



EMPLOYMENT TRIBUNALS

Claimant: Ms C Russell

Respondent: (1) Urbis Academy Trust
(2) Mayville Primary School

Heard at: East London Hearing Centre

On: 28, 29, 30 September, 1, 5 October 2021,
24, 25 and 26 January 2022; and in chambers
On 24 and 25 February 2022

Before: Employment Judge Jones

Members: Ms S Harwood
Mrs B Saund

Representation

Claimant: Ms Godwins (lay representative)

Respondent: Mr Gray-Jones (Counsel)

RESERVED JUDGMENT

1. *The Claimant was fairly dismissed.*
2. *The complaints of unfair dismissal and breach of contract/wrongful dismissal fail and are dismissed.*
3. *The complaints of race discrimination and victimisation fail and are dismissed.*

REASONS

1. These were Claimant's complaints of unfair dismissal, wrongful dismissal, direct race discrimination and victimisation on grounds of race. An agreed list of issues was in the trial bundle and will be referred to by the Tribunal below in the judgment part of these reasons.

2. The Tribunal apologises to both parties for the delay in the promulgation of this judgment and reasons. This delay was due to the pressure of work on the judge arising from the pandemic, difficulties in finding dates to meet with the lay members and the judge's ill-health at the end of the summer.

Evidence

3. The Respondent made an application under rule 50 of the Employment Tribunal Rules of Procedure 2013, that the Claimant's colleague who was named in these proceedings, should be made the subject of a restricted reporting order. The reason for doing so was that the Claimant's colleague was facing criminal proceedings in relation to her conduct at work. She had also been dismissed. The Respondent submitted that she was facing a number of allegations, which if they were discussed in this hearing and evidence given on them, could affect the integrity of her criminal trial.
4. The Claimant's representative confirmed that she also acted for the Claimant's colleague. The Claimant's colleague initially, did not want a restricted reporting order. The Respondent submitted that the Claimant's colleague's Article 8 rights to a fair trial at the criminal courts would be engaged by the evidence in this case as if there is no order anonymising her identity, there is a risk of prejudice to her in those proceedings. The Tribunal is likely to make findings of fact that involved her and include serious allegations against her. After further discussion, we determined that what was necessary was an order to anonymity order under Rule 50(3)(b) the Claimant's colleague in this hearing so that she could still be referred to. The Tribunal was referred to the case of *TYU v ILA Spa Ltd* EA-2019-000983 (previously UKEAT/0236/20) (16 September 2021, unreported) at [27], in which the EAT held that an Anonymity Order could be made in favour of an individual where the unfair dismissal judgment had indicated that she was suspected of dishonesty and intimidating behaviour in the workplace.
5. The Tribunal made the anonymity order and the Claimant's colleague will be referred to in these reasons as YZ.
6. The tribunal heard from Claimant in support of her claim.
7. For the Respondent, the Tribunal heard from Walter Harding, the chair of Governors, Lorraine Barella, the Respondent's business manager, Daniella Glynn, HR consultant who conducted the disciplinary investigation into the Claimant, Natasha Duckett HR consultant employed by Browne Jacobson, Steve Hall, Local Authority Designated Officer for a London Borough (LADO), chair of the disciplinary panel that dismissed the Claimant; and Steve Bernard, chair of the panel which heard the Claimant's appeal against her dismissal.
8. The Tribunal make the following findings of fact from the evidence given in the hearing over 8 days. The Tribunal has restricted itself to only making findings that relate to the issues in the case. There were other matters covered in evidence which are not referred to here as they did not assist us in making our decision on the issues.

Findings of fact

9. The Claimant began her employment at the Respondent in 2001 as a senior teacher. The Claimant was then appointed Deputy Head Teacher, in 2002, Acting Head Teacher in 2009. The Claimant became the Head Teacher in 2010 and remained in that post until her dismissal on 19 October 2019.
10. Mr Harding was initially a teacher at the school and became assistant head around the time that the Claimant became Head Teacher. He became a staff governor Wiley was assistant head and when he retired from teaching, he became the chair of Governors. The Claimant and Mr Harding worked well together for many years.
11. Mrs Barella began her employment at the Respondent as an office assistant. She took on more responsibility when previous business manager left in 2011/2012. She had been the school's business manager since 2010. She was the Respondent's Deputy Designated Senior Manager for safeguarding during the period in question. She reported to the Claimant and they also got along well.
12. The Respondent is a one school trust, the only school being Mayville Primary School. The school is located in one of the most underserved areas in the borough. The Claimant's unchallenged evidence was that the school's population has always been ethnically diverse, with the vast majority of children and parents having English as their 2nd or 3rd language. When the first Claimant first became Deputy Headteacher she built on the work done by the previous Headteacher and implemented programs, secured quality marks, introduced after-school clubs and made other changes that made a significant impact on the schools' performance. There were documents in the bundle which confirmed that the Claimant was praised by Ofsted for her passion for improving the school and for nurturing a culture where pupils thrive. Mr Harding confirmed in his evidence that the Claimant's leadership had been largely responsible for the significant improvement in the schools' performance, working with the staff and pupils.
13. The Claimant had responsibility for approximately 50 employees at the school, most of whom were teaching staff. One of the teachers in the school, YZ, was appointed as a year 6 class teacher in September 2014. YZ is a female teacher from Nigeria.
14. We find that YZ was having success with the Year 6 class. She taught literacy across the Year 6 group. However, the Claimant also had complaints from some teachers that they had difficulty understanding YZ. We find on balance, that this was not only in relation to the presentation that she did on the *6Traits+1* strategy but related to her communication with other members of staff in meetings and in the staff room. This related to YZ's manner as it was later suggested in the exit interviews that she could sometimes be abrasive. It was also related to YZ's Nigerian accent. We also find that on balance it is likely that when the Claimant proposed promoting YZ to assistant headteacher, Mrs Barella told the Claimant that she sometimes could not understand YZ and that she had received complaints from other teachers about that. We were told that YZ had a

speech impediment as well as a strong Nigerian accent. Whenever she was told about difficulties in understanding YZ, the Claimant did not address those concerns but defended YZ. She told the teachers that there were teachers from other parts of the UK with strong accents, but no one had complained about being able to understand them.

15. We also heard evidence of YZ's abrasive way of communicating with colleagues. She told colleagues off for not doing the pre-reading for one of her presentations. She was excited to present to her colleagues, the *6Traits+1* strategy. This was a way of teaching that was used in the USA and other members of staff were concerned that she was promoting this strategy over the national curriculum. The Claimant would not hear of any criticism of YZ.
16. We find it likely that during a discussion with the Claimant about promoting YZ to the post of Assistant Head, Mr Harding said '*I know what these women are like*'. Mr Harding denied making this statement, but we find that this was a reference to his first wife who was Nigerian. We find that the Claimant would only know that he had previously been married to a Nigerian woman, which had ended, if he had told her about it. He also said in that conversation that he had been told that other teachers were having difficulty in understanding her. The Claimant commented that in raising that issue he was sounding just like Mrs Barella who had also mentioned this to her.
17. At a governing body meeting on 27 June 2018, one of the matters discussed was the high turnover of staff. The Claimant was present at the meeting as was Mr Harding and Mrs Barella. A copy of the minutes was in the trial bundle. The Claimant was asked about how the high turnover of staff. The claimant reported that 8 teachers, which was approximately 50% of the total staff complement, would be leaving at the end of term. Although the Respondent stated that the figure was higher, we find that she was correct as 8 were leaving at that time. A further 3 teachers left at the end of the first term. During the meeting, the Claimant went through the list of teachers who were leaving and gave the reasons why she understood they were leaving: such as one teacher leaving for medical reasons, another teacher leaving due to housing issues and yet another teacher leaving to move nearer to their home. She reassured the governors that there was always a high turnover of staff and that only one outstanding teacher was leaving. She also told them that she was in the process of recruiting.
18. The governors discussed what could be done to stem the loss of teachers. They were concerned that it was difficult to recruit good teachers to work in that part of London and that the lack of social housing for key workers appeared to be having a detrimental impact on recruitment. This was not a new issue for the Respondent. Mr Harding's evidence was that the number of teachers leaving had been high in previous years and the governing body had undertaken initiatives tried to improve staff retention. The Respondent had made arrangements to provide subsidised accommodation for staff on school premises, at a significantly lower rent than the normal private sector rent in the area. The Respondent had also decided to pay teachers on the main pay scale an Inner London allowance whereas, the school's location meant that it would only receive funding from the government for an Outer

London allowance. The governing body was concerned that these initiatives did not appear to be having an effect on retention of staff.

19. At the end of the discussion, the action point recorded in the minutes was *'to consider asking all staff anonymously about working at Mayville, e.g. suggesting three things to make working life better'* in the column entitled 'named person for action identified' the minute taker had inserted the Claimant's name along with Mrs Barella. The task had to be completed by the next meeting. Also noted in the minutes, at paragraph 6.9, was the following: *'Leavers should have an exit interview and those teachers who stay should also be asked views on how to retain staff.'*
20. Another item of discussion at this governor's meeting was a chair of governors' annual report written by Mr Harding. In this document he confirmed that the school was now the 4th highest-ranking school in the area and that it was in the top 3% in London on measures of progress. He referred to the Year 6 teaching team as follows: *'I also extend our thanks to the Year 6 team for their outstanding commitment and success'*.
21. Mr Harding sent this report to the Claimant on 8 February 2018. In the email, he confirmed that he had read it out to the governing body at the last meeting. On the day she received it, the Claimant forwarded the report to Mrs Barella. As business manager, it was appropriate for Mrs Barella to be responsible for dealing with this document. In his email to the Claimant, Mr Harding did not say where he expected this report to be published. His unspoken expectation was that it would be distributed to all staff. However, we find it unlikely that he told the Claimant or Mrs Barella that this was what he expected. Mrs Barella amended the report and uploaded the amended version to the Trust's website. It is likely that Mr Harding was unhappy about where this document was placed because four months later, he raised it at the governors' meeting in June. The minutes noted that he expressed his disappointment that the governor's statement had not been available to teachers and parents. The report had been uploaded to the school's webpage within the Trust's website.
22. We find it likely that Mr Harding felt slighted by the Claimant because the letter was not easily accessible by teachers and staff on the Academy Trust's website. He thought that the Claimant had instructed Mrs Barella to 'bury' the report on the website. The governing body meeting minutes record that Mrs Barella stated that the letter was available on the Trust's website and that if it was not on the school webpage, that was an oversight which would be remedied.
23. We find it likely that Mr Harding was very upset about this as he believed that he had been slighted by the Claimant. He spoke to Mrs Barella about resigning from the governing body. His evidence at the hearing was that he considered resigning because of the high turnover of staff. The minutes confirmed that the governing body had a plan of action to deal with the high turnover of staff. No one person was being held responsible for that. We find that it is more likely that the possibility of him resigning was related to the fact that his report was not featured on the Academy Trust website in the way that he wished it to be and that it had not been distributed to staff. He continued to be upset about what had been done with his report months

later, as he raised it when he was interviewed Daniella Glynn. Mrs Barella told the Claimant that he was threatening to resign. On 28 June, the Claimant had a discussion with Mr Harding about it and later texted Mrs Barella to inform her that she had just spoken to him and that he was now not going to resign.

