# EMPLOYMENT TRIBUNALS

**Claimant** **Respondent**

Ms. Jocelyn D'Arcy **V** The Governing Body of Rugby School

& Mr Steven Govorusa

**Heard at**: Birmingham **On**: 28 February 2023 – 10 March 2023

31 March 2023 in Chambers

6 & 7 June 2023

28 – 30 June 2023 (in chambers)

11 August 2023 (in chambers)

**Before:** Employment Judge Robin Broughton
Ms L Wilkinson
Mr P De Chaumont-Rambert

**Appearances:**
For Claimant: Mr A Rozycki, counsel
Respondent: Ms D Masters, counsel

# JUDGMENT

The Claimant's claims of direct disability discrimination, discrimination arising from disability and harassment fail as does her claim for automatically unfair dismissal.

Her claims for wrongful dismissal and breach of contract are dismissed on withdrawal.

The claims for victimisation and whistleblowing detriment also fail save in respect of the detriments alleged about the tone and approach of the disciplinary and grievance outcomes (but not the overall sanction) at first instance.

The claims against the second Respondent fail and are dismissed.

**REASONS**

1. This was a sad and difficult case. We started with 5 full lever arch files of documents, running to over 3500 pages but not in chronological order. During the course of the hearing, we received many more, almost daily, totalling hundreds more pages, ranging from the results of subject access requests to comparator documents and undisclosed emails and texts between the claimant, her union representative and her subsequent employer. It was evident that there were more that we did not see.

2. The original hearing allocation was, therefore, inadequate and we needed 2 further days of evidence, then written submissions and responses and a significant amount of time to piece the evidence together, with neither side providing a clear chronological version of events, beyond the skeleton agreed chronology.

3. The Claimant, for example, had raised a 176 page grievance, but neither side went through it methodically, either in chief, nor cross examination or submissions.

4. These observations are not necessarily a criticism. It was a complex case with many overlapping issues. We, too, have focussed on what we considered to be the principal matters relevant to the issues in the case.

5. The Claimant had also faced 20 disciplinary allegations.

6. All of this, however, arose despite the Claimant only having been in active employment with the Respondent for a little over 2 months.

7. She brought claims of breach of contract, and wrongful dismissal as well as several claims under each of the following heads:

    a. Whistleblowing detriment and dismissal
    b. direct disability discrimination,
    c. discrimination arising from disability,
    d. disability related harassment,
    e. failure to make reasonable adjustments and
    f. victimisation

8. Beyond a couple of brief letters and occupational health reports, there was no detailed, specialist medical evidence addressing the Claimant's 4 alleged disabilities, the statutory test of disability and, most importantly, their impact, if any, on the specifics of numerous grievance and disciplinary allegations.

9. Nonetheless, the issues in the case were of significant importance and seriousness to the parties and we spent several days working through them.

## The facts

[References in square brackets are to key documents in the bundles but are not meant to be exhaustive. No students are identified. Staff that we did not hear from directly are generally only identified by their initials]

### Induction

10. The Claimant had been a successful teacher of mathematics (and in more senior positions) in a number of well-regarded schools prior to applying for a position with the Respondent, a well-known independent school. She applied for a position as both a teacher and house mistress (HM) of the Respondent's day house for girls, Southfield.

11. Southfield was a facility of common rooms, dining areas and studies for non-boarding pupils who could, as a result, arrive early in the morning. Some would stay well into the evening.

12. The role as housemistress was to be the Claimant's first pastoral role.

13. She was offered the role on 19 February 2020 to start from 1 September 2020.

14. She completed a medical questionnaire on 28 February 2020 [585].

15. Shortly thereafter, on 16 March 2020, England went into lockdown due to the covid pandemic. As a result, schools were closed, and lessons moved on-line. This inevitably impacted on the planned induction process for the Claimant. She had hoped this would have included weekly shadowing of the departing Southfield HM, LB. This would have been on Saturdays, as the Claimant was still employed in her previous role.

16. As the girls were not on school premises, this did not happen. Nonetheless, the Claimant felt that shadowing on-line interactions would have been beneficial, however different from the in-person role. She apparently only had one such opportunity, despite, she said, requesting more.

17. There was a dispute about the amount of time that the claimant had with her predecessor, but it was common ground it was only a few hours. That said, in the internal investigation, LB said they had regular zoom meetings and other interactions and that she had offered more.

18. The Respondent felt there would have been little benefit to the proposed shadowing, given the different circumstances. In addition, there were certain limitations in relation to privacy, safeguarding and data-protection prior to a new

employee starting. There would, for example, be girls leaving the school prior to the Claimant's official start date.

19. The Respondent acknowledged that, with the benefit of hindsight, more could, perhaps, have been done in relation to arranged interactions with the Claimant's predecessor. They considered, however, that this was more than compensated for in other areas of the Claimant's induction, not least the extensive support she received from the House Master of the boy's day house, AC, across the summer of 2020 and into her first term.

20. Given the Claimant's medical disclosures, an Occupational Health Report was prepared on 26 May 2020 [590] [1118], following a consultation with the Claimant.

21. The Claimant had disclosed a couple of historic periods of depression, a migraine and vomiting condition (cyclical vomiting syndrome (CVS)) and a relatively recent diagnosis of ADHD. Nonetheless, the Occupational Health (OH) Report concluded that the Claimant had no health problems "likely to limit this employment; no identified need for restrictions or adaptations to this work".

22. As a result, whilst known to the Respondent's HR Team, no information about the Claimant's health conditions was shared by either party with staff with whom she would be working, including her line manager.

23. We note, however, that the second Respondent, the Respondent's Head of HR, Steve Govorusa, considered, even in his witness statement, that the Claimant had only disclosed historic (as opposed to ongoing) conditions and was not on any medication. This was despite clear disclosures about the lifelong conditions CVS and ADHD, the latter requiring daily amphetamine-based medication.

24. The second Respondent was unable to explain this anomaly. We do not think he was being disingenuous but it, perhaps, illustrates an oversight, albeit an important one. A blind spot where some at the Respondent were, seemingly, unable to identify the Claimant's disabilities, let alone the possibility of a link between her medical disclosures and some of what followed.

25. We heard that, like many others, the Claimant experienced heightened stress at the start of the covid pandemic. She received temporary medication to cope, which was effective, and so she did not consider it necessary to notify the Respondent, or OH, at the time.

26. The Claimant complained that her induction was inadequate in the following ways in her witness statement at paragraph 13:

    a. Only given 2 hours with her predecessor LB
    b. No opportunity to shadow LB

c. Not being introduced to most of the staff
d. Not given a copy of the Boarding Manual and other “basic information”
e. Lack of integration
f. Not replying to some emails
g. Not acting when the Respondent knew she was struggling.

27. From what we have seen, the Claimant was introduced to numerous staff both prior to the start of her employment and soon thereafter. This included an introductory meeting with her immediate managers, Peter Bell and Sally Rosser, on 22 April 2020.

28. There were also subsequent introductions to her predecessor, LB, her future Deputy, HB, the HM of the boys’ day house, AC, as well as some of the SMT, other maths teachers including the Head, and the nurse, registrar, estates manager, data analyst etc. More than we would have expected in the circumstances, and no specific individual alleged failing was identified.

29. The Claimant was given access to the Boarding Manual early on and it was further signposted in her induction in July 2020, albeit it was acknowledged she was not actually given a hard copy. She was also given, and given access to, significant amounts of further information, much of which she said she didn’t have time to fully assimilate, so it was far from clear what her generic complaint of a lack of information related to. LB said all her files were also transferred to the Claimant.

30. There were also significant efforts made to integrate the claimant. There were several formal and informal meetings, with a variety of teaching and pastoral staff, as well as the girls, in the months prior to her commencement and shortly thereafter. Again, it was, in our experience, significantly more than the minimum that could reasonably be expected in the circumstances, albeit not as much as the Claimant would have wished.

31. Similarly, whilst there may have been occasional emails that, potentially, were missed or overlooked we saw far more examples of where they were received and appropriately responded to. We saw a number of examples from the Claimant to Mr Bell and other senior staff, which, directly or indirectly, indicated challenges experienced, or requests for information or assistance. Generally, they were responded to with helpful suggestions and various attempts to accommodate those requests, such as reductions in workload, mediation of disputes, additional support etc. Some of these we will return to below.

