusiastic about the Claimant's ability to organise this activity for the girls. The Tribunal accepts Mrs Day's evidence that the Claimant used a hockey stick to hit her dog's ball across the field and had asked for additional hours to run a hockey team.)

62. On 2 December the Claimant was again walking up and down outside Mrs Day's flat and ran up to her kitchen door aggressively, grimacing and shaking her fists. This was the incident that finally caused Mrs Day to report the Claimant's behaviour to the police. She felt so threatened that she telephoned her husband to ask him to come home from work. She was also very worried that she and her son were at risk of harm from the Claimant when her son came home from school because, as a result of his disability, it takes him some time to leave the school bus.
63. Even before this final incident, the Claimant's behaviour had caused Mrs Day to feel so unsafe that she had sought alternative accommodation for her family away from the School. She could not find anything suitable that would meet the needs of her son, because of his disability. Mrs Day suffered panic attacks and was accompanied by Mrs Keenan-Edwards so that she was not alone when walking to and from work. She was given an office in the main school building so that she did not need to go back to her flat during the school day.
64. The Tribunal accepts that Mrs Day had learned of disclosure A only a few days before she decided to report the Claimant to the police. On the evidence it has heard, however, the Tribunal is satisfied that Mrs Day's decision to report the Claimant to the police was not affected in any way by the protected disclosure. Rather, it was because the Claimant was behaving in a way that caused Mrs Day to be genuinely and profoundly fearful for the safety of herself and her family.
65. The claim of detriment on the ground of a protected disclosure therefore fails.

Employment Judge Cox
Date: 26 May 2022

Reserved Judgment and Reasons sent
to the parties on:
Date: 26 May 2022