24. We find it unlikely that prior to the governors meeting on 27 June, Mr Harding had been concerned about the number of after-school and lunchtime clubs held at the school or about any atmosphere in the school. If he had those concerns, it is likely that he would have raised them at a governors meeting or in his discussions with the Claimant. We had no evidence of him raising these issues before that meeting. The minutes produced from the governors' meeting on 15 March, do not record him mentioning either of those points. The minutes show that the Respondent was pleased with the school's performance. That was appropriate because the school had been doing well and had received a number of awards. One issue that he did raise with Ms Banjo at the staff Christmas party at the end of 2017 was why there were so few teachers attending the party. It is unlikely that he raised this with the Claimant.
25. As a result of the meeting on 27 June 2018, Mr Harding decided that he would personally conduct the exit interviews and interviews with the rest of the staff. The Respondent already operated an exit interview process using the Ofsted exit questionnaires. Mrs Barella managed this process for the Respondent. Exit questionnaires were completed by 5 teaching staff out of the 8 staff who were leaving that year. It was not clear when they were completed. Those exit forms had not given the Respondent any sense that there were issues at the school which was causing staff to leave. Reasons given in the exit forms for leaving were ill-health, to be closer to home/family support and re-location.
26. On 7 July 2018, the Respondent held a summer fete, organised by the parents and teachers' association. YZ was operating a stall. Mr Harding attended the fete with his partner. We preferred YZ and the Claimant's version of what occurred that day as it was more consistent than Mr Harding's. Mr Harding and his partner went over to YZ's stall. Mr Harding's partner picked up a book and expressed interest in it. YZ told her that it was not for sale. It was not clear to us why the book was on the stall if it was not for sale. Mr Harding's partner was also a teacher but in a different school. When she was told that the book was not for sale, she walked away but Mr Harding remained at the stall, picked up the book, gave YZ £5 and took the book away. YZ had told him that it was not for sale. YZ told the Claimant about this incident and she challenged Mr Harding about the book when she next saw him.
27. The exit interviews that arose from the discussion at the governors' meeting were conducted by Mr Harding and Dr Ann Smart, who was another member of the governing body, on 12, 13 and 17 July. The Claimant was aware that the exit interviews were going on. They interviewed departing staff, i.e. the 8 teachers who were due to leave at the end of term which was in a few days' time; and 2 members of current staff, i.e. those who were due to return in September.

28. The notes of those interviews were also in the hearing bundle. They are all handwritten, undated and unsigned. Everyone who was interviewed was told that whatever they shared would be kept confidential and would not be shared with the Claimant.
29. In the exit interview report and in his witness statement Mr Harding reported that some staff raised safeguarding issues in their interviews and they were then asked to put those in writing so that they could be passed to the LADO (Local Authority Designated Officer).
30. Mr Harding's evidence was that in the exit interviews the staff he spoke to were tearful and reported bullying from the Claimant and YZ. They reported that they had been made to feel that only the Year 6 teachers, of which YZ was the main one, were good teachers, and was the reason for the Respondent's success. They told Mr Harding and Dr Smart that they felt that they have been over-worked and not appreciated and that they found it difficult to maintain a work life balance. They complained that when they raised issues with the Claimant about how YZ spoke to them, their complaints were ignored.
31. The notes of the exit interviews records that the word '*safeguarding*' was used by some of those who were interviewed although that word does not appear in the notes of their interviews. It is likely that Mr Harding and Dr Smart wanted to wait to see the written reports that they had asked the teachers to submit. The interview notes addressed the teachers concerns and their perception of the Claimant and YZ. In the notes of one of the interviews it was recorded that a teacher referred to YZ and the Claimant as '*black solidarity*'. Mr Harding did not challenge the teacher on what he meant by that phrase. This was a reference to two black women managers.
32. The teachers discussed with Mr Harding and Ms Smart that they felt that their workload was too much, that they felt unsupported and that the Claimant tended to side with or support YZ against them. They were unhappy that YZ had been praised for the success of Year 6 and felt that all teachers should have been praised for those achievements. They also referred to being threatened with capability procedures if they did not comply with instructions. There was apparent resentment against YZ and the Claimant as staff seemed to think that the Claimant always supported YZ and not them.
33. At least one member of staff, SK who completed an exit questionnaire also attended an exit interview with Mr H. In the questionnaire she stated that she was leaving the school because of the distance away from her home and because of her personal circumstances. However, when interviewed by Mr Harding and Ms Smart she stated that she had safeguarding concerns and that she felt bullied.
34. The following day, 19 July, having been invited to put their safeguarding complaints in writing, staff emailed 3 complaints to Mrs Barella in the office. Those set out serious safeguarding concerns. They reported quite serious accusations of a teacher shouting at a child, YZ grabbing and dragging children out of classrooms or speaking to them in an inappropriate manner.

35. Other complaints about YZ and other teachers came in between 17-20 July. We find that only one came from a teacher who have been interviewed as part of the exit process.
36. There was an obvious contradiction in the questionnaire completed by SK and the exit interview she gave to Mr Harding and the subsequent complaint about YZ that she sent to Mrs Barella on 20 July. We do not know whether her questionnaire was completed with an eye to receiving good reference, as submitted by the Respondent. SK worked in this school for approximately 8 years. When conducting the exit interviews, Mr Harding promised teachers anonymity; but we note that when she wrote a letter of complaint about YZ on 20 July, SK did so from her email and signed her name. Her complaint was about a child being taken out of class. She also stated that the child called YZ 'evil' and told her that YZ had thrown a shoe at another child at an earlier date.
37. There had been no written complaints about the Claimant or YZ prior to these exit interviews being conducted.
38. The matters reported in these emails were passed to the governors as they raised serious safeguarding issues. Mrs Barella referred in her evidence to other verbal complaints that teachers began to make to her about YZ and the way she treated children.
39. Mrs Barella also wrote to Mr Harding on 18 July to bring to his attention two incidents that occurred to children in year 6 which had given her cause for concern and which she stated she had told the Claimant about at the time. She gave further details of those incidents in her witness statement and in the hearing. YZ had made a pupil stand on one leg which upset him and which was inappropriate. It is likely that the Claimant was not present at school on the day that this incident occurred in July 2017. When challenged about the incident, YZ had stated that she sometimes did this as it made children focus. It was Mrs Barella's evidence that she had telephoned the Claimant on the same day and notified her of the allegation. It was also her evidence that she wrote down the child's and other relevant statements and gave those to the Claimant on her return to school so that an investigation could be conducted. She heard nothing further about the matter. A second incident involved a child being locked in a room by YZ and the key being removed. On that occasion the Claimant was at school. Mrs Barella's evidence was that she reported that matter to the Claimant. The Claimant's evidence was that she investigated this matter at the time and found that what had happened was that a child had closed themselves in a room that did not have a lockable door. However, there were no notes of any investigation into this allegation that she could refer to.
40. Despite these incidents, Mrs Barella would usually report at Board meetings that the school had no safeguarding concerns. The Claimant and Mrs Barella never conducted separate meetings to review any complaints that could be considered to raise safeguarding concerns.
41. On the advice of the Respondent's HR advisor, Natasha Duckett, after a review of the information gleaned from the exit interviews; the Respondent contacted the local authority's LADO team. On 20 July, in a meeting

between Mr Harding, Ms Varndell, Mrs Barella and the LADO, all of those matters were raised. The LADOs in attendance at the meeting were Gill Nash and Jennifer Knight. The LADOs conducted a risk assessment on the Claimant and completed a form which we had in the bundle at 316Q. The assessment concluded that the concerns outlined to them met the threshold outlined in the London Child Protection Procedures.

42. At the time of the allegations, Mr Harding was the school's named Safeguarding Trustee. Prior to July 2018, the safeguarding arrangements in the school were that Alison Varndell was the DSL. She was asked to complete the LADO referral form and the LADO referred the matter to the police. The risk assessment noted that the police were conducting a criminal investigation in relation to the concerns raised about abuse alleged to have taken place against children, which had not been responded to appropriately.
43. The Respondent decided, with advice from the LADO that it was appropriate for the Claimant to be suspended to allow an investigation to be conducted into the issues raised. Staff and children were advised by the police that they may be called to give evidence.
44. The Claimant was not at school on 20 July. Teachers and pupils had already broken up for the summer holidays. Mr Harding telephoned the Claimant and advised her that she had been suspended. This was a shock to the Claimant and her immediate response was to hang up the phone. She had never had any concerns about her teaching or her management of the school expressed to her during her employment. She had not been expecting this call and knew nothing of the results of the exit interview process. The Claimant called Mr Harding later that day. She was still in shock and told him that she would stand in front of a bus for the children at the school. Mr Harding told her that a number of matters had come to light in relation to her management of the school, which the governing body had not previously been aware of and that it was necessary to suspend her in order to allow a proper investigation to be carried out.
45. Her recollection was that he told her that she should not worry about it. We find it likely that at the time, Mr Harding did not know how the investigation would develop. It was also a difficult conversation and he may have said to her that she should not worry about it as a way to deal with her queries and her obvious upset about being suspended and being told not to come back to work until notified.
46. We do not know when YZ was suspended although it is likely that it was either on 20 July or shortly afterwards.
47. On the same day, the Respondent wrote to the Claimant to confirm that she was suspended and to set out the terms of that suspension. There is a dispute between the parties over parts of the conversation between the Claimant and Mr Harding. We find it likely that she was upset during the call, but it is likely that she was told that she could not have contact with anyone while suspended. The Claimant was advised that Mr Harding would be her only point of contact with the school. It is also likely that the Claimant had herself suspended staff during her time as Headteacher and would have

been aware of the requirement that she should not contact anyone until the matter was resolved. Even if she had never suspended anyone, the evidence was that Mr Harding told her that she should not speak to anyone else.

48. During her suspension, the Claimant spoke to YZ twice. She spoke to the administrator. She also texted someone to do some corrections on the website. It is likely that the Claimant found it difficult to stop thinking about things that needed to be done at work and to accept that she had been suspended.
49. The letter of suspension dated 20 July was clear that she was only allowed to contact Mr Harding, as her contact, and no one else.
50. The first time she spoke to YZ, she was answering a call from her. YZ told the Claimant that Mr Harding had said that she should speak to her. We found that unlikely. The Claimant received Mr Harding's letter of 20 July before she returned YZ's call and so she would have been aware that she should not have done so.
51. The Claimant was informed that her email account had been suspended. It is likely that she felt isolated.
52. She was told that her salary would continue to be paid but that she was not allowed to go on to the school premises.
53. We had the relevant disciplinary policy and procedure dated June 2017 in the bundle. Under the heading '*actions during a suspension*', it stated that whilst a member of staff is suspended, the nominated contact person should communicate with them regularly, keeping them informed of the status of their suspension and of the progress of the investigation. The person who is suspended is not allowed to take up other paid employment and must be available to assist with or participate in the investigation. The member of staff must confirm any sickness or annual leave that they wish to take while suspended. The policy made no mention that the suspended employee gets to choose who their designated contact should be. We find that as the Claimant was the head of the school, there were limited options of who she could have as her contact, especially as the Respondent wanted to keep this matter confidential during the investigation.
54. The investigation of the safeguarding concerns raised by the teachers in their emails was now a LADO investigation. It was not an investigation that was conducted by the Respondent and the Respondent had no control over it.
55. The Claimant as the Headteacher had responsibility for safeguarding as well as Mrs Barella. The Claimant was the Designated Senior Manager and had responsibility in relation to allegations against staff. Mrs Barella was the school's Deputy Designated Senior Manager. The Claimant was the Respondent's Deputy Designated Safeguarding Lead. As the safeguarding lead, Ms Varndell was responsible for the safeguarding policies and their updates.