32. The Respondent, via Peter Bell, the Claimant’s mentor and line manager detailed many of the actions which they did take [his paragraphs 5-16]. In addition to those already mentioned, these included specific covid related

training and discussions, albeit we note that the Claimant, in her statement, inaccurately claimed to have had no such training or briefings [para 16].

33. The Claimant attended the HMs meeting on 25 June 2020, which included significant discussions about covid protocols based on the latest guidance in preparation for the following term.

34. When covid protocols were being discussed at the June meeting, it was common ground that the Claimant raised some forceful objections, and subsequently apologised for the manner in which she had done so.

35. The Claimant suggested before us, albeit not to the Respondent at the time, that this was again due to heightened stress, for which, she said, she received further medication, albeit not noted in her records.

36. Nonetheless, this was perhaps an early indication of the Claimant's approach being more confrontational than the Respondent would expect. However, given the prompt apology and apparent insight, no further action was deemed necessary at the time.

37. A formal induction took place on 6 July 2020. Whilst the Respondent acknowledged that the Claimant had not been directly given a copy of their boarding manual, the online version was signposted to the Claimant at this induction. It may be, however, that this did not register with the Claimant amid all the other new information being provided. She said she didn't read it.

38. There was evidence of significant further exchanges and interactions with several staff and the Claimant prior to the commencement of her employment, not least about covid and appropriate protocols.

39. The Claimant felt that the Respondent should have done more, but the situation was evolving, and the Government guidance was not finalised until late in August 2020.

40. We would acknowledge that it was a very challenging time for everyone, especially schools.

41. We heard that the Respondent gave each house a template risk assessment to adapt to their own circumstances and the Claimant liaised extensively with AC, the Housemaster of the Boys' Day House, in this regard and, indeed, in relation to other matters.

42. AC acted as an informal "buddy" and it was not in dispute that the Claimant turned to him extensively, as one would expect. They developed a good, supportive relationship.

43. She was also offered mentoring, particularly in relation to specific girl related matters by DH, HM of one the girls' boarding houses, albeit the Claimant accepted in her grievance [117] that she rarely availed herself of this support.

44. As the new term approached, we would acknowledge that it was a very stressful time for everyone and especially for the Claimant who was not only starting a new job but moving house with her family. She felt she was not given enough time or support when she moved in on 22 August 2020. It was also her first pastoral role, going straight in as a housemistress and all in the time of covid.

45. The Claimant considered the Respondent to have been late and ill prepared for the new term under covid, compared to her previous schools. However, we have seen that her perspective did not entirely reflect reality.

46. Contrary to her claims there had been covid training, as well as the provision of partially completed risk assessments, which required adaptation for the specifics of the different houses and on which the Claimant was supported by AC. It may be that the provisional government guidance did not change much over the course of the summer but, as it was not finalised until 28 August 2020, against a rapidly changing backdrop, no school could have formally confirmed their new protocols until shortly thereafter.

47. Moreover, we imagine, as was the case in many other workplaces, that plans and processes continued to evolve with ongoing learning and ever-changing circumstances. This was not easy, but we do not accept that the Respondent's actions fell below what could reasonably be expected in such challenging times.

**The first month**

48. The Claimant's employment formally commenced on 1 September 2020. There was training for all staff from 1 to 4 September 2020. This specifically included training on safeguarding, mental health and covid as well as HM meetings.

49. Students returned that weekend and the advent term started on 7 September 2020.

50. The Claimant said that she was working 18-hour days, albeit this included certain tasks which the Respondent, understandably, considered to be unnecessary, such as her sorting out the Christmas decorations. The Respondent acknowledged that she was working long hours, albeit not to the extent claimed, and there were various efforts to assist her with time management.

51. The Respondent offered some assistance with prioritising tasks and removed certain duties, such as attending hockey. They also extended the deadline for the Claimant assisting girls in her house with their UCAS Application

Statements, whilst also reminding her that, in any event, this was not a requirement of her role.

52. The primary responsibility for UCAS statements fell to the tutors. LB, in the internal investigation, said that she had offered to do them and actually did some and assisted with others.

53. The Claimant's suggestion that she was unaware of the work required for the UCAS process was, at best, surprising, given her history as was her claim about the number of hours per student this task required. That said, we acknowledge that the Respondent's initial deadline for this may have been earlier than expected.

54. The Claimant felt that these measures only offered very limited relief to her workload but that was principally because she wanted to be involved in everything. Whilst ordinarily laudable, it is difficult to see how blame for the hours worked could then legitimately be placed on the Respondent.

**HB**

55. It was clear from the outset that the Claimant had a difficult relationship with HB, her deputy housemistress. Even in their interactions prior to the Claimant's start date, the possibility of a personality clash was apparent, albeit not raised by either at the time.

56. HB had been with the Respondent for a couple of years and was a popular member of staff, albeit new to the deputy housemistress role.

57. At the stressful start of the advent term, HB was quarantined until 5 September and, again, on 7 September, which may have, unwittingly, added to the Claimant's view that she wasn't getting enough support. It appears that the way she communicated this to HB "got her back up" and implied she was not happy with this mandated absence.

58. What was clear, however, was that the Claimant wanted and expected far more from her deputy than, for example, the 2 nights per week required of her. This led to HB raising concerns about the Claimant within the first week of term.

59. It was clear that the Claimant felt that HB should be doing more to help her, and raised this, whereas HB felt that the Claimant was expecting too much and there was, perhaps, a lack of clarity about roles and responsibilities in circumstances where the individuals concerned were unable or unwilling to cooperate more fully with each other.

60. The Respondent did take certain steps to help with the relationship, including a mediation meeting on the 17 September 2020, at which roles were clarified but the problems persisted with both sides complaining about the other.

61. In updating Mr Bell on the mediation meeting, the Claimant said, amongst other things

> "chat was fine"
> "AC and I chat daily"
> "I have some great tutors who are incredibly supportive"
> "I'm still a little behind on personal statements and unpacking"

She also thanked him for the extra time freed up by being released from hockey but said she wouldn't want it at the expense of a colleague before going on to detail her view of her own previous management successes.

62. The issues were acknowledged by the Respondent who seemed to approach the problem neutrally with attempts to find solutions to assist both parties, clarify the roles etc but these, too, had only limited success.

63. The Claimant suggested that her deputy was undermining her and breaching covid rules. There was scant evidence of either. In fact, we saw that, very soon, HB wanted to leave Southfield due to her difficulties with the Claimant.

64. That said, we heard examples of such alleged breaches by both HB and the Claimant. When these matters were raised, whether against HB or the Claimant, the Respondent dealt with them informally and, contrary to the Claimant's perception, there was no evidence of preferential treatment.

65. Rather, Mr Bell and others, were attempting to find solutions and mediate between two obviously strong characters in circumstances where the Claimant had unrealistic expectations based on her own view that staff should want to go well above and beyond their job descriptions.

66. This was, perhaps, best illustrated over the subsequent Halloween period (see below).

**Parent Letter**

67. On 12 September 2020, the Claimant sent an email to the parents of girls in her house about covid measures [765].

68. Mr Bell's house had been locked down due to a positive case and the idea was to reassure parents. AC had sent an email to the parents of the Day Boys and the Claimant was to do the same. She used his letter as a base.

69. However, in the Claimant's email, she stated that she had been lobbying the school's senior management team for stricter measures. Whilst there was evidence of a parent appreciating such frankness, another, who was both parent and staff member, was concerned that this could be seen to be undermining the school's approach. Indeed, Ian Macintyre, when considering the issue subsequently, said he felt it was insubordination potentially amounting to gross misconduct.

70. In any event, we would acknowledge that such an email, particularly in the circumstances at the time, gave rise to a serious and genuine concern on the part of the Respondent.

71. The email was forwarded to a number of the Respondent's senior managers and, it seems, it was promptly determined that there should be a preliminary investigation in relation to the alleged "lobbying".

72. There was a small delay in this regard which was, at least, partially explained by the very busy start of a new term in the covid era and an exeat weekend, albeit the precise timeline was unclear.

73. However, the decision to investigate the issue clearly predated a mediation between the Claimant and HB, her deputy HM, on 17 September 2020 which was arranged to address problems that had already arisen in their relationship so early in the term and which, regrettably, transpired to have had limited success.

74. It was established that there did appear to have been some informal lobbying by the Claimant of a couple of members of the SMT in relation to covid protocols. Nonetheless, the Respondent remained concerned about the need to have clear communications and present a united front and so, on 29 September 2020, the Claimant was invited to an investigation meeting to take place on 30 September 2020.

75. This was to consider potential disciplinary allegations, including bringing the school in to disrepute and undermining the SMT and school policy in communications with parents, potential breaches of the Respondent's staff code of conduct. It was, however, made clear that the purpose of the meeting was to gather information and not a formal disciplinary hearing.

76. The Claimant nonetheless characterised this enquiry as "unnecessary", "insensitive", "heavy handed", to "punish" her, and to "avoid making accommodations for her disability" and "break her" [C paragraph 19].

77. It seems to us that this was, at best, a surprising perspective. We would acknowledge that some employers may have dealt with the situation more informally and, ultimately, in this case, no disciplinary action was taken. That

said, we cannot say that no reasonable employer would have viewed the situation at least as seriously as the Respondent. At least some would, reasonably in our view, have considered the Claimant's actions worthy of disciplinary sanction.

78. In fact, contrary to the Claimant's assertion of being punished for her disability, her extreme reaction, which may have been related to her CVS, was part of the reason the disciplinary process was not taken further. It was not correct, however, for the Claimant to characterise the outcome of the investigation as "no case to answer".

79. The Claimant's failure to acknowledge any inappropriate action on her part, even with the benefit of hindsight, showed a significant lack of insight. We note that it occurred at a time when she did not even consider herself to be disabled [appeal transcript 2837] and, given the well drafted letter, based on one originally prepared by AC, could not realistically be described as impulsive. There was no clear link between the Claimant's comments and either of her then disclosed disabilities (CVS and ADHD).

80. The Claimant also said that her colleague, AC, who was asked to check on her wellbeing, following the meeting, had told her that the Executive Headmaster, PG, had told him that the investigation was "a shot across her bows" in relation to the HB issue, something the Claimant felt had not been properly investigated in her subsequent grievance.

81. It seems to us that this is inherently implausible, notwithstanding that we did not hear from AC or PG. Firstly, the email sent to parents did potentially undermine the school's approach to covid measures and it was, therefore, reasonable for the school to investigate and involve the Claimant in that process.

82. As mentioned, her letter did, potentially, warrant disciplinary action, even though the school stopped short of that. The Claimant suggesting that it was completely unjustified seemingly shows a lack of awareness of the potential to damage the school's reputation and unnecessarily add to the anxiety of parents. We would acknowledge that it occurred during the stressful early stages of a new term, but, on the Claimant's case, her stress was largely well managed at the time of the investigation.

83. There was no evidence that those involved on the part of the Respondent were aware of any of the Claimant's disabilities at this stage, even if they should have been. The Claimant's suggestion, with the benefit of hindsight and reflection, that it was a deliberate attempt to break her and to avoid adapting for her disability was an untenable conclusion, indicating an inability to take personal responsibility, even for unambiguous genuine concerns.

84. It may be, however, that her perspective was clouded by her extreme reaction. She said at the time that she was not receiving enough praise. We note that, a few weeks later, when preparing her self-appraisal, the Claimant described herself as a "praise addict" and, whilst acknowledging some of the concerns that were being raised about her even at that stage, sought to turn these into positives or blame others.

85. It seems that the Claimant had such difficulty accepting constructive criticism and acknowledging her own areas for improvement that it could make her unwell, but blaming others was not the solution.

86. In addition, had the Respondent's actions been intended as a "shot across the bows" regarding an entirely unrelated issue, it was impossible to see how the Claimant was expected to receive that message unless AC himself was part of this alleged plot, but he was only sent to check on the Claimant as a result of her extreme reaction to the investigation.

87. Whilst not directly asked about the alleged "shot across the bows" comment following the September investigation, his evidence in the internal investigation would not support any inference to support the Claimant's version of events. We imagine he would have seen the amendments the Claimant had made to his letter and shared the same concerns as the school.

88. That said, we do not rule out the possibility that something may have been said which the Claimant misinterpreted or about which her narrative subsequently evolved.

89. In any event, given the Claimant's

    a. inappropriate and forceful response in the June meeting,
    b. letter to parents suggesting she felt the school's covid protocols were not strict enough,
    c. difficulties managing HB from day 1, including unrealistic expectations,

    it was clear that the Claimant's approach did not sit comfortably with the culture of the Respondent, something she was seemingly able to acknowledge herself in her self-appraisal with SR at the end of October 2020.

90. In those circumstances, it may have been beneficial for the Claimant to have viewed the September investigation as a "shot across her bows", pointing her in the direction of the school's expectations without the need for disciplinary action.

91. Regrettably, however, as mentioned above, she viewed it as an unjustified personal attack, rather than a learning experience and that approach continued in relation to subsequent issues.

92. We also note that the Claimant's narrative is unsupported by the seemingly neutral way the Respondent approached the management issues between the Claimant and her deputy and, indeed, Mr Bell's kind and thoughtful approach, contacting her both before and after the investigatory meeting to offer support.

93. That said, it was clear that the Claimant did have an extreme reaction to the investigation meeting. We heard that she was crying, had difficulty speaking and had to type her responses and that, towards the end of the meeting, she was vomiting.

94. It seems to us that, whilst it may have been reasonable not to share the Claimant's personal medical information with those working with the Claimant up to this point, her extreme reaction was, perhaps, an indication of a potential underlying health condition, albeit the Claimant did not expressly raise it as such at the time.

95. A number of senior managers were aware of the Claimant's response, and it is regrettable, with the benefit of hindsight, that there was no consideration at that stage of a possible connection between the Claimant's health disclosures and her reaction.

96. It was, at least possible, that the anxiety caused by being investigated for a potential act of insubordination, triggered her vomiting syndrome, although there was nothing to realistically link her initial conduct or her reaction to ADHD, either at the time or subsequently.

97. It is worth repeating that the Claimant had only disclosed 2 historic periods of depression, one of which was post-natal, which would not, without more, meet the statutory definition of disability. She was only diagnosed with recurrent depressive disorder by Dr McLaren, in June 2021, so the Respondent could not have had knowledge of that sooner.

98. Elsewhere, there was reference to the Claimant having a generalised anxiety disorder (see Dr Malfatto reports). At other times, her response to the investigation was described as an "acute stress reaction". Neither of those were pleaded or relied on, save to the extent that they arose from, or were related to, the other alleged disabilities.

99. Shortly after the investigation hearing on 30 September 2020, the Respondent, seemingly via JM and SR, took the decision, in part as a result of the Claimant's reaction and her claimed lack of support, that a disciplinary sanction was not required. Rather, they determined the claimant should be offered counselling, additional mentoring and coaching. She was advised that she needed to delegate more to the tutors.

100. There was no evidence of any involvement by more senior management in this decision that would support the Claimant's conspiracy theory. It was, in our judgment, a considerate and supportive response to a potentially serious conduct issue. We also note that JM offered additional help himself and SR had a good, supportive relationship with the Claimant for many months, including after her suspension, as evidenced by their text messages.

101. It was, nonetheless, clear by this stage that a number of the Respondent's staff were aware that the Claimant was having difficulties.

102. There had already been, on 17 September 2020, a mediation meeting between the Claimant and her deputy, HB, to try to resolve their differences. In the outcome of that meeting, the Claimant was referred to as a "rabbit in the headlights".

103. She had raised concerns about matters such as her challenges with HB, her workload, moving house and implementing the school's covid procedures with Mr Bell and others. There was no evidence, however, that the Claimant ever directly linked any of these to her claimed disabilities at the time or, indeed, at all until her subsequent suspension.

104. Her extreme reaction to the investigation was clearly a matter of concern to a number of those involved such that AC had been asked to check on her wellbeing and the HR adviser involved had suggested an OH referral.

105. The offer of counselling from SR also reflected this.

106. With the benefit of hindsight, it is regrettable that the respondent did not, at this stage, look at the Claimant's file and enquire further whether there may have been any link between her disclosed health conditions and her actions, difficulties and reaction to the investigation and / or progress an OH referral at that stage.