56. The LADO decided that the Respondent should undertake a safeguarding review by a suitably qualified safeguarding professional. Mr Harding was tasked with organising this review. This was treated as an urgent matter and the report at 316C stated that it had to be conducted within 2 weeks. This was because there had been serious allegations of physical and emotional abuse and neglect of children at the school.
57. The next meeting was a strategy meeting conducted by the LADO Gill Nash, on 26 July. At that meeting the LADO outlined a list of children around whom there were safeguarding concerns related to YZ. In setting out his account of how the school arrived at this situation, Mr Harding referred again to his governance report not being put on the website. He referred in this meeting to his suspicion that the report was '*deliberately hidden*'. This again demonstrates how important this report was to Mr Harding personally. It was not clear to the Tribunal how his report was relevant to a discussion about safeguarding. It is likely that this was a sore point for Mr Harding and that is why he brought it up in the meeting.
58. Nick Pratt, a qualified social worker and LADO was appointed by the Respondent to conduct the independent safeguarding review. The report had been commissioned by the school for two reasons: firstly, because of the recent LADO involvement in the school arising from allegations of abuse in relation to the staff and pupils by an assistant headteacher, (who is likely to be YZ); and secondly, because of concerns that the Claimant had been aware of concerns but had not followed statutory guidance and procedures as outlined by the Council's safeguarding children's board or school policy, to address them.
59. Mr Pratt visited the school as part of the audit. In his report, Mr Pratt confirmed that the school had written Safeguarding Policy and Procedures in line with its legislative and statutory duties. He highlighted areas for improvement in the policy, in his report, such as the absence of clear guidance on the ability of staff to approach the LADO directly, if they have serious concerns. He observed that the policy was not in line with the additional current thresholds as outlined under the London Child Protection Procedures adopted by the Council's Safeguarding Child Board. There appeared to be a lack of provision for the early years group as although he was told that there were policies that covered it, they were not within the school's general safeguarding policy.
60. In his report Mr Pratt confirmed that he found staff to be trained appropriately and that he could see records that confirmed that enhanced DBS checks and references were chased and scrutinised effectively. The Respondent had an appropriate process to follow in relation to visitors and contractors on the school premises and grounds. The school had an appropriate induction process for staff, including signatures being obtained by those supplied with information after they had read it. The school provided sufficient training to staff on safeguarding at the levels expected of their role within the governing body.
61. He noted that the named individuals such as Mrs Barella and Ms Varndell had not had sufficient relevant training to perform their roles. Also, that arrangements were in place in the school so that there was always a DSL

or deputy DSL available during school hours with whom staff could discuss safeguarding concerns.

62. Mr Pratt's findings were that although the school's safeguarding policy was adequate to meet statutory requirements, it was not a document of any practical benefit other than to be read at induction. He noted a lack of professional curiosity demonstrated by the board and the named safeguarding Trustee which led to an inability to effectively challenge and scrutinise safeguarding practice and staff issues. He also confirmed that it was not until the exit interviews that the school became aware of any concerns around the Claimant and YZ, but once they had that information, they acted on it. There was no evidence that prior to the exit interviews the school had any information which indicated a need to distrust information provided by the Claimant.
63. Mr Pratt felt that the chair of Trustees should not also be the named Safeguarding Lead Trustee as that could impede freedom of information sharing with him. Given Mr Harding's level of seniority, people may be reluctant to share concerns or information with him or not see him as a whistleblowing option. This would apply to whoever was the chair. He also suggested that the Respondent may wish to consider having the DSL as opposed to the Headteacher attend Trustee meetings to outline safeguarding within the school and present the safeguarding report.
64. He found that there was a culture of fear around challenges to the Claimant. There were no structures in place to address this with the board, outside of whistleblowing. The Respondent was to set out a process whereby staff could access Trustees. He concluded that in the reported incidents, even though they had the training, staff had failed to follow safeguarding practice, as outlined in their training and/or their induction. The wider safeguarding remit held by the DSL did not stretch beyond the Claimant as Headteacher; which was to be rectified with training to the DSL. He also identified a requirement for improved support for the DSL from the Board and that the school must ensure that its complaints procedures are visible and freely accessible to parents. Reference should be made to it in the information shared with parents.
65. It was apparent from his audit, that Mr Pratt had clear opinions on what had happened at the school and the Claimant's role in it in terms of the application of a safeguarding policy and its compliance with national standards and child protection protocols.
66. The audit was completed on 26 September 2018. During the audit, safeguarding training was delivered to the Board of Trustees on 30 August 2018 and on 24 September, one-to-one training was provided to the Mr Harding as the Named Safeguarding Lead for the Trustees. The report was dated 7 October.
67. One result of the audit was that Mrs Barella was relieved of any particular responsibilities around safeguarding.
68. The concerns raised against the Claimant following the conclusion of the criminal investigation were set out in the risk assessment on page 316Q.

The allegations against the Claimant were of serious failure to follow the Trust's child protection procedures, serious breach of part 2 of the Teacher Standards, bringing the Trust into disrepute, and serious breakdown in trust and confidence. The assessment noted that the Council's LADO had advised that these concerns met the threshold outlined in the London Child Protection Procedures and that there would be a disciplinary investigation.

69. On 12 September the Respondent wrote to the Claimant and invited her to an internal investigation meeting. This was a process run by the Respondent. It was separate to that being run by the LADO although it was clearly related. The Trustees considered that they lacked the skills to conduct an internal investigation, so they instructed Daniella Glynn, an HR consultant from Browne Jacobson, the Respondent's HR advisers, to carry out the investigation. Ms Glynn had no previous involvement in the case and did not know the Claimant. Mr Harding or the other Trustees. Once Ms Glynn was instructed to do the investigation, Mr Harding had no further involvement in the disciplinary process apart from being interviewed.
70. The letter dated 12 September invited the Claimant to an investigation meeting to be held on 20 September to discuss the concerns referred to above: serious failure to follow the Trusts child protection procedures, serious breach of the Teacher Standards – notably Part 2, bringing the Trust into disrepute, and serious breakdown in trust and confidence.
71. We find that sometime in early Sept 2018, Natasha Turck provided Mrs Barella with an email confirming that the Claimant had been given vouchers in a personal capacity as part of a referral bonus for referring teachers to recruitment consultants. Ms Glynn added this issue to the matters that she wished to speak to the Claimant about.
72. Although the invitation letter informed the Claimant that she could bring any information that might be of assistance to the investigation with her; she would have found it difficult to know what to bring as the allegations were unspecified and also, as she was still suspended, she did not have access to her files and documents.
73. The Claimant attended the investigation meeting accompanied by Jason Hogg, her Trade Union representative. The meeting took place on 27 September. During the investigation meeting the Claimant was asked about 36 allegations of misconduct, mainly alleged to have been committed by YZ. In the written investigation report Ms Glynn did not refer to those allegations that she considered were unsupported by evidence, or which were not so serious or were unlikely to succeed. In her final report she concentrated on and only referred to, the most serious allegations.
74. It was unusual for an investigator to exclude the allegations that she found were not serious enough to take to a disciplinary hearing or for which she found no evidence in support. This may have been why the Claimant thought that the Respondent had asked Ms Glynn to deliberately tailor this report to get her dismissed after a disciplinary hearing. We did not find evidence to support that.

75. In the investigation meeting, the Claimant was asked about Mr Harding's governance report which he raised with Ms Glynn in his interview. He still believed that it had been buried on her instructions. She explained that she had delegated the publication of the report to Mrs Barella.
76. The Claimant was visibly stressed at the meeting. However, we find that if she had felt too unwell to continue, she or her trade union representative would have said so to Ms Glynn and sought an adjournment. The claimant was a senior member of staff and the Respondent could rely on her to ask for an adjournment if she wished.
77. The Claimant was asked whether she had ever received personal payments or a referral fee from a teaching agency used by the school. She admitted that she had received a voucher from a teaching agency and that sometimes teaching agencies provide baskets of fruit as a thank you. She reported that once she received a bottle of Baileys and on other occasions agencies had brought in something for the school fete. She confirmed that she had received vouchers but stated that she could not remember their value.
78. The Claimant confirmed that she was aware that if she was given a personal payment of money from an agency, that would be against the rules. She agreed that vouchers are equivalent to money. She also stated that she could not recall being given money by a teaching agency. It is likely that she meant money apart from vouchers.
79. The Claimant did not know that the Respondent had already had confirmation from Natasha Turck about the vouchers that she had been given. It is unlikely that she told Ms Glynn in the meeting what she did with the money as she inserted those details into the minutes afterwards. The Claimant told us that she used the money to buy school supplies. She did not report this to anyone at the time.
80. The Claimant was asked and had opportunity to explain her actions in relation to specific incidents that were alleged against YZ, including the child being put in the locked room, which the Claimant felt she had investigated and found unsubstantiated; YZ allegedly throwing a chair, which at the time she did not recall hearing about; and a child being made to stand on one leg; which she considered was a misunderstanding. She was asked about the allegation that YZ had pulled a child out of line, which she also did not recall. There was another allegation of YZ threatening to slap a child, which the Claimant did not recall although she did recall having a serious meeting with the child and their parents and that she asked YZ to attend the meeting. The Claimant did not recall begging the child's parents not to report the threatened slap to the police.
81. The Respondent was unable to give her dates on when these incidents were alleged to have occurred. This was because the teachers who raised them had not made notes at the time.
82. The Claimant confirmed that she had not kept records in relation to any of the incidents that she recalled happening or being told about. She had not

or could not recall if she had kept a note of any investigations that she carried out in relation to the allegations against YZ.

83. We find it likely that the Claimant was out of school at a funeral on the day of the standing on one leg incident. Mrs Barella telephoned her and told her about it. She gave us a detailed account. When the Claimant returned to work the following day, it is likely that Mrs Barella gave her the statements which she had taken from the child and others, which were in the bundle at pages 1607 onwards. There was no record of the Claimant conducting an investigation into the incident.
84. The Claimant was asked about long hours for teachers, workload, after school clubs and YZ's alleged practice of keeping children late after school – up to 4.30pm. She explained about the booster classes and they discussed the high turnover of staff.
85. Ms Glynn also spoke to YZ on the same day.
86. After the investigation meeting, the Claimant called Natasha Turck to find out the worth of the vouchers that she had given her. It is likely that Natasha Turck had by then been told about the investigation being conducted by Ms Glynn. We say this because after her conversation with the Claimant, she emailed Ms Glynn and informed her that the Claimant had called her and asked her to lie for her. She did not explain what lie the Claimant had asked her to tell. The Claimant had already admitted to Ms Glynn that she had received vouchers and during the investigation meeting she had agreed that vouchers are akin to money.
87. On the same evening, Ms Turck sent an email to Ms Glynn in which she stated that the Claimant had telephoned her to ask whether anyone from the school had been in touch with her regarding what she referred to as '*recruitment fees*'. Ms Turck reported that the Claimant stated that if she did receive such a call, she should lie for her as if she gave a statement about the vouchers it could mean '*the end of her*'. Ms Turck stated that at that point she ended the conversation and although she stated that she would call the Claimant back, she did not do so. She then had four missed calls from the Claimant.
88. We find it unlikely that the Claimant had asked Natasha Turck to lie for her as she had already admitted to Ms Glynn that she had received vouchers. We question whether there was a misunderstanding between them. We find it unlikely that Ms Turck's email reporting this was a complete and accurate record of the whole conversation she had with the Claimant.
89. In his interview with Ms Glynn, Mr Harding stated that he had concerns prior to the exit interviews that there were too many book reviews being done in the school and too much work. Also, that teachers were doing after-school clubs under duress. We find it unlikely that he had those concerns prior to the exit interviews as he did not raise them at the governors meeting, as far as we can tell from the minutes that we saw; and he did not tell us that he had ever raised this as an issue with the Claimant. When he mentioned it to Ms Glynn, she rightly asked him where he got the book review point from

and he said that it was from the exit interviews and *'in his notes'*. The Tribunal did not see those notes.

90. She asked him to provide her with the notes that supported those allegations. It is unlikely that he did as those allegations did not form part of the allegations that went forward for disciplinary action.
91. Ms Glynn also spoke to Ale Rasul who was another year 6 teacher. He alleged that YZ made that the children stay in class so that they missed lunch. This was investigated and found to be false as the dinner staff confirmed that no child had ever missed lunch. The fact that he made a false allegation was omitted from the investigation report. Ms Glynn only gave details in the investigation report of the matters that were serious substantiated allegations against the Claimant.
92. In relation to the allegations that were unsubstantiated or that were less serious, she put them in a separate report together with recommendations for the Respondent as well as action points.
93. In her interview with Paula Newman, Ms Glynn noted that Ms Newman passed emails to her for her to keep. We were not shown those emails and do not know what they covered. It may be because they did not cover anything that later became the subject of allegations against the Claimant and which were referred for disciplinary action.
94. Ms Glynn interviewed many individuals as part of her investigation. She interviewed the Claimant again on 8 November 2018, when the Claimant was once again accompanied by her trade union representative. Prior to that second meeting, Ms Glynn had sent the Claimant a summary of issues that were to be discussed at the meeting. That gave the Claimant more information on the allegations so that she could prepare. It still did not include dates on most of the allegations as some of the teachers who had raised them had not included dates. The Claimant did not have records of any investigations that she had carried out when these matters were raised with her. She did not point the Respondent to any records of safeguarding investigations that she had kept in the school.
95. The Claimant was able to make amendments to the notes of interview and her amended versions were included in the investigation report. Ms Glynn did not interview the Claimant's pa, the school nurse or the parents who had come back to school to thank her for the quality of their child's education. We find it unlikely that any of those individuals had information that would have assisted Ms Glynn in her investigation of the specific allegations against the Claimant.
96. Ms Glynn wrote her report based on the Claimant's version of the meeting notes.
97. On 18 November, Ms Glynn wrote to the Claimant to give her the opportunity to comment on another allegation, which was that YZ had ill-treated children by making them work outside on a bitterly cold day; and that the Claimant knew about it and did nothing. The Claimant stated that this was a complete

fabrication. Ms Glynn was unable to give a precise date of when this was alleged to have happened.

98. The investigation report initially only concentrated on those allegations that Ms Glynn considered were more serious and where she considered that there was evidence to support them. She had not asked the persons making the complaints, such as Mr Rasul, to provide evidence in support. Ms Glynn's told to us was that it was not necessary for her to include in her report, the evidence related to the allegations against YZ as those related to separate disciplinary proceedings. She also did not include her recommendations in the initial report or those matters alleged against the Claimant that were unsubstantiated.
99. There were 17 allegations that she recommended should be taken forward to a disciplinary hearing.
100. Ms Glynn incorporated into the report the Claimant's explanation of all the allegations that were put to her, which were going to be considered at a disciplinary hearing, including her account of the items she purchased for the school with the vouchers she received from the recruitment agency.
101. In the report, Ms Glynn referred to the Academies Financial Handbook and the responsibility placed on the Claimant as the Trust's designated Accounting Officer. She also referred to the school's Declaration of Interest Policy and School Gifts and Hospitality Policy which was explicitly clear that Trustees, Governors and Staff should not accept gifts of rewards from any organisation or individual with whom they have contact in the course of their work either for doing something or not doing something, in their official capacity. The policy also recorded the Trust's intention to establish a register of pecuniary interests for the Governors and Staff, which would be open to the public and must clearly show that any decisions taken were made in a true and fair way. School governors were required to make annual declarations of pecuniary and personal interests.
102. The school's declaration of interest policy was quite clear that in all instances where there is reasonable belief that there has been a failure to declare, the Trust would conduct a formal investigation and school employees may be subject to disciplinary procedures as it would potentially be matters of misconduct. The school's most recent (2016) Code of Conduct stated that all staff must be honest and act with integrity in their work. This included handling and claiming money and the use of school property and facilities. It also stated as follows:

'Gifts from suppliers or associates of the school must be declared to the Headteacher with the exception of "one-off" token gifts from students or parents.....in the case of the Headteacher they should discuss this with the chair of Governors'.
103. Ms Glynn found that the Claimant had been given high street shopping vouchers in a personal capacity as part of a referral bonus scheme from a recruitment agency, totalling £375. She also recorded the Claimant's evidence that she spent the vouchers on resources for the school and for

an NLP course she intended to attend, and which was later approved as part of her performance management process.

104. Ms Glynn recommended that the allegation that the Claimant had committed gross misconduct by doing the following: - accepting the vouchers and failing to declare a conflict of interest in her role as Accounting Officer and Trustee; should be considered at a disciplinary hearing. She considered that it was irrelevant what she spent the money on as the policy was really concerned with the receipt of the money and not what it had been used for.
105. The vouchers also gave rise to a separate allegation which Ms Glynn also recommended should be taken to a disciplinary hearing. This was the allegation that the Claimant had tried on more than one occasion on 27 September, to contact Ms Turck by telephone, after the allegations had been put to her by Ms Glynn earlier in the day. She considered that the Claimant had tried to undermine the investigation and she was also concerned that in their conversation, the Claimant had asked Ms Turck to lie for her.
106. Ms Glynn also set out the Claimant's explanation of what happened between her and Ms Turck.
107. Ms Glynn considered that the disciplinary panel should consider this as an act of gross misconduct as it was a further act of serious dishonesty, an attempt to undermine the investigation and to cover up wrongdoing.
108. Ms Glynn referred in her report to a set of allegations related to how the Claimant spoke to teachers at the school, acted unprofessionally by making comments to staff that had the potential to undermine the employment relationship and the derogatory way in which she spoke about children and their families; she recommended should also be considered misconduct.
109. She recommended that the Claimant's actions in contacting and discussing her suspension with a number of individuals during her suspension, in direct contravention of the Respondent's instruction that she should not do so; should be considered as gross misconduct.
110. Ms Glynn recommended that the Respondent should also consider in a disciplinary hearing whether in relation to the following allegations related to YZ, the Claimant failed to protect children in the school by failing to follow a robust process and proper procedures in investigating and addressing them. These were the allegations that YZ had locked a child in a room, in relation to the workload and time being spent in the classroom by year 6 children, the allegation that YZ had thrown a chair at a child, had made a child/children stand on one leg as punishment, had threatened to slap a child and had threatened to take children outside in winter as punishment for not completing their homework. Those all related to safeguarding of children.
111. Ms Glynn attached the full set out minutes of the meetings she had with the Claimant, copies of the relevant policies, the minutes of meetings with all the witnesses she spoke to and notes of all communication with them –

whether by phone or by email or witness statements. She included the school Code of Conduct in the pack sent to the Claimant.

112. In the hearing bundle we had the 2016 version of the statutory guidance document '*Keeping Children Safe in Education*'. It was the relevant version for this case. This document contains information on what schools and colleges should do and set out the legal duties with which schools and colleges must comply in order to keep children safe.
113. In a section entitled '*the management of safeguarding*' it set out the responsibility of governing bodies, proprietors and management committees in schools, including the Designated Safeguarding Lead (DSL). That stated that governing bodies and proprietors should appoint an appropriate senior member of staff, from the school leadership team, to the role of designated safeguarding lead and that person should take lead responsibility for safeguarding and child protection. This should be explicit in the role-holder's job description. The school can then have one or more deputy designated safeguarding leads. They should all be trained to the same standard as the DSL. The policy stated that while the activities of the DSL can be delegated to appropriately trained deputies, the ultimate lead responsibility for safeguarding and child protection remained with the DSL and should not be delegated.
114. In its written safeguarding policy for 2017/2018, it was recorded that the Respondent had appointed Ms A Varndell as DSL, with the Claimant as Deputy DSL. As DSL, Ms Varndell's role was to ensure that the Respondent's procedures were regularly reviewed and up to date. She did that in conjunction with the Claimant. Mrs Barella's role was the audit and monitoring findings returned to the Council. They both took responsibility for training and cascading training to the rest of the staff. Every staff member has responsibility for safeguarding and taking an interest in the safeguarding of pupils.
115. The Claimant was the Designated Senior Manager with responsibility regarding allegations against staff with Mrs Barella appointed as her deputy. We find that as YZ was a senior member of the leadership team, it was the Claimant's responsibility to investigate the allegations made against YZ by children and teachers and to address them, especially when those allegations were brought to her attention.
116. We also had the Respondent's disciplinary policy and procedure in the hearing bundle. It stated that a formal disciplinary hearing will be convened if the findings of an investigation suggest that formal disciplinary action may be required. The purpose of the formal hearing was for evidence to be presented and considered. The member of staff will have the opportunity to prepare a response to the evidence presented and answer any allegations that have been made. The member of staff would also be given the opportunity to raise points about any information provided by witnesses.
117. By letter dated 22 August 2018, Steve Hall, chair of the disciplinary panel, wrote to the Claimant to invite her to a disciplinary hearing to take place on 18 December 2018. (1141A) The invitation letter set out the 17 allegations that Ms Glynn recommended should be considered as misconduct or gross

misconduct. The letter stated that the allegations when taken together or separately were a serious breach of the school's disciplinary policy, the Teacher's Standards, the School's Code of Conduct, Safeguarding Provisions, the Academies' Financial Handbook and the School's Gifts and Hospitality Policy.

118. The letter stated the names of the teachers that were expected to attend the disciplinary hearing to give evidence, along with Mrs Barella and Ms Turck. The Respondent intended to call 13 witnesses.
119. The Claimant confirmed that she received the investigation report and all the appendices on 6 December 2018. It is likely that she felt overwhelmed by all the documents that she received but it was appropriate that she should be sent the investigation report that was going to be considered by the disciplinary panel and the supporting documents so that she could prepare for the hearing. The Claimant became unwell and went to her GP for medication to deal with stress. She notified one of the panel members that she needed a postponement. It took the Claimant some time before she was able to read the report and the appendices.
120. Once the Claimant's trade union representative queried the information that she had been given, Ms Glynn produced unredacted copies of the material relating to the disciplinary allegations against her. The material that related solely to YZ was not given to the Claimant. It was appropriate for the Claimant to ask what happened to the other allegations that she had been questioned about as she was not told. The initial report simply omitted them. It is likely that she had been worried about each allegation and would have been scouring the investigation report to see what the findings were in relation to all of them.
121. Ms Glynn's reason for redacting the documents was because the redactions contained information not being put forward at the disciplinary hearing, which either related to YZ or might have been prejudicial to the Claimant. Partially unredacted documents were eventually sent to the Claimant's trade union representative on 5 September 2019.
122. The Claimant prepared a 206-page document for the disciplinary hearing in which she included all her evidence.
123. The initial panel had to be changed due to circumstances unrelated to the Claimant. By the time of the hearing, the panel consisted of Steve Hall, Nick Pratt and Colum Lowe. The Claimant had been advised of her right to be accompanied to the hearing and she arranged to have her trade union representative with her.
124. On 23 April 2019, the Claimant was informed by email that her contact person had been changed to the attendance and admissions officer.
125. The hearing was conducted over 3 days, 13 September, 11 October and 14 October 2019. At the last minute, Colm Lowe had to go away on business. The hearing went ahead with the remaining two members of the panel from the second day.