107. Equally, as mentioned, there was no evidence that the claimant even made the link herself, let alone shared that with the respondent.

108. The Claimant claimed in her witness statement that she "made the Respondent aware of her medical limitations…..to be completely open to ensure they felt I was suitable for the role". However, this was a reference to her pre-employment medical disclosures when she had already been offered the position.

109. She went on to say, "I repeatedly raised my disabilities in subsequent internal meetings". This gave the impression that the Claimant was saying that she raised her disabilities in her induction and during the first term as it

was positioned in her statement prior to the Claimant's mental health deteriorating as a result of "false allegations" being made against her.

110. There was, however, no evidence that the Claimant raised her alleged disabilities prior to her suspension, save in relation to her CVS following a further episode at the end of October 2020 and, perhaps, generic references to stress.

111. She did not even consider herself to be disabled prior to the investigation meeting on 30 September 2020 and it seems inconceivable that there would be nothing in writing subsequently, if she was raising her disabilities and being ignored. To the extent necessary, we prefer the Respondent's evidence, that the Claimant did not raise her disabilities in the context of either her conduct, capability or workload, before submitting her grievance on 10 November 2020.

112. The extent to which there may have been a link between the alleged disabilities and the September events is something on which we had, even at the hearing, very little clear expert evidence. It does, however, appear that the Claimant's cyclical vomiting syndrome may have been triggered by the investigation hearing, which is not to say that the Respondent was acting unreasonably in calling it.

113. Whilst stress can impact the condition, we note that it can simply be, as the name suggests, cyclical.

114. Whether the failure to make further enquiries at that stage was sufficient to mean the Respondent had actual or constructive knowledge of one or more of the claimed disabilities no longer being well controlled and any related disadvantage is a matter to which we shall return.

**The next few weeks**

115. It cannot be said, however, that the Respondent did nothing. The services of the school counsellor were normally reserved for students, but this was extended to the Claimant. She took up the offer and received some benefit from it.

116. The Claimant said that the counsellor had diagnosed her with PTSD but, in our experience, they would not be qualified to do so. In any event, there was no evidence to support that, including from her own psychiatrist and in subsequent OH reports or even before us.

117. That is not to say that the Claimant did not have an extreme stress reaction that appears to have triggered her cyclical vomiting syndrome on 30

September 2020. Her inability to accept the justification for the investigation appears to have played a significant part in her subsequent anxiety.

118. In addition, some of the support offered, such as mentoring by JM, the Claimant did not avail herself of.

119. She rarely utilised a similar offer from another female HM, despite the fact that this may have been of benefit, given a number of the subsequent issues that arose related to Southfield girls in the disciplinary proceedings.

120. She appeared not to have read the Boarding Manual, despite it having been clearly signposted to her.

121. We also accept that some other adjustments had already been made. For example, some time was freed up by removing obligations from her timetable, such as attending hockey and she was given an extension for her students to complete their UCAS statements which, in any event, we heard, were the primary responsibility of the tutors, not the HM.

122. Moreover, we accept the Respondent's evidence that some of the Claimant's other activities she did not need to be doing, were not her responsibility and / or she became overly involved, including cleaning the storeroom or sorting out the Christmas decorations.

123. This is not a criticism. There was no dispute that the Claimant worked hard, was diligent and, seemingly, wanted to be all over everything going on in the house from the start. She remained an excellent teacher.

124. However, there did appear to be an issue with prioritisation and time management, and we saw that the Respondent endeavoured to assist the claimant with this, but she was not overly receptive. The Claimant maintained, even before us, that it was necessary for her to work 18-hour days.

125. Whilst it was not disputed that she was working very long hours, we do not accept that they were all necessary.

126. The period of the covid pandemic was, inevitably, a stressful time for all. This was especially the case in schools and boarding schools had an additional level of complexity.

127. The Claimant, starting a new role, her first pastoral position, moving house, with a young family and, at some stage, personal relationship difficulties, was always going to be under increased stress. The Respondent recognised this much at least, albeit without making any link to any possible underlying disability, and sought to help.

128. Whilst the Respondent's efforts fell short of the support the Claimant believed she needed, both at the time and, even more so, with the benefit of hindsight following her suspension, in not raising any alleged link to her conditions, nor taking on board all of the suggestions and support offered, the claimant was not helping herself either.

129. We note that the Claimant claimed in her statement that she was requesting an Occupational Health Report as her stress increased, implying that this was prior to the incidents that led to her suspension, but that was not supported by the evidence.

130. The possibility of considering such a report was first raised by an HR advisor following the Claimant's reaction on 30 September 2020 and, again, by SR, on 30 October 2020 but not with the Claimant's knowledge and it wasn't raised by her.

131. In fact, it was first raised formally as an option by PG, Executive Headmaster, on 13 November 2020, in response to the Claimant's grievance, and only after her suspension [841]. The Claimant responded, on 22 November 2020, that there is "likely little that OH can do at this stage", albeit she was willing to engage with them.

132. Such a report was sought and received in January 2021.

133. During October 2020, the Claimant continued to raise occasional issues about HB, other staff, school and covid procedures etc.

134. At the same time, a number of issues about the claimant's conduct were increasingly being raised by students, parents, staff and contractors such that the Respondent had significant concerns and started to collate the information.

135. The grievance outcome indicated that the process of preparing for this preliminary investigation started towards the end of October as the concerns mounted, albeit interviews did not commence until the following week.

**Halloween weekend**

136. The Claimant had a further episode of her cyclical vomiting syndrome on 29 and 30 October 2020. As a result, the Respondent told her to take the weekend off and rest. HB, her deputy, was to stand in for her. The Claimant confirmed in her subsequent grievance that she had no further need for medical support at this time.

137. The Claimant had made arrangements for various activities for the girls that weekend which was also to incorporate cross country and the house singing competition.

138. However, when the Claimant was starting to feel better, on 30 October 2020, she sought to intervene in some of the plans that HB and others were making. This, unsurprisingly, then led to further issues with HB over who was ultimately responsible for the arrangements and concern that the Claimant was not resting.

139. HB asked Mr Bell for advice and support, and he attempted to mediate in person that evening, encouraging the Claimant to leave house management to her deputy that weekend.

140. It appears, however, that the Claimant did not heed this advice. Further issues arose the following day, with allegation and counter allegation between the Claimant and her deputy. These included, from the Claimant, concerns being raised about covid safety under HB, which were first raised by email to Peter Bell on 31 October 2020.

141. As a result, and in a seemingly even-handed manner, the Claimant was, at her request, allowed to return to her duties on Sunday 1 November 2020 and HB was no longer required to cover for her. The covid safety issues were addressed with HB by SR.

142. Following the further CVS episode on 29 October 2020, SR did raise the issue of checking the claimant's medical disclosures and the possibility of an OH referral with HR.

143. This indicates, it seems, an awareness that there may have been some underlying medical issue but principally appeared triggered by the vomiting. That enquiry, however, was superceded by the events that led to claimant's suspension.

144. That said, when these concerns were raised about whether there may have been underlying health issues at play, it was sufficient for the Headmaster, GPJ, to review the Claimant's medical disclosures. He did so but, saw no connection, whilst ultimately leaving the matter to "others".

145. Rather like the inexplicable view of R2, that there were no current disabilities, it was difficult to see how the episode of vomiting was not linked to the disclosed CVS at least.

146. It appears that the Claimant somehow became aware of the possibility that there may be a preliminary investigation underway (or simply that it would be surprising if there wasn't, given the number of issues or fallout from the

Halloween weekend) and we saw a statement from AC that said he felt uncomfortable that the Claimant was trying to recruit him to take sides.

147. The Claimant's first alleged protected disclosure was made against this background and related to what she said were covid related health and safety issues that arose out of HB's management of the Halloween weekend.

148. Whilst the list of issues stated that this alleged disclosure was made on 4 November 2020, that related to the Claimant's request for an investigation into HB, to include alleged covid breaches but with no specific information being disclosed.

149. The Claimant, therefore, sought to rely on her initial complaint to Peter Bell on 31 October 2020 in which she alleged a breach of social distancing protocols that evening and a subsequent complaint to SR, on 2 November 2020, in which she alleged that HB was seen at "probably just under 2m" distance from a student from another block.

150. In relation to the latter, at the time, the Claimant stated that she didn't believe the activity was a covid risk.

151. There was no evidence before us that breaching covid protocols and / or social distancing rules amounted to a breach of a legal obligation at the time.

152. The Claimant did not lead any evidence in relation to the reasonableness of her belief in the alleged health and safety risks or the legal obligation breached nor, indeed, the public interest. This was, however, addressed in cross examination.

153. Stepping back, it appeared that there were several other issues being raised by the Claimant about HB and vice versa that, to a degree at least, reflected an ever-worsening relationship.

154. That is not to say that any of the concerns raised by either were untrue or entirely malicious. Rather, all of them could, and should, have been capable of resolution between co-operative staff with mutual respect and understanding and without the need for recourse to senior management. However, it had reached a point where other staff and students were also starting to raise concerns about the Claimant.

155. That said, the Claimant had genuine concerns about the school's covid protocols as far back as June and September. There was clearly a public interest in compliance with all relevant guidelines at all times.

156. In any event, there was no evidence that this played any material part in the events that followed a few days later.

157. The investigation into HB apparently resulted in an informal warning and coaching, similar to how the Respondent treated the allegations against the Claimant on 30 September 2020 and, indeed, subsequent alleged covid breaches by her, such as when her son was sitting on the lap of a student during a social evening.

**The Claimant's suspension**

158. On Saturday 7 November 2020, the Respondent received complaints about the Claimant's conduct that lunchtime with a group of 14 year old girls, including allegations that she had

a. asked one of the students in a group to remove her top and
b. had thrown a mobile phone and folder in anger and
c. had accused a student of lying

It was alleged that, as a result, this had caused distress and fear among the girls, some of whom described it as violent and threatening.

159. In her witness statement, the Claimant merely described this as becoming "bad tempered" and shouting for which she said she promptly apologised.

160. After a preliminary investigation, SR, safeguarding lead, and GPJ, Headmaster, met to consider the situation. They determined that the Claimant should be suspended pending further investigation. In the manuscript notes of their discussion, they seemingly queried whether the claimant may be a "suicide risk".

161. This appears to be another example of the Respondent's awareness of potential underlying mental health issues. The suspension itself, later that day, was dealt with sensitively as a result. Beyond that, however, there was no evidence of any consideration being given to whether this was just a conduct issue or whether mental health issues were also at play.

162. The Respondent had formed the view that the allegations against the claimant may have met the threshold which required them to report the issue to the Local Authority Designated Officer (LADO). It was common ground that, in such circumstances, they were expected to do so within 24 hours, albeit, given that, by this time, it was a Sunday (8 November 2020), there was no response until the following day.

163. The Respondent had evidently felt that, to protect all concerned, they needed to suspend the claimant before students started arriving the following morning. That was understandable.

164. There was disagreement between the parties regarding whether the respondent appropriately followed the Keeping Children Safe in Education (KICSE) guidance in relation to a number of matters.

165. Firstly, it was suggested by the Claimant that the guidance required the respondent and the LADO to agree if suspension was necessary and appropriate. It did appear to suggest this in one section [para 254, pg 3358], albeit elsewhere, it was clear that the decision was ultimately one for the school [paras 223, 250 – 252 pgs 3351]. KiCSE expressly states “the power to suspend is vested in the school [3357].”

166. That must be right as it cannot have been intended that an independent school could be prevented from suspending a teacher without such consent in safeguarding issues, but they would be free to do so, subject to ordinary rules of fairness, in all other circumstances.

167. In any event, it was common ground that alternatives should be considered, and suspension only used as a last resort. However, in the circumstances of this case, it was difficult to see how the Respondent could have complied with their duties to students without ensuring the Claimant was fully separated from all students until the situation was fully understood and resolved.

168. In those circumstances, they couldn’t realistically await the LADO response the following day.

169. When SR was able to speak to the LADO, on 9 November 2020, there was nothing to suggest that the designated officer disagreed with the suspension or the school’s approach.

170. The LADO determined that the incidents of 7 November 2020 did not reach the threshold for their involvement, but we would acknowledge that, in borderline cases, it was right for the Respondent to report the issue.

171. It was clear that there had been previous lower-level incidents that had been reported to the Respondent but fell further short of the threshold.

172. The Claimant viewed this approach as in breach of KiCSE but, it appears, the LADO did not.

173. It seems to us to be entirely in accordance with the guidance that significant risks of harm are reported, either in relation to an isolated incident or

a number of minor concerns building a picture. In this case there were potentially both. The guidance expressly states that common sense and judgment are required, and many allegations may not meet the criteria.

174. It wasn't the case, as presented by the Claimant, that "after the initial attempt to undermine me with the LADO had failed, many weeks later further safeguarding concerns were alleged".

175. The incidents of 7 November 2020 were rightly reported as potentially reaching the threshold for LADO involvement. The earlier incidents were already being investigated by the Respondent and were flagged with the LADO. The LADO asked to be kept appraised of the progress of the investigation as a whole. That was entirely sensible and in accordance with the guidance [at para 221] where it states that the LADO may enquire about the history.

176. There had been around 6 investigation interviews relating to these other incidents conducted by ED, prior to the suspension incident, in the couple of days prior to 7 November 2020.

177. The Claimant suggested that the submission of a "log of concerns" months after the incidents themselves was what KiCSE was "designed to prevent" or "the concerns were manufactured in an act of victimisation".

178. Again, that is a startling conclusion. There was nothing to support the assertion that the concerns were in any way manufactured. There was clear evidence in relation to each issue of the origin of the complaints against the Claimant from numerous sources, when they were received and what the Respondent was doing about them.

179. The vast majority only came to the Respondent's attention in the last week or so prior to the suspension in any event. They were being investigated. Once the Claimant was suspended there was no immediate risk of harm to any students.

180. In the week following the 7 November incidents, ED conducted more than 15 further investigatory interviews which were then put on hold following receipt of the Claimant's grievance.

181. Once the preliminary investigation was concluded, the allegations were forwarded to the LADO, seemingly at their request, on 3 December 2020, within less than a month.

182. The LADO raised no concerns with the Respondent's approach but asked to retain a watching brief the following day [2961/1416]. In fact, on 24 December 2020, it was the LADO chasing the Respondent for an update, rather than the Respondent driving "attempts to undermine" the Claimant.

183. That said, the LADO did ask the Respondent from the outset to try to understand why the Claimant had acted as she did on 7 November 2020 and there was no evidence that they did much, at that stage at least, beyond progressing the investigation. However, prior to receipt of the Claimant's grievance and subsequent detailed expansion, it was anticipated that the whole investigation, suspension and disciplinary process, would only take a couple of weeks.

184. In addition, when the possibility of an OH referral was raised with the Claimant shortly after her suspension, she saw little potential benefit at that stage.

185. When the Claimant was informed of her suspension, this was done sensitively, and appropriate support was offered. Understandably, she was told not to discuss the matter with anyone connected with the school.

186. The Claimant claimed to have understood the instruction to be that she could not speak to any student, parent or staff member without prior approval from SR or HR.

187. We saw extensive and supportive text exchanges between the Claimant and SR over the following months suggesting otherwise.

188. The Respondent accepted that the Claimant was not to speak to any students but denied any absolute bar on speaking to other staff, save in relation to the disciplinary allegations. That must have been the case as, for example, the Claimant commenced a relationship with a fellow staff member after the breakdown of her marriage a few weeks later.

189. We would acknowledge, however, that engagement with colleagues is often easier to avoid than sidestepping the elephant in the room of an investigation.

190. The Claimant's suspension was confirmed in writing on 9 November 2020. The reason was given as "verbally and physically threatening behaviour in the presence of students". The letter also confirmed that there were wider concerns also being investigated.

191. The Claimant, understandably, initially went away for a few days and found it difficult on her return as her home was attached to Southfield and on campus meaning that she would see students and staff but was unable to engage with them.

192. The Claimant had separated from her husband in late 2020 and the breakdown of this relationship no doubt added to her stresses at the time and well into 2021, when she also lost a pregnancy.

193. In January 2021, however, she was able to return to Southfield as schools were, once more, in lockdown and students did not actually return until March 2021, from which point, due to the Claimant's unease, the Respondent agreed to expense alternative temporary accommodation for the Claimant and her family.