126. The Claimant's union rep challenged why there had not initially been a complete list of allegations in the investigation report.
127. By the time of the disciplinary hearing, Mr Pratt had conducted his investigation and was on the school board. It was likely that the Claimant was not aware that Mr Pratt had provided safeguarding training to the Respondent as she had been on suspension.
128. Natasha Duckett attended to support the panel and at times, it is likely that she assisted them with asking questions in the hearing and provided general assistance. We do not find that she took over the hearing.
129. The Claimant found the disciplinary hearing incredibly difficult as she listened to the witnesses give their evidence. The Claimant and her union representative tried to raise questions of credibility at the hearing as she considered that the fact that they had made serious allegations against her that were not included in the report, should discredit their evidence. The Respondent did not allow the Claimant to ask about anything that was not in the investigation report as the panel wanted to concentrate on the allegations that had been asked to consider.
130. The Claimant was not allowed to ask Mr Harding and Ms Turck all the questions that she wanted to as the panel considered that her questions were not relevant to the issues that it had to decide. She wanted to question them on their credibility. However, she was allowed to ask them some questions.
131. Mr Hall's evidence was that Mr Pratt did not bring any information into their decision-making that he knew from his earlier work with the school. Their decision was based solely on the evidence heard or read in that disciplinary hearing. They looked at the evidence in 4 separate areas: firstly, there were allegations related to the Claimant's conduct towards the Respondent's staff and its pupils' parents; secondly, there were allegations related to the Claimant's honesty and her compliance with the requirements of the policies on declarations of interests and gifts; thirdly, there was another set of allegations related to her adherence to the Respondent's safeguarding policies; and a fourth set of allegations related to the Claimant's compliance with the terms of her suspension and also related to her honesty as it was alleged that she had contacted a witness and asked her to lie for her, thereby attempting to compromise the disciplinary investigation.
132. The Claimant was able to put her case across in the disciplinary hearing and had the assistance of her trade union representative. The Claimant submitted to the panel, as she did to us in the Tribunal, that there were other employees with responsibilities for safeguarding at the school and that they were also guilty of failures and should be sanctioned. The panel was only considered allegations against her and had not been asked to conduct a wide-ranging inquiry to the Respondent. That was being conducted by the LADO and elsewhere. The panel's job was to consider the disciplinary allegations against the Claimant.
133. The Claimant also submitted in the disciplinary hearing that the reason she was facing these allegations was related to her working relationship with

Mr Harding. The panel considered this also and decided that there was no evidence of that and that even if there were issues between them, there was no evidence that it affected the evidence that the panel heard. The panel based its decision on the allegations on the evidence in heard. We find that neither Mr Harding nor Mrs Barella was involved in making the decision at the end of the disciplinary hearing.

134. We find that the decision taken at the end of the hearing was taken by Mr Hall and Mr Pratt. Ms Duckett did not take part in making the decision. The panel found 11 of the allegations against the Claimant proven and dismissed the remaining 6.
135. On 17 October 2019, Mr Steve Hall wrote to the Claimant to notify her of the outcome of the disciplinary meeting. She was informed that the panel had decided that the allegations that the Claimant had acted unprofessionally in her senior role by telling teachers in staff meetings that if they did not want to work there, they could go elsewhere and on other occasions that they needed to make a choice between their career and their families; had been found proven because more than one teacher reported to the panel that they had heard her say words to that effect. Those statements from the Claimant had the potential to undermine the employment relationship and caused some employees to feel uncomfortable and concerned.
136. The panel found that the allegation that the Claimant had used a derogatory term when referring to a parent was proven and that this was unprofessional and inappropriate.
137. In relation to the allegation of a child being locked in a room, the panel decided that as the Claimant confirmed, she had been away from work on the day of the incident. She was told about it. She had been at work on the following day and had conducted a limited investigation but she failed to take any written statements from the members of staff involved. She did not speak to the child concerned or consult with the LADO about it. She did not have any written records in relation to this matter. The Claimant had therefore not followed a robust process in dealing with this allegation. Her actions had not met her statutory requirements in accordance with the schools safeguarding policies and teacher standards or Keeping Children Safe in Education.
138. In relation to the allegation regarding YZ making children stand on one leg, the panel were satisfied that the Claimant had not been on site on the day that this allegedly occurred. Although the Claimant denied that this had ever been raised with her, the panel heard from two witnesses who stated that statements were taken from pupils and passed to her so that she could conduct her own investigation and deal with it. It is likely that Mrs Barella was one of those witnesses. The panel therefore decided that on balance, it was likely that the matter was raised with the Claimant and that she failed to follow the correct procedures in dealing with it in accordance with the school's safeguarding policies and procedures. That allegation was found proven.
139. The panel heard from the parent of the child who was the subject of YZ's alleged threat to slap them. The panel concluded that the Claimant had

sufficient information to enable her to properly record it and follow the School's procedures in investigating it and dealing with it. This was a serious allegation of violence towards a child against a senior member of staff, which the Claimant had failed to address properly. She had invited YZ to a meeting with the parent, which she ought not to have done. She had failed to report the matter to the LADO for investigation and she had failed to record it as a serious matter.

140. In relation to all the incidents regarding children, Mr Hall's evidence to us was not that the panel had found that these incidents had occurred. It was true that the panel did not have dates for the all these serious allegations concerning children. But that did not mean that they could not and that the Claimant should not have taken them seriously. What the panel decided was that the incidents had been reported to the Claimant had she had failed to record the information that she had been given and had failed to conduct a safeguarding investigation into them. She had taken no action. This was serious and a clear breach of her responsibilities as Designated Senior Manager with responsibility regarding allegations against staff also, her responsibilities as Headteacher. As the Designated Senior Manager, it was her responsibility, in addition to others in the school, to advise the LADO of any allegations and to direct any investigation as set out by the LADO.
141. The panel did not uphold allegations where there was insufficient evidence provided in support, such as the allegation that the Claimant had referred to children in the school as '*problem children*'. This was also the case in relation to the allegations that she had failed to intervene in relation to the workload and time spent in the classroom for Year 6 children, that she had failed to follow safeguarding process when there were allegations that YZ had thrown a chair at a child, pulled a child out of line or threatened to take children outside to complete their homework on a very cold day. The panel found these allegations unproven.
142. In relation to the allegations that the Claimant had breached the rules of her suspension by contacting and discussing it with a number of individuals, contrary to what she had been told to do; the panel found that allegation proven. The Claimant had admitted this but presented the panel with mitigating circumstances such as how shocked she had been at being suspended. The panel found that Mr Harding had made it clear to the Claimant when she was suspended, that she should not contact anyone. The Claimant had made a total of 9 calls within a short period of time after her suspension, two of which had been made to YZ. After the Claimant received the suspension letter, which made it clear that she was not to speak to anyone about her suspension, the panel found that she spoke to YZ and to Ms Turck. On 10 August 2018, there was a further letter from the Respondent reminding her of this when it was clear from her work phone records that she was making these calls. The last call the Claimant made was to Ms Turck on 27 September.
143. The panel decided that the Claimant's actions in making these calls demonstrated a wilful disregard for the suspension terms, which could have impeded the investigation and which placed her in a position where her integrity could be brought into question.

144. The panel upheld the allegations surrounding the vouchers from Natasha Turck. Firstly, it was the panel's decision that as an employee, a Trustee and the Accounting Officer for the Trust, the Claimant had acted dishonestly and in breach of the Academies Financial Handbook 2016, the School Declaration of Interests and Gifts and Hospitality Policy, Code of Conduct for Employees and for Governors, by accepting and failing to declare vouchers received from a recruitment agency to the value of £375. The Claimant had already admitted to receiving the vouchers. It was not her case that she had declared it at the time she received them. The panel considered that in doing so the Claimant showed a disregard for both school and statutory guidance.
145. Secondly, the panel found that the Claimant acted with serious dishonesty and attempted to undermine the investigation when she contacted Ms Turck and asked her to lie for her. The panel concluded that even though it was the Claimant's word against that of Ms Turck, that Ms Turck had nothing to gain by lying about this and that she immediately reported the conversation to Ms Glynn. Thirdly, the panel found the Claimant's actions in continuing to try to make contact with Ms Turck when she refused to take her calls, was in breach of the suspension conditions. It did not uphold the other part of the allegation because it was not known what the Claimant would have said had Ms Turck answered those calls.
146. The panel found the following allegations: contacting individuals while suspended, accepting and failing to declare the vouchers, contacting Ms Turck and asking her to lie and making four further calls to Ms Turck; failing to follow robust processes and the required procedures in relation to the allegations that YZ had locked a child in a room, that YZ had made children stand on one leg, that YZ had threatened to slap a child and that the Claimant had told the parent that she would be responsible if he told the authorities that YZ had threatened to slap his child; to all be acts of gross misconduct.
147. The panel considered the points made on the Claimant's behalf and by herself in the hearing as mitigation. She had stated that she had a higher workload than normal at the time of some of these allegations. Also, that she had issues with her personal assistant around the time of some of these. The Claimant also told the panel how these allegations had seriously affected her physical and mental health. The panel did not dispute this but was aware that most of these allegations pre-dated the issues with the Claimant's health which mostly arose as a result of her suspension.
148. In deciding on the appropriate sanction to impose on the Claimant, the panel considered her length of service at the school and that the Claimant had agreed in the disciplinary hearing, in relation to some of the allegations, that her conduct had not been appropriate and that she could have done more. The panel considered that due to the seriousness of the conduct found to be gross misconduct, in that they related to the safety of children, it was not appropriate to consider alternatives to dismissal.
149. The Claimant was summarily dismissed. Her final date of employment was 19 October 2019. She was not paid any notice pay. The Claimant was also told that the Respondent would have to inform the Disclosure and Barring

Service (DBS) about her dismissal given the nature of the allegations they found proved against her.

150. The Claimant was advised of her right to appeal against her dismissal. She was to write to Mr Harding, the chair of governors, within 7 days of the date of the dismissal letter, stating her grounds of appeal in full. An appeal hearing would then be arranged.
151. The Claimant appealed against her dismissal on 6 March 2020. The Claimant submitted a letter of appeal and appendices in support. Mr Hall, on behalf of the disciplinary panel, submitted a response to the Claimant's grounds of appeal.
152. In her appeal the Claimant alleged that the decision to investigate her, the investigation itself and the disciplinary hearing had been unfairly influenced by bias. In the hearing she alleged that Mr Harding, Mrs Barella and Mr Ale Rasul had conspired against her to ensure that she was dismissed because of YZ and her support for YZ and their race. She appealed on the ground that Nick Pratt, who had been on the disciplinary panel had been biased against her because of his conduct of the safeguarding assessment for the Respondent. She felt that he already had made up his mind about her before the disciplinary hearing. She had not raised this at the disciplinary hearing because she was not yet aware that he had conducted the safeguarding review.
153. The Claimant appeal also referred to her upset that the School's board of governors had breached confidentiality in relation to the disciplinary procedure or had publicly announced that she was no longer Headteacher at the school, long before her employment ended. The Claimant cited as an example that her name and that of YZ had been removed from the website by an administrator, before the outcome of the disciplinary hearing was known as evidence of a pre-determined outcome.
154. We find that this happened while Mrs Barella was away from the office on leave and following the appointment of an interim Headteacher to run the school while the Claimant was suspended. The matter was brought to Mr Harding's attention and the Claimant's name and status as Headteacher was immediately restored. The Respondent's evidence was that the website continued to identify the Claimant as the Headteacher until her dismissal. The website also indicated that there were ongoing investigations into the Claimant and YZ because of the many queries to the school from parents, pupils and former pupils wanting to know what was happening and given their continued absence from school. The Respondent endeavoured to give the minimum information on the website about the situation. They took advice from Browne Jacobson on the wording of the statement.
155. The Claimant's appeal against dismissal was heard by a panel made up of Steve Bernard, chair and Rasheed Dauda, both of whom were black and Ms Rita Domingues who was of Portuguese nationality. Mr Dauda was a member of the Trust while Mr Bernard and Ms Domingues were independent panel members. Mr Bernard in his day job was a Team Manager in a Council's Children's Services department. He had experience

of sitting on disciplinary panels, with particular experience of hearing cases involving safeguarding allegations.