194. That was a difficult, but largely unavoidable, situation and we saw that she stayed in a variety of hotels and short-term rentals over the following months.

**The first grievance**

195. The Claimant submitted her first grievance on 10 November 2020, asking for the disciplinary process to be put on hold but it was subsequently confirmed that the processes would run in parallel. They were clearly related.

196. The Claimant was invited, on 13 November 2020, to a hearing to consider her grievance on 17 November 2020.

197. The Claimant requested a postponement, and it was ultimately heard by PN on 3 December 2020 although, by that stage, the detail of the Claimant's grievances had still not been provided.

198. She sought to read out a lengthy prepared statement and there was some disagreement about how the meeting should progress.

199. Given indications of the wide-ranging nature of the Claimant's allegations, the Respondent decided to appoint an external HR Consultant, Sarah Martin, of Narrow Quay HR, to investigate the grievance, but not the disciplinary issues.

200. The Claimant was reviewed by Dr Malfatto, consultant psychiatrist, on 12 November 2020, who produced a letter that was subsequently included in her grievance. He gave diagnoses of generalised anxiety disorder and ADHD (but made no mention of any alleged PTSD) and said that both conditions made her sensitive to stress which, when above a certain threshold, could lead to additional symptoms, including occasional outbursts.

201. He did not specifically address what that threshold may have been, nor whether any of the circumstances in this case could reflect such an outburst, nor apportioning the level of responsibility which remained with the Claimant, alongside her alleged stressors.

202. He suggested coaching, supervision and shadowing to help her feel supported and reduce stress but there was no evidence that he was aware of what was already in place, let alone what he was specifically suggesting as potential improvements on that.

203. The last line of the letter had been cut off and was only produced during the hearing. It said her symptoms were expected to improve within 3 – 4 weeks.

204. Dr Malfatto reviewed the Claimant again a month later and produced a further report on 11 December 2020. He reported that the Claimant's anxiety had reduced significantly and was likely to be in full remission in no more than 4 weeks when she would be able to return to work and cope with stress. Unfortunately, that optimistic prognosis did not transpire to be the case, but it is difficult to see how the responsibility for that could be placed on the Respondent.

205. By the date anticipated for her recovery, the Claimant had separated from her husband, submitted the 176-page grievance on 31 December 2020 and was in the very early stages of pregnancy

206. The Respondent sought to characterise the extensive grounds of grievance before us a deliberate attempt to divert attention from, and responsibility for, the allegations and as part of some overall strategy of settlement.

207. It seems likely that those factors were at play and the length and detail of the grievance was, at best, disproportionate, given the very short period of the Claimant's employment. That said, we do not consider that the grievances were entirely disingenuous. At least some had a degree of merit, albeit many lacked a reasonable degree of objectivity, perspective and self-reflection.

208. The grievances were relied on as including both protected acts and protected disclosures and there was no dispute that they did, at least, raise allegations of disability discrimination and covid related health and safety concerns. The Claimant also alleged GDPR breaches in relation to pupil's personal information.

209. The grievances were in 4 principal areas of complaint:

a. The Claimant's induction,
b. Support provided since the Claimant's employment commenced,
c. Response to the management issues with HB,
d. Instigating disciplinary investigations as a punishment for raising covid and safeguarding issues.

In all of the above, the Respondent was alleged to have been negligent with regard to the Claimant's mental health. The first 3 were alleged to have fallen far below the standards that could reasonably have been expected.

210. In any event, it seems likely that, but for the Claimant's grievances, the disciplinary proceedings would have been completed within November 2020 and so the Respondent cannot be held responsible for the delays arising from having to wait almost 2 months for the grievances themselves.

211. Having already appointed an external HR consultant, the Respondent acted incredibly promptly, early in 2021, with schools back in lockdown and the grievance only received on the last day of 2020.

212. On 4 January 2021, the Respondent sought Occupational Health advice on the whole situation, not least because the Claimant was raising her alleged disabilities in the context of both her grievances and in mitigation against the disciplinary sanctions. They also wanted to understand the Claimant's current health.

213. ED Carried out 4 further investigatory interviews on 6 and 7 January 2021.

214. Sarah Martin, the external HR consultant, conducted her first grievance investigatory hearing with the Claimant and her union representative, Mark Dale on 7 January 2021. Mr Dale covertly recorded it. Shortly before the meeting the Claimant asked Mr Dale by text whether she should cry "a little, a lot, or not at all".

215. Whilst this does not necessarily mean that any tears would not be genuine, it indicates a level of emotional control that would not support some of the Claimant's allegations. For example, she suggested that she cried in every meeting with Mr Bell, as if she had no alternative, such that he must have been aware of her struggles. He denied this and we prefer his evidence, given the above.

216. Following the grievance investigation hearing, the Claimant texted Mr Dale saying of Sarah Martin that "she definitely seemed quite reasonable".

217. There was a further grievance investigation hearing the following week, on 14 January 2021, with the same participants.

218. From 17 January 2021, the Claimant was unfit for work due to her CVS and migraines as well as being a couple of weeks pregnant. This required adjustments to her other medications, and she was signed as unfit for work until 21 February 2021. Sadly, the pregnancy ended on 20 February 2020.

219. Meanwhile, the Respondent received the OH report on 28 January 2021, following a review of the Claimant by video call that day. [2214].

220. This report highlighted the differences of opinion between the parties about the level of support the Claimant had received. She apparently told the OH physician that she saw little wrong with her conduct, other than occasionally raising her voice or misunderstandings.

221. The physician confirmed that the Claimant's conditions had been stable and well controlled with medication in the past, albeit she was finding her current circumstances stressful.

222. The report did not foresee any reason why the Claimant should not be able to manage her conditions and return to work once the disciplinary process concluded. It proposed future adjustments, following a stress risk assessment, of a mentoring and buddy system but it was unclear how, if at all, this was suggested to be different from what was already in place apart, perhaps, from greater regularity.

223. OH confirmed that the Claimant was fit to attend meetings. It was suggested that both parties potentially had a lot to learn from the situation. A conclusion with which we agree.

224. The LADO sought a further update from the respondent on 11 February 2021, again illustrating that it was not the Respondent driving this, as claimed.

225. Sarah Martin carried out various investigations and meetings over the next few weeks before producing her report on 11 March 2021 [910], which the Claimant said trivialised and failed to adequately address her grievances.

226. In short, the report concluded as follows:

a. The Claimant's induction did not fall well below what could reasonably be expected as, for example, illustrated by some of our findings above. There was no evidence that the Respondent was aware of any mental health issues adversely impacting her at this stage, nor did the Claimant raised any serious concerns at the time.

b. The support on commencement did not fall well below reasonable expectations. Those supporting the Claimant were not aware of her mental health issues, nor was she behaving in a manner to give rise to concern, albeit that latter conclusion appeared to be focussed on the "first few weeks". The covid strategy development was discussed and supported during induction but final implementation did lead to additional pressures at the start of term. There were adequate introductions to key

staff, given covid restrictions, albeit the Claimant had suggested a couple of ideas to improve on this.

c. The issues with HB were appropriately managed. The Claimant had unrealistic expectations of her deputy and various efforts were made to mediate between them. There was no evidence of bullying. There was evidence that, from the end of September 2020, the Claimant was behaving in a way that caused concerns to be raised about her, but these were managed supportively and sensitively.

d. The September investigation was genuine. The "shot across the bows" comment was not directly investigated as the Claimant wanted PG, rather than AC, spoken to, which was not a satisfactory approach from Sarah Martin's perspective who was, nonetheless, satisfied with the justification for the investigation and that it was not "heavy handed". The second investigation was in the process of being instigated prior to Halloween and so could not be said to have arisen because the Claimant raised covid and safeguarding issues that weekend. Again, the reasons were genuine and handled sensitively.

227. Overall, Sarah Martin acknowledged the various "normal" stresses the Claimant was under, many of which were inevitable in all the circumstances and which we have addressed previously. Beyond those, she accepted that there was no reason for staff to have been concerned about the Claimant's mental health prior to 30 September 2020.

228. The report concluded that, thereafter, there were signs of stress, but that Mr Bell and SR were trying to assist with this. The Claimant did not raise her disabilities, or any additional vulnerability in this context and so they remained unaware of them.

229. That conclusion, however, did not expressly address whether there should have been more joined up thinking between line managers and HR (over the conditions the Claimant had disclosed upon appointment) prior to her suspension.

230. The extent to which the Claimant was suffering from any mental health issues and the extent to which they may have caused or contributed to any conduct issues were said to be beyond the scope of the report. We imagine that this was because the disciplinary allegations were still being handled internally by the Respondent.

231. That said, Sarah Martin did recommend that those handling the disciplinary issues have full regard to her conclusions as she considered the matters to be related. She also specifically recommended consideration being

given to the Claimant's mental health in the next stages of the process and a review of the external HM induction process.

**The Claimant's new job**

232. The Claimant had found an alternative job opportunity as assistant principal at the National College of Maths and Science (NatMatSci) in Coventry.

233. She applied whilst signed off sick and, following a couple of interviews, was offered the position (albeit she disputed this was an offer – see below) on 1 March 2021, subject to the usual references and DBS checks.

234. Mark Dale congratulated the Claimant on her "new employer" by email on 3 March 2021, whilst also saying that she needed to "give the impression" that she wanted to return to work with the Respondent.

235. Further detail of the events that led to the Claimant commencing that role are included in our decision below.

**The disciplinary and grievance outcome**

236. On 15 March 2021, Ian McIntyre invited the Claimant to a hearing, on 19 March 2021, to consider her grievance and the disciplinary matters, an approach sensibly agreed with her union representative, given the significant overlap in the issues. They had also agreed that the last 2 disciplinary allegations should be dropped.

237. That week the Claimant was staying in Cambridge and, as we saw from documents only disclosed during the hearing, arranged to meet Dr Andrew Kemp, Principal of NatMatSci, for a walk in the botanical gardens on Wednesday 17 March 2021.

238. According to her impact statement, the Claimant had taken an overdose on 16 March 2021, although this did not appear to result in any immediate medical intervention.

239. On 18 March 2021, the Claimant was seen by consultant psychiatrist, Dr McLaren. She reported that she had taken an overdose on 16 March 2021. As a result, she was admitted to the Priory hospital on 19 March 2021 and the hearing was, necessarily, postponed.

240. The Claimant stabilised quickly and was discharged on 2 April 2021.

241. On 13 April 2021, the Claimant changed her status to "disabled" on the Respondent's internal system, which supports the suggestion that she did not

consider herself to be disabled prior to her suspension and hence would not have identified herself as such.

242. Shortly before the meeting, Mark Dale sent the Respondent the Claimant's lengthy "statement of case" which was also said to include protected acts and disclosures. This had been requested at least 48 hours in advance. As it was only produced on the day, it needed to be considered thereafter.

243. OH had previously considered that the Claimant was fit enough to attend but she said that she was unable to participate due to being unwell. Nonetheless, she observed the combined hearing that day off camera and was supported by her partner. Mr Dale covertly recorded the meeting and made oral representations on her behalf to supplement the statement of case.

244. Both the statement of case and oral representations were said to include further, or at least repeated, protected acts and disclosures in relation to safeguarding issues and reports to the LADO.

245. The text messages between the Claimant and her representative, which were only disclosed during the course of the hearing, showed that she was, in fact, able to give her responses as the grievances and allegations were taken in turn.

246. Merely by way of example, the Claimant admitted referring to a student as "bratty" but also asserted that her predecessor signed off messages with "xx" which had been alleged as inappropriate when done by the Claimant. In relation to giving the girls alcohol, she surprisingly believed that she was obliged to give sixth form students 2 drinks on a Saturday, but that was not supported elsewhere.

247. We will address each area of grievance and each of the disciplinary allegations in turn only once, when considering the outcome, to avoid repetition.

248. Also on 13 April 2021, the Claimant lodged a second grievance, incorporating the first and a timeline, sent to the school governors.

249. That grievance was subsequently withdrawn but, contrary to the second Respondent's belief, that would not negate whether it contained protected acts and disclosures.

250. There was a further email from Mr Dale to the Chair of Governors alleging breaches of safeguarding reporting procedures [1104] on 28 April 2021. We have already addressed those.

251. On 7 May 2021, the Claimant was sent a confidentiality agreement by NatMatSci, to allow her access to their systems prior to her start date, stated to

be 1 September 2021, albeit Dr Kemp asserted that was simply because he was using a template.

252. The Claimant was in hospital for an elective procedure between 11 and 14 May 2021.

253. On 13 May 2021, Ian McIntyre informed Mr Dale that the Claimant was not being dismissed, her suspension was lifted but she was to be given a final written warning and removed from the position of HM.

254. Mr Dale informed the Claimant of this, whilst expressly telling her it was important not to talk about it.

255. Formal confirmation and full details of the decision were provided to the Claimant in writing on 21 May 2021.

256. The outcome was over 30 pages in length.

257. The grievance was considered first, albeit acknowledging the overlap in the issues. Mr McIntyre described the Claimant's grievance and statement of case as "an incorrect and unhealthy narrative about the school's conduct and motives." Whilst we can understand that view in relation to some of the Claimant's assertions, it didn't appear to be balanced with an acknowledgement that at least some of her points were genuinely held concerns.

258. Mr McIntyre went on to reject the Claimant's statement of case "in its entirety" (or similar wording) on several occasions. He said he preferred all of the investigation findings and recommendations and we will not repeat those here.

259. He went on to state that he did not uphold any aspect of the grievance, saying it had frustrated and delayed the process, albeit acknowledging that some of the points could have been validly raised as mitigation in relation to the conduct allegations.

260. It is clear that Mr McIntyre was concerned that the Claimant was unwilling or unable to accept that there needed to be a disciplinary investigation. He felt that, attacking the school, rather than taking responsibility, did the Claimant no credit.

261. He was aware that the Claimant had, by this stage, submitted a second grievance, although he didn't know the detail. Nonetheless, he said that he hoped that, following his decision, the Claimant would "reflect on the second grievance and decide it may be wiser to withdraw it" assuming it would be continuing a narrative he did not consider to be true.

262. Mr McIntyre then turned to the 20 remaining disciplinary allegations but first addressed some of the Claimant's more general points in her defence.

263. The Claimant had alleged breaches of safeguarding, KiCSE and LADO procedures. In that regard, his conclusions seemed reasonable and appropriate.

264. In summary, these were that:

a. The Respondent was wise to report the incident of 7 November 2020 to the LADO when in doubt about whether the reporting threshold was met.

b. They were not required to report the earlier lower level concerns immediately as they did not reach the threshold.

c. However, when viewed together, they were potentially reportable and the LADO seemingly agreed.

d. Had the Respondent not done as they did, they may well have been failing in their safeguarding obligations.

265. Mr McIntyre then considered the Claimant's claims about her health / disabilities.

266. He found that, given the initial OH report had found that there was no health problem to limit employment and no need for adjustments, there was no reason for those working with the Claimant to know of her disabilities at the outset and the Claimant did not make them aware.

267. That seemed a justifiable conclusion on the evidence. However, the Respondent placed a lot of emphasis on what individuals may have known or not known and, seemingly, had a blind spot about whether, the school as a whole, was, or ought to have, considered the possibility of a link between the Claimant's initial health disclosures and her subsequent signs of stress, particularly after 30 September 2020.

268. In any event, he acknowledged that PB and SR, amongst others, were aware of the Claimant's stress thereafter and, whether disability related or not, he considered that reasonable adjustments were made, which is a point to which we shall return.

269. Mr McIntyre considered that no specific or underlying health issue caused the Claimant to act as she did on or before 8 November 2020. It was unclear how he reached this conclusion, given the medical reports that identified a possible factor as a susceptibility to stress and a risk of outburst if a certain threshold was reached.

270. He was unable to justify this assertion before us, seeking instead to rely on his fallback position that, if the Claimant's health did play a part, he had been compassionate and adjusted the sanctions accordingly.

271. We would accept that it was not unreasonable for Mr McIntyre to consider that at least some of the allegations against the Claimant were potentially gross misconduct which suggested that he may have done just that.

272. Mr McIntyre went on to explain why, in his view, suspension was necessary as the Claimant's conduct and / or health created a potential risk for students in any capacity which could not be overlooked. That, too, appeared reasonable. Had the school not acted as they did, parents, students and staff may have had understandable concerns and, had there been any repeat, or worse, the Respondent would have failed in their obligations.