156. The Claimant's appeal against dismissal was due to be heard on 21 January, which was the Claimant's birthday. She felt too unwell to attend and asked for it to be rescheduled. It was rescheduled to 30 March. The Claimant submitted an updated grounds of appeal document on 10 March 2020. The Claimant submitted a 21-page document in support of her appeal, which was heard on 26 April and concluded on 6 May 2020. Because of the pandemic and the need to social distance, the appeal hearing took place remotely by telephone conference. The Claimant attended with her trade union representative and Steve Hall attended to present the management case. He was supported by an HR advisor from the Council. There was also a notetaker present.
157. The Claimant included information about her deteriorating health in her appeal. She sent in information about the medication she was on. After her dismissal the Claimant became very ill as she was suffering from severe anxiety and depression and she gave the appeal panel information on that. She became upset in the appeal hearing and the panel adjourned to give an opportunity to regain her composure before they continued. The Claimant did not ask for an adjournment to the hearing.
158. The Claimant produced character references in the form of letters of praise and commendation from parents and former students. She also challenged the truth of some of the allegations found against her. The Claimant was questioned by Mr Hall and the panel and then Mr Hall presented the management case. He was questioned by the Claimant and her trade union representative and the panel. Both the Claimant and Mr Hall summed up their respective cases.
159. The appeal panel addressed the Claimant's belief that both the investigation and the decision to dismiss her had been tainted by race discrimination. We were struck by the approach taken by the chair of the appeal panel who candidly admitted that he was someone who had experienced race discrimination in his working life and so was alert to the possibility that this could have been a feature here as both the Claimant and YZ are black women. He considered whether the treatment the Claimant received was influenced by or related to her race or that of YZ. His evidence was that it did not appear to him or any of the other panel members that the Claimant's race or that of YZ had any bearing on the decision to conduct the investigation, to discipline the Claimant or to dismiss her. The panel was convinced that the decision to conduct the exit interviews arose out genuine concerns about the high staff turnover at the School.
160. The appeal panel's decision, after taking some time to deliberate, was to uphold the decision to dismiss. The appeal panel considered that the disciplinary panel's conclusions that the Claimant had been informed about the safeguarding allegations against YZ were correct and should be upheld. This was so even though there were written notifications to the Claimant. It would have been up to the Claimant to ask that staff write down any information before passing it to her. She did not implement such a procedure and therefore, the staff gave her information verbally. The appeal

panel was satisfied that the Claimant had seriously breached her safeguarding obligations by not recording and investigating these allegations. She had ultimate responsibility for doing this as the Senior Safeguarding Manager and the Headteacher in the school. She could not pass the responsibility for this to Ms Varndell or to Mrs Barella.

161. The appeal panel's decision and the reasons for it were set out in writing and sent to the Claimant on 12 June 2020.
162. The Claimant began early conciliation on 17 January 2020 and the ACAS certificate was dated 28 February 2020. The Claimant issued her ET1 on 27 March 2020.

Law

163. The Claimant makes complaint of unfair dismissal, wrongful dismissal, direct race discrimination and of victimisation. The Tribunal applied the following law to the findings of fact set out above.

Unfair dismissal

164. The first issue for the Tribunal is determination of the question - what was the reason for the Claimant's dismissal? The Respondent's alleges misconduct, which is one of the reasons set out in section 98(2) of the Employment Rights Act 1996 (ERA). The burden is on the Respondent to show the reason for the dismissal and that it is a potentially fair reason i.e. that it relates to the Claimant's conduct.
165. A dismissal on the ground of conduct can be fair. In order to decide whether it is fair or unfair, the Tribunal needs to look at the processes employed by the Respondent leading up to and including the decision to dismiss. In cases concerning the employee's conduct, the Tribunal's analysis involves the application of the principles set out the case of *British Homes Stores Ltd v Burchell [1980] ICR 303*, as follows:-
 - (a) did the Respondent genuinely believe that the Claimant was guilty of the alleged misconduct and dismissal for that reason was justified;
 - (b) Did the Respondent hold that belief reasonable grounds, having conducted a proper and adequate investigation; and
 - (c) was dismissal within the range of reasonable responses?'
166. This means that the employer does not need to have conclusive direct proof of the employee's misconduct but only a genuine and reasonable belief of it which has been reasonably tested through an investigation. The range of reasonable responses test applies to the investigation as well as the decision to dismiss. (See *Sainsbury's Supermarkets Ltd v Hitt [2003] IRLRL 23*).
167. If the Tribunal concludes from all the evidence that this is the case; then the

next step for the Tribunal is to decide whether, taking into account all the relevant circumstances, including the size of the employer's undertaking and the substantial merits of the case, the employer acted reasonably in treating it as a sufficient reason to dismiss the employee. In determining this, the Tribunal has to be mindful not to substitute its own views for that of the employer. Whereas the onus is on the employer to establish that there is a fair reason, the burden in this second stage is a neutral one. The *Burchell* test applies here again and the Tribunal must ask itself whether what occurred fell within "the range of reasonable responses" of a reasonable employer. The law was set out in the case of *Iceland Frozen Foods v Jones* [1982] IRLR 439 where Mr Justice Browne-Wilkinson summarised the law concisely as follows:

"We consider that the authorities establish that in law the correct approach for the ... Tribunal to adopt in answering the question posed by [section 98(4)] is as follows:

- (1) the starting point should always be the words of section 98(4) themselves;
- (2) in apply the section the Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (members of the Tribunal) consider the dismissal to be fair;
- (3) in judging the reasonableness of the employer's conduct, a tribunal must not substitute its decision as to what was the right course to adopt for that of employer;
- (4) in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, and another quite reasonably take another;
- (5) the function of the Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable response which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair."

Race Discrimination

168. The Claimant also complained of direct discrimination because of the protected characteristic of race. The Claimant complained that as a black female and because of her association with YZ, who was a Nigerian black female, the Respondent treated her less favourably than others who did not have that protected characteristic. The Claimant alleged that there was a pre-determined decision to dismiss her because of her race and that of YZ and that the Respondent's decision to believe other witnesses rather than

the Claimant showed their bias against her. She compared herself to hypothetical white headteachers and/or safeguarding leads. She also referred to two actual comparators, Mrs Barella and Ms Varndell who she said should have been held equally responsible for any safeguarding failures at the school.

169. Sections 13 of the Equality Act 2010 (the Act) states that 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. The burden of proving the discrimination complaint rests on the employee bringing the complaint. The burden of proof provisions in section 136 of the Act applies to this claim. It states at subsections (2) and (3), “*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.*” But this does not apply, if A is able to show that it did not contravene the provision.
170. There is a substantial volume of case law which seeks to provide guidance on the burden of proof. It was fully addressed in the case of *Igen v Wong [2005] IRLR* and confirmed in subsequent cases including *Madarassay v Nomura International Plc [2007] IRLR 246*.
171. The Court of Appeal of *Igen Ltd v Wong* specifically endorsed these principles:
 - (1) it is for the Claimant who complains of discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the Respondent had committed an act of discrimination against the Claimant which is unlawful by virtue of the Act. These are referred to below as “such facts”.
 - (2) If the Claimant does not prove such facts she will fail.
 - (3) It is important to bear in mind in deciding whether the Claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination - even to themselves.
 - (4) In deciding whether the Claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the Tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
 - (5) At this stage the Tribunal does not *have* to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a Tribunal is looking at the primary facts before it to see what inferences of secondary fact *could* be drawn from them.

- (6) In considering what inference is or conclusions can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts.
 - (7) Likewise, the Tribunal must decide whether any provision in any relevant code of practice is particularly relevant and if so, take it into account in determining such facts. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.
 - (8) Where the Claimant has proved facts from which conclusions could be drawn that the Respondent had treated the Claimant less favourably on the grounds of race, then the burden of proof shifts to the Respondent.
 - (9) It is then for the Respondent to prove that he did not commit, or as the case may be is not to be treated as having committed, that act.
 - (10) To discharge that reason, it is necessary for the Respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of race.
 - (11) That requires the Tribunal to assess not merely whether the Respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that race was not a ground for the treatment in question.
 - (12) A Tribunal will normally expect cogent evidence to discharge that burden of proof. In particular, the Tribunal would need to examine carefully explanations for failure to comply with any relevant code of practice.
172. The Tribunal can consider all evidence before it in coming to the conclusion as to whether or not a Claimant has made a prima facie case of discrimination (see also *Madarassay v Nomura International Plc* [2007] IRLR 246). That case is also authority for the principle that a prima facie case is not made out simply by the Claimant showing a difference in treatment and a difference in status. ‘something more’ is required to shift the burden of proof. The ‘something more’ may be an explanation for less favourable, or unfavourable treatment which is rejected.
173. In every case the Tribunal has to determine the reason why the Claimant was treated as s/he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572 “this is the crucial question”. It was also his observation that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator. If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reasons. It is sufficient that it is significant in the sense of being more than trivial.

174. The less favourable treatment alleged in this case are the decisions to suspend the Claimant, to subject her to a disciplinary investigation and process; to manufacture evidence against her, and to withhold the exit interviews and redact the disciplinary investigation notes and evidence.

Victimisation

175. [Section 27](#) of the Equality Act 2010 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) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act –
- (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule."

176. The protected acts relied on in this claim are identified at paragraph 14 of the List of Issues as follows:

- a. C informing colleagues that their complaints about YZ's accent and not being able to understand her was because she was Nigerian and their complaints were discriminatory;
- b. C informing Mr Harding that he sounded like Mrs Barella who was always complaining about YZ's accent.

Applying Law to Facts

Race Discrimination

177. We first considered whether there were any facts from which we could infer that the Claimant was treated less favourably in terms of her suspension, the instigation of the investigation or in the decision to dismiss her or not to uphold her appeal because of her race or because of YZ's race.
178. Both the Claimant and YZ are black women. YZ is a Nigerian woman with a speech impediment who also spoke with a strong accent which sometimes made it difficult to understand what she was saying. It is also a fact that both the Claimant and YZ were subjected to investigations and disciplinary action in the summer of 2018.
179. It is our judgment that Mr Harding, who is a black man, was unhappy about the handling of his report and blamed the Claimant for burying it on the Trust's website even though it was clear that she gave it to Mrs Barella to upload for her as it was an admin task. However, it is our judgment that none of those matters resulted in the Claimant being suspended, investigated and subsequently dismissed.
180. It is our judgment that there were no facts from which we could conclude that the Claimant's race bore any relation to the decision to suspend her, investigate her and subsequently dismiss her. The allegations which led to the Claimant's suspension and the investigation came out of the exit interviews that Mr Harding conducted with Dr Smart and the other written allegations sent to Mrs Barella afterwards.
181. In our judgment, we do not conclude that the fact that Mr Harding decided to conduct the exit interviews showed bias or that he wanted to or was going to construct a case against the Claimant. There was nothing to the fact that he decided to conduct the exit interviews. As chair of the governors, he was entitled to decide on reflection after the meeting that this was serious and that he wanted to do it himself. In our judgment, it is likely that Mr Harding was surprised by the extent and the seriousness of the allegations that arose from the exit interviews. He had not been expecting them and there was no suggestion that he told the teachers what to say. It is correct that a flurry of written allegations came into the office addressed to Mrs Barella after the exit interviews. That was because Mr Harding and Dr Smart asked the teachers to report the safeguarding concerns separately in writing to Mrs Barella, which is what they did. Mr Harding correctly realised that the safeguarding issues should not be contained within the exit interviews as they had to be treated separately.
182. The Tribunal did not find any evidence of conspiracy here.
183. The decision to suspend the Claimant was made by Mr Harding on behalf of the Board but on the advice of the LADO. In our judgment, the Respondent did not really have a choice in the matter because as soon as the safeguarding concerns were passed to the LADO, they were instructed what to do. They had to report concerns to the Police, suspend the Claimant

and YZ, instigate a safeguarding assessment of the school and a disciplinary investigation against the Claimant. The matter was effectively taken out of Mr Harding's hands.

184. Mr Harding and Mrs Barella did not make the decision to refer the Claimant to a disciplinary panel and did not decide to dismiss the Claimant. There was no evidence that Mr Harding and Mrs Barella or Mr Ale Rasul had the power to influence or instruct Ms Glynn to prepare a report that would lead to dismissal or the disciplinary panel to dismiss her. Ms Glynn as a professional investigator, decided how she was going to conduct the investigation, constructed the report and made her recommendations without influence or instruction from the Respondent. There was no evidence to the contrary.
185. The Claimant did not allege that Mr Pratt decided to dismiss her because of her race. In our judgment, it is likely that Mr Pratt had formed an opinion about the Claimant from conducting the investigation but it is unlikely that it was any more than an opinion which she could have influenced or changed, if she had a satisfactory explanation to present to the disciplinary panel. The Tribunal is satisfied that there was no evidence that the investigation process conducted by Ms Glynn or the disciplinary process was influenced by the Claimant's race or by her association with YZ.
186. There was no evidence that Mr Harding or Mrs Barella told the panel to dismiss the Claimant or directed the disciplinary process in any way. Mr Harding commissioned Ms Glynn and then stepped back. He gave a statement as part of the investigation and from that statement it was evident that he was clearly still annoyed that his report had not featured prominently on the website but that does not mean that he controlled the investigation or the outcome. An example of this is when, in his meeting with Ms Glynn, he referred to the Claimant requiring too many book reviews to be done as another allegation of misconduct, Ms Glynn asked him to provide the evidence to support it. He did not do so and she did not take it any further.
187. The Respondent's decision to suspend the Claimant, subject her to a disciplinary investigation and dismiss her were not favourable treatment. However, it is our judgment that there were no facts from which we could conclude that if Mrs Barella or Ms Varndell, who are white women, had been the Headteacher, that they would have been treated any differently by the Respondent.
188. Ms Varndell was not the Headteacher. She was the Respondent's Designated Safeguarding lead, which meant that she had some responsibility for maintaining safeguarding policies and procedures within the school. The Claimant as the Headteacher had different responsibilities. She was responsible for allegations regarding staff. Mrs Barella was her deputy.
189. In our judgment, Mrs Barella and Ms Varndell were not proper comparators in this case because they were not in the same position as the Claimant. She was the Headteacher with a greater responsibility for safeguarding the children in the school, setting standards and creating/implementing policy than them. It is our judgment that had Mrs Barella and Ms Varndell been

the Headteacher and the same allegations had arisen of them failing to investigate and take appropriate action on possible safeguarding incidents, it is highly likely that the school would have reported the matter to the LADO as soon as it was aware and would have taken the same action against them.

190. In our judgment, the Respondent did not manufacture evidence against the Claimant as alleged in item 12(3) of the list of issues. At the end of her investigation, Ms Glynn separated the information into different categories. She wrote one investigation report containing only the disciplinary allegations which she recommended should be considered at a disciplinary hearing with the Claimant. The allegations that related to YZ were put in a separate document as were the allegations that were not going to be considered at a disciplinary hearing and about which she had made recommendations for broader consideration by the Respondent. Although this was an unusual way of writing the investigation report, there was nothing sinister in it. There was no evidence that she had done this because of the Claimant's race. Once the Claimant's trade union representative asked for the full unredacted statements, they were provided.
191. In this Tribunal's judgment, it is not appropriate and would have been very dangerous for the Respondent to ignore or downplay allegations of safeguarding breaches because of the Claimant's past achievements at the school. The Respondent treated these allegations seriously as it had to.
192. The Claimant admitted that she had received vouchers and that she had not declared them as she ought to have done. The obligations that she breached by failing to declare the vouchers were not dependent on what she had done with the money. They were put in place to ensure that everyone, whether member of the governing body, teacher, Headteacher or other member of staff, should not accept gifts or rewards from any organisation or individual with whom they have contact in the course of their work either for doing something or not doing something, in their official capacity, except in certain circumstances. If they do, they must make a declaration and record it. The Claimant failed to do so. The Claimant's race was unrelated to this finding against her and this was a serious offence of gross misconduct.
193. It is therefore our judgment that the Claimant has failed to prove that the decisions to suspend her, conduct an investigation, dismiss her and confirm the dismissal on appeal was done because of her race or because of YZ's race. The burden of proof does not shift to the Respondent.
194. The complaint of race discrimination fails and is dismissed.

Unfair Dismissal

195. *The first question for the Tribunal is – what was the reason for the Claimant's dismissal? Was it her race or was it YZ's race as she alleged? Item 1 in the list of issues (pg. 49)*

196. We have determined above that the Claimant's race was not the reason for her dismissal. Neither was YZ's race. The Claimant was dismissed because of gross misconduct. The disciplinary panel decided that the Claimant had committed gross misconduct in some of the allegations against her. Others were classed as misconduct and others as unproven.
197. *We the Claimant dismissed because of a pre-determined decision to dismiss her because she had appointed YZ as assistant Headteacher, as the staff perceived that there was favouritism towards YZ and because of the breakdown in the Claimant's relationship with Mr Harding? (Item 1(2) of the list of issues at page 49 in the trial bundle).*
198. It is our judgment that the Claimant's relationship with Mr Harding had been a longstanding one as they had worked together for many years. The Claimant knew what Mr Harding's partner looked like and knew of his first marriage. It is our judgment that their working relationship was not at its best at the time of the exit interviews because of what had happened over Mr Harding's report and because of the fact that the school was losing at least 8 members of staff and the governors were worried about it. In our judgment, it is unlikely that the incident with the book at the summer fair would have made Mr Harding decide to terminate the Claimant's employment.
199. Up to the date of the exit interviews, Mr Harding and the rest of the board were happy with the results that the Claimant was achieving for the school. They were receiving awards and quality marks and other accolades. The main concern was the constant turnover of staff. There was no evidence that this was something that would cause Mr Harding to decide to terminate the Claimant's employment and no evidence that this was what he did.
200. Although Mrs Barella and Mr Harding were not overly happy with the Claimant's proposal to appoint YZ as assistant Headteacher, she did make the appointment. Mr Harding had the authority to stop her from doing so or to not confirm the appointment and he did not use that authority. YZ was appointed as assistant Headteacher.
201. There was no evidence of a pre-determined decision to dismiss her which infected the investigation or the disciplinary panel.
202. *Had the Respondent conducted a reasonable and fair investigation into the Claimant's alleged misconduct? Item 4 of the list of issues.*
203. The Claimant was suspended because the LADO advised the Respondent that it was appropriate to do so. Mr Harding did not know how long the investigation would take or where it was going to go. That is why he said to the Claimant that it would all be sorted shortly. This was not to mislead her but what he genuinely believed at that moment.
204. It was fair and reasonable for the Respondent to instruct Browne Jacobson and in particular, Ms Glynn to conduct the investigation. This meant that it was out of the Respondent's hands and being done at arms-length. The Claimant and Ms Glynn had not known each other before this. There was no evidence that she knew Mr Harding or Mrs Barella prior to this. In

conducting the investigation, Ms Glynn talked to all the relevant people. The only person she did not speak to, was the Claimant's pa. and it was not necessary for her to do so in order to include the fact that the Claimant had been busy and had variable admin support around the time of some of the allegations.

205. As already stated, Ms Glynn decided to divide up the investigation report and create more than one report. She created one report for the disciplinary hearing which only contained the allegations that she considered were serious and where there was evidence that supported them. This report was to recommend a disciplinary hearing. It contained allegations to be considered at a disciplinary hearing. That was the report that was provided to the Claimant.
206. It is correct that there were no dates for a number of the alleged incidents of safeguarding that related to children at the school. However, even for the allegations that the Claimant recalled being told about she had not conducted investigations and had no notes of who she had spoken to or what had been done. For example, she had investigated the allegation of the child in the locked room but had no written record of her investigation or of what she found. That meant that she could not give a clear account of what she had been told or why she came to the conclusions that she did. She was depending on her memory. That was unsatisfactory. The allegation that YZ had made a child stand on one leg was another allegation that she confirmed that she had been told about. Although she had not been at school on the day of the incident, she did return to school on the following day. There was no evidence that she had treated this seriously and had conducted an investigation into it and addressed it. The fact that there were not clear notes from the teachers with dates and times was unfortunate but did not mean that the allegations should not be treated seriously.
207. The Claimant was also asked about matters that were not ultimately pursued as part of disciplinary allegations. It was unclear to us why that made the investigation unreasonable or unfair.
208. The allegations against the Claimant were that she failed to follow processes when she was told of the allegations. The Respondent was not able to say whether all these incidents actually occurred or occurred in the way they were reported to Mrs Barella but it was clear from the investigation that the Claimant failed to follow procedure, to record the allegation/s, conduct an investigation, or take action on incidents of safeguarding concerning the children in her care. The Claimant's obligations where there are allegations of safeguarding incidents involving teachers was clear and she failed to comply with those.
209. The allegations that the Claimant contacted and spoke to people while suspended were also serious allegations. She made a total of 9 telephone calls while on suspension. It is likely that five calls were to Ms Turck and three were to YZ and one to the person who she spoke to about the school's website. This was all in direct contravention of the Respondent's clear instruction to her in the letter of suspension and again in a subsequent letter in August, not to contact anyone except her point of contact, Mr Harding.

Her point of contact was later changed to another teacher. The Claimant disregarded that instruction on more than one occasion.

210. This instruction was not that she should not contact anyone unless it was important or unless there was a good reason. The Respondent's clear instruction, made even clearer in the letters to her, was that she was not to contact anyone. The evidence was that she was suffering from shock, anxiety and stress in relation to her suspension. She became ill when she understood the enormity of the allegations against her. It was understandable that she would want to get support and to talk to someone. At the time, she did not have any detail of the allegations against her. However, those circumstances do not negate the fact that she breached the Respondent's clear instruction that she should not contact anyone during her suspension. Initially, YZ telephoned her. The Claimant had not initiated that contact. But she did go on to telephone her and others.
211. The Claimant agreed that she had contacted Ms Turck about the vouchers and that after they spoke, she called her four further times to speak to her. Here again the Claimant disregarded the Respondent's instructions that she should not contact anyone. Ms Turck was not one of her teachers and there was no work matter that she had to discuss with her. Ms Turck was not a friend from whom she was seeking support. There was no good reason to contact her. The Claimant knew that the investigation meeting was going to continue and it was likely that she would have to discuss the vouchers again with Ms Glynn. She could have waited and asked Ms Glynn whether she knew the total value of the vouchers. There was no need to call Ms Turck. The Respondent considered this to be gross misconduct.
212. The Claimant complained that Ms Glynn questioned her on matters that were not directly related to the allegations against her. It is our judgment that as the investigator of serious disciplinary allegations against the Claimant, Ms Glynn was entitled to ask questions to understand how the school worked, what sort of practices the Claimant had instituted to address issues in the school and to get a broad picture to give context to the allegations and so that she could understand the information that she had been given.
213. Taking all the above into consideration, it is this Tribunal's judgment that Ms Glynn conducted a reasonable and thorough investigation process. She created a report that incorporated the Claimant's comments and corrections to the minutes. The Claimant's trade union representative was given all the relevant unredacted documents once he asked for them and before the disciplinary hearing. He was able to attend and assist her with the process.
214. It is this Tribunal's judgment that the investigation report was fair and unbiased and simply put the allegations and the evidence to the disciplinary panel for consideration.
215. Mr Pratt who had already conducted the safeguarding review was on the disciplinary panel. He had an opinion that there was a culture of fear surrounding challenges to the Claimant and that the DSL procedure did not go much beyond the Claimant. Did that mean that he had made up his mind

to dismiss the Claimant? The Tribunal did not hear from Mr Pratt in the hearing. We heard from Mr Hall, who chaired the disciplinary panel. We also had all the relevant documents.

216. It is our judgment that we had no evidence that Mr Pratt had any fully formed beliefs or convictions about the Claimant and these allegations. His safeguarding review and the training he gave to Mr Harding related to policies and procedures on safeguarding. They were not personal to the Claimant, although she was referred to in the report. It was right that the Respondent should consider strengthening their safeguarding policy so that if in future, concerns are escalated to the Head and nothing happens, teachers/staff feel empowered to take matters outside the school to the LADO. That recommendation did not demonstrate that he had made up his mind about specific allegations of misconduct against the Claimant or about her continued employment by the Respondent.
217. The allegations against the Claimant had not been settled at the time of the safeguarding review and Mr Pratt had not been involved in the process of formulating them. That was done by Ms Glynn, from the exit interviews, the written complaints that were sent to Mrs Barella and the evidence given to her when she took statements.
218. In our judgment it is likely that Mr Pratt came to the disciplinary hearing with some familiarity with the people and procedures involved but we did not have evidence that he had reached final conclusions on the Claimant's guilt. In our judgment, at the disciplinary hearing, the Claimant had the opportunity to show that she had followed procedure when the safeguarding allegations were reported to her. It is our judgment that had she been able to point to some investigations and records that she kept, Mr Pratt and Mr Hall would have considered that and may have come to a different conclusion on her employment. It is this Tribunal's judgment that the conclusions that the panel came to at the end of the disciplinary process came from the evidence presented to it and not from any pre-conceived ideas about the Claimant.
219. The Claimant submitted that there was no evidence to support the allegations against her. However, the panel only upheld the allegations where more than one witness supported it. The allegations that were made by only one person such as the allegation that YZ had threatened to take children outside to do their homework on a very cold day, were not upheld because there was insufficient evidence. The panel were conscious of the fact that these allegations were serious and had the potential to be career-ending for the Claimant. The panel therefore only upheld the allegations that were supported or confirmed by more than one person. In those circumstances, it was this Tribunal's judgment that it was within the band of reasonable responses for the panel to prefer the evidence given by two or three witnesses and contemporaneous statements, such as those related to the standing on one leg incident, over the Claimant.
220. The Claimant did not have any additional evidence to present to the disciplinary appeal which challenged the evidence at the disciplinary hearing. The Claimant's case at appeal was more about presenting mitigation as to why she should not have been dismissed and how the

disciplinary process had adversely affected her health. Mr Pratt was not on the appeal panel. The appeal panel seriously considered her contention that her race was the reason for her dismissal but found no evidence to support it. They also found that the process followed by the disciplinary panel was in accordance with the Respondent's procedures.

221. It is therefore our judgment that the Respondent had a reasonable belief that the Claimant had committed gross misconduct in relation to some of the allegations against her. It is also our judgment that the Respondent's belief was based on a reasonable and fair investigation and a fair disciplinary process.
222. The decision to dismiss the Claimant was based on findings of gross misconduct. The allegations in the investigation report which were considered at the hearing were related to incidents that happened and which were serious and which it was right to hold her responsible for as she was the Headteacher, the person responsible for safeguarding when it came to teaching staff, and the most senior leader in the school whom these incidents had been reported to.
223. The Claimant's failure to declare the voucher was an act of gross misconduct. It did not matter what she spent the money on. The Respondent had regard to the Academies Financial Handbook and the responsibility placed on the Claimant as the Trust's designated Accounting Officer. There was also the school's Declaration of Interest Policy and School Gifts and Hospitality Policy which was explicitly clear that Trustees, Governors and Staff should not accept gifts of rewards from any organisation or individual with whom they have contact in the course of their work either for doing something or not doing something, in their official capacity. The Claimant's action in taking those vouchers which were a personal gift to her, was gross misconduct.
224. She also telephoned various people during the investigation and while suspended. That was also gross misconduct.
225. In this Tribunal's judgment, it was reasonable for the Respondent to consider those to be acts of gross misconduct, quite apart from the Claimant's failures in dealing with the safeguarding allegations against YZ. Those were also gross misconduct.

Was dismissal fair? Was it an appropriate sanction?

226. The Respondent had found that the Claimant had committed gross misconduct. It was therefore appropriate for it to impose a disciplinary sanction.
227. There were many incidents relating to a breach of the safeguarding practices. The Respondent decided on the evidence before the panel that the Claimant, as Designated Senior Manager, as Headteacher, as one of the school's leaders had failed to follow the Respondent's processes for dealing with the safeguarding allegations that had been reported to her.

228. The incidents were serious – they included threats to slap a child, a child being locked in a room and children being made to stand on one leg; which led the panel to conclude that it was reasonable to expect the Claimant to have recorded and investigated these allegations, and reported them to the LADO, which she failed to do.
229. Even though it was the Claimant's case at the hearing that the panel had no written evidence of these allegations, the ones upheld against her were the ones she admitted she had been aware of. She also appeared to suggest to us that Ms Varndell should have been held responsible instead of her but we did not have evidence that suggested that this was correct. The Claimant was the Designated Senior Manager with designated responsibility regarding allegations against staff. It was her responsibility, especially when incidents are reported directly to her, such as the locked in the room allegation and the standing on one leg issue; to investigate them, record them and if she was not sure what to do with the information – to report it to the LADO. She failed to do any of that.
230. The Claimant also admitted failing to comply with Mr Harding's instructions that she should not contact anyone during her suspension by making phone calls to various people. She admitted to accepting vouchers from a recruitment agency without declaring them. These were serious matters as the Claimant was responsible for financial management of the school, a position which required a high degree of honesty and integrity. The Respondent was entitled to find the Claimant's conduct dishonest and incompatible with continued employment.
231. The Claimant's comparators (Mrs Barella and Ms Varndell) had not done the same things as she and had not been in the same positions of responsibility as she had been. They are therefore not correct comparators. It is also our judgment that had they been in the same position and failed to address safeguarding allegations in the same way, accepted the vouchers without declaring them and contacted people in direct contravention of an instruction not to do so; the Respondent would also have dismissed them. Mrs Barella had contacted the Claimant about the standing on one leg incident and had collected statements and given them to the Claimant. She had complied with her duty there.
232. The panel weighed the above against the fact that the Claimant was a long-standing employee, having worked at the Respondent for 17 years. She had done much to turn the school around and achieved much for the school in that time. The school benefitted from her hard work over the years. However, she was also bound by these policies and procedures.
233. It is our judgment that in those circumstances, the Respondent did consider separately what would be the appropriate sanction to impose on the Claimant for gross misconduct. Mr Hall confirmed that the panel considered the Claimant's points in mitigation. It considered her long service and it considered the work and achievements that she had made at the school over the many years that she had been there. It also considered her admission at the disciplinary hearing that she now appreciated that there were things that she could have done differently. However, the matters that

had been found against her were serious and involved safeguarding and honesty. Those are both fundamental requirements of her employment.

234. It is our judgment that the Respondent's disciplinary and appeal panels considered the Claimant's mitigation but did not think that it was sufficient to cancel out what she had done and what she had allowed to happen in relation to the safeguarding allegations.
235. It is this Tribunal's judgment that the decision to dismiss the Claimant was within the range of reasonable responses to the gross misconduct that she had been found to have committed.
236. In the circumstances, the Claimant's dismissal was fair and reasonable. The complaint of unfair dismissal fails and is dismissed.

Wrongful dismissal

237. It is our judgment that the Claimant committed gross misconduct. The Respondent has proved that the Claimant breached the financial obligations on her in accepting the vouchers/money from the recruitment agency without declaring it. This was gross misconduct.
238. Also, the Respondent has proved that the Claimant made telephone calls to individuals involved in her investigation, without good reason and when she had been specifically told not to do so. That was in direct contravention of the Respondent's instruction and threatened to jeopardise the investigation. This was gross misconduct.
239. There were some allegations relating to safeguarding which she had been asked about at the investigation stage which Ms Glynn decided not to proceed with. That was appropriate. The allegations that were taken to the disciplinary hearing were those where there was evidence to support them. It was then up to the Claimant and those representing her to present an explanation at the hearing for what she had done or failed to do and to produce evidence or direct the Respondent to where the evidence was kept at the school, which would disprove the allegations. The Claimant was unable to do so. She was dismissed on the allegations that she agreed that she had been told about at the time and did nothing. She had not conducted any investigations into allegations of breaches of safeguarding policies. The Claimant did not refer to any investigations that she had conducted and created a written record for. Although she stated that she had gone up to the room that had been allegedly locked and investigated it, she could not point to where she had recorded this or what she had found/concluded at the end of her investigation. That was gross misconduct and not in compliance with her responsibility for allegations against staff, as Headteacher and as the most senior member of staff at the school.
240. The Claimant's acts of gross misconduct were fundamental breaches of her employment contract such that the Respondent was entitled to terminate it without notice.

241. It is our judgment that the decision to summarily dismiss the Claimant was not a breach of her contract. It is therefore this Tribunal's judgment that the complaint of wrongful dismissal fails.

Victimisation

242. It is our judgment that the Claimant did not do a protected act.

243. The Claimant alleges at paragraph 14 of the Agreed List of Issues that she did two protected acts as follows:

- a. Claimant informing colleagues that their complaints about YZ's accent and not being able to understand her was because she was Nigerian and their complaints were discriminatory, and
- b. Claimant informing Mr Harding that he sounded like Mrs Barella who was always complaining about YZ's accent.

244. It is this Tribunal's judgment that the Claimant did not say to Mrs Barella nor Mr Harding that they were being discriminatory when they referred to having difficulty understanding YZ. We found above that she stated that they were saying what they did because she was Nigerian but she did not say that it was discriminatory.

245. The Claimant did say that they said that they were having difficulty understanding YZ because of her Nigerian accent. That was not making an allegation that the Respondent had contravened the Equality Act 2010. She did not do a protected act.

246. Even if the Claimant had done a protected act (paragraph 16 of the List of Issues), it is this Tribunal's judgment that the evidence was that the Respondent suspended, investigated and put the Claimant through a disciplinary process because there were serious disciplinary allegations which arose from the exit interviews and statements submitted by teachers after the exit interviews, which the Respondent could not ignore. There would have been serious consequences for the school had it not taken any action after receiving written allegations from teachers that the Claimant had been told that a child had been locked in a room or that a child had been made to stand on one leg or that a class had been threatened with being taken outside in the cold to complete their homework or that a child had been threatened with a slap, and took no action. The school had to investigate what had happened to those allegations, whether the Claimant as the Senior Designated Manager had received those allegations at the time, whether she had recorded and investigated them and what she had done in response. The Respondent's actions in suspending, investigating and disciplining the Claimant, were in response to the information provided to it. They were not in response to the Claimant's race or to any protected act she may have done. There was no evidence that Ms Glynn, Mr Pratt, Mr Hall, Mr Bernard, Mr Dauda or Ms Domingues were aware of the conversations that the Claimant had with Mrs Barella or Mr Harding about YZ/YZ's accent. It is our judgment that they made their decisions based on the evidence before them.

247. It is this Tribunal's judgment that the Respondent had not manufactured any evidence against the Claimant. It was not clear to us what this referred to. The Respondent provided the redacted disciplinary investigation notes and evidence to the Claimant as soon as her trade union representative asked and the reasons for separating out the investigation report has been addressed above and in our judgment had not been done because of the Claimant's race or any protected act but because each report did different things. The investigation report for the disciplinary hearing focussed on the allegations going to the disciplinary hearing and referred to those and the supporting evidence. A separate report referred to the allegations against YZ which we believe were more serious than the allegations against the Claimant and the separation was for the Claimant's benefit. Lastly, there was another document with the allegations that had no supporting evidence and which raised issues for the Respondent or where there was a need for a procedure or policy change or other recommendation. This was the way in which Ms Glynn chose to present the information that she had from her investigation. In our judgment, it was a reasonable way to make the information more manageable and there was no evidence that it was done because of the Claimant's race or because of any protected act.
248. The complaint of victimisation fails and is dismissed.
249. The Claimant's complaints of unfair dismissal, wrongful dismissal and direct race discrimination fail and are dismissed.

**Employment Judge Jones
Date: 29 November 2022**