273. He then found that, in his view, therefore, the allegations were evidently the cause of the suspension and disciplinary process rather than any alleged whistleblowing or disability issues, before taking each allegation in turn.

274. We would acknowledge the Claimant's concern that the way these had been presented arguably made the issues appear more numerous and serious, which is not to downplay them.

275. Merely by way of example, the first 3 allegations all related to the same relatively short period at lunchtime on 7 November 2020.

276. The Claimant accepted before us that she had accused a student of lying (allegation 3) and asked one to remove her top (2), albeit disputed this was in front of others. She said she had apologised thereafter.

277. Whilst downplaying the severity of this incident before us, at the time the Claimant expressed regret and acknowledged being "unprofessional", raising her voice and appearing uncontrolled.

278. However, she said that this was as a result of PTSD, without any evidential support and, in any event, Mr McIntyre, did not accept this "retrospective diagnosis" as a reason or justification for the conduct and listed all the alleged breaches of the staff code of conduct that resulted.

279. As mentioned, however, it was unclear why he did not directly address the letters from Dr Malfatto or the January 2021 OH report (both of which suggested the possibility of a link between the conduct and disability) before, seemingly, rejecting any such link.

280. In addition, treating the 3 as separate incidents, each warranting a final written warning was, in our view, unnecessary.

281. Allegation 4 was that the Claimant had engaged in sexual banter with a student whilst walking her back from the school doctor. It was alleged that the Claimant had said she wouldn't mind being alone in a room with the doctor and that "if he asks if you are sexually active, say no but I'd like to be."

282. The Claimant didn't clearly confirm of deny the words used at the time, albeit they were largely accepted before us. She focussed on the context and the student saying she was not offended or upset, albeit she had reported being shocked.

283. The Claimant also identified others who had made sexual references who were not subjected to disciplinary proceedings. They had been spoken to and the circumstances appeared different, more generic. She also said that as the school had known of this allegation from around 26 October 2020, if serious, they should have reported it to the LADO then, but we have already addressed that.

284. Mr McIntyre rejected the Claimant's defence and upheld the allegation of breaching safeguarding policy by engaging in sexualised language, albeit only deeming it to warrant a written warning.

285. It seems to us that this was a serious allegation of inappropriate conduct and there was no evidence to link it to a stress related outburst. The Claimant referenced generic information on the NHS website about ADHD and impulsivity, but this may or not have applied to the Claimant.

286. Focussing on whether the student felt harmed appeared to ignore the appropriate role modelling reasonably expected of a teacher. Whether a student is upset by an inappropriate conversation is not really the issue.

287. We are satisfied that Mr McIntyre's response to this allegation was reasonable and proportionate and it was not comparable to the other sexual comments raised, not least because they were isolated one-offs.

288. Allegation 5 was that the Claimant had rewarded a student with a box of chocolates before suggesting she go away and "sick them up".

289. This had been reported by a colleague but, whilst the relevant student was interviewed, she was not asked about this allegation. The Claimant denied it. Nonetheless, it was upheld.

290. That conclusion was difficult to justify on the evidence and, indeed, was overturned in the Claimant's subsequent appeal.

291. The Claimant suggested this further illustrated Mr McIntyre's negative attitude towards her throughout that, she said, was influenced by her having raised an extensive grievance including protected disclosures and allegations of disability discrimination.

292. Allegation 6 was also about inappropriate information sharing, including telling students that another group had been watching porn, referencing a student with an eating issue and telling a student about another student's medical issue, acne, and suggesting a solution.

293. The Claimant admitted the latter, however well intentioned, but disputed the context of the first two examples. The porn comment was, appropriately in our view, overturned on appeal.

294. Had these been the only concerns raised about the Claimant we imagine that they would have been dealt with informally, but Mr McIntyre deemed them worthy of a written warning for not being a role model and normalising the language.

295. That, of course, was largely academic given his other findings. Whilst some may have been more lenient, we are mindful of the higher standards that are expected from certain public schools.

296. Allegation 7 was about the use of inappropriate language again such as "lazy, weird and bratty" as well as "the cool girls" (by implication that the others were not)

297. The Claimant did not expressly deny the allegations at the time but again relied on context and comparators. She admitted the "bratty" comment, albeit this was to a colleague, NLM.

298. Again, the allegation was upheld. It appeared that, as with a number of the other allegations, there was no link to the Claimant's disability, but it was more about her approach not being one in keeping with the Respondent's expectations and codes of conduct.

299. Allegation 8 was about invading the privacy of a student by entering her room and throwing her dirty clothes into the hallway.

300. The Claimant considered that there was nothing wrong in entering the student's room to ensure its cleanliness and order. That did not seem unreasonable although, before us, she did admit throwing the dirty clothes into the hallway which had previously been denied.

301. It was not unreasonable for Mr McIntyre to focus on the negative effect on the student and her relationship with her HM and, given no obvious link to the Claimant's disabilities and her denial of anything inappropriate, it was not unreasonable to uphold the allegation.

302. The Claimant admitted taking a phone from a student without warning (allegation 9) and blamed her irritability on her alleged PTSD and disability. She again complained that, if it was as serious as claimed, the Respondent should have reported it to the LADO as soon as they were aware of it on 29 October 2020.

303. We have already rejected that latter point as it was clear that the most serious allegation related to the incidents of 7 November 2020, and it was not unreasonable to investigate the lesser complaints to see if there was a pattern of behaviour that may have met the reporting threshold.

304. It was, therefore, a serious and genuine concern. Indeed, at appeal, Charlotte Marten felt that a disciplinary sanction of a written warning was too lenient but, accepting at face value, the Claimant's stress and disability as potential mitigation, the finding on this allegation was not unreasonable.

305. Allegation 10 included a repeat of allegation 6 that was, nonetheless, upheld which is difficult to justify, especially as the rest of the allegation, about inappropriate and overly familiar WhatsApp messages with students, was not upheld as there was a lack of consistency in implementing the school's protocols on such matters.

306. The upheld allegation was, rightly in our view, overturned on appeal.

307. Allegation 11 was unnecessarily separated from 10, as it also related to text messages, timings etc, but was not upheld for the reasons already given.

308. There was apparently an area in Southfield with poor wi-fi reception. The Claimant acquired a mobile wi-fi device to attempt to resolve this. This was, therefore, separate from the school's IT systems and the Claimant had not sought approval from the school for her approach. Allegation 12 was that she had provided unfiltered internet access to students and that this was a safeguarding issue.

309. It did not appear to be disputed that the Claimant had ensured parental controls were in place on the mobile device and had even informed a senior member of staff of her intentions.

310. Mr McIntyre's finding that the Claimant had attached equipment to the school's systems in breach of school policy did not appear accurate, nor did it reflect the allegation. Nonetheless, he considered this allegation to be worthy

of a final written warning. This was, therefore, potentially another area where his response appeared unduly harsh.

311. However, notwithstanding those issues, we would acknowledge that it was both surprising and unwise for an experienced teacher to act as the Claimant did, without seeking input from IT Services. It may well be that the school had a stricter regime than the standard offered by Vodafone, or that this approach may have caused other technical or security issues.

312. It was clear from the appeal, focussing on the different filtering levels and the school's inability to track student activity, that the allegation of seriously breaching IT policy was made out, however.

313. We are aware that many employers rightly take these matters very seriously.

314. Allegation 13 related to the Claimant providing alcohol to sixth formers at lunchtime on 30 September 2020, that was, it was said, unauthorised and unmonitored. When challenged, the Claimant had allegedly responded "I can do what I like, it's my house"

315. The Claimant admitted providing alcohol but denied the alleged comment and that consumption was unmonitored. She claimed not to understand the school policy having never been provided with the Boarding Manual, although we have seen that, at the very least, she had access to it, and it had been signposted on her induction.

316. In any event, we would accept Mr McIntyre's conclusion that, in relation to matters such as alcohol provision and consumption, any teacher ought to ensure that they understand school policy before proceeding.

317. Given the date, the Claimant believed that this allegation had been dredged up as an act of victimisation as nobody had raised it with her at the time. Again, however, we would accept that sometimes, when investigations of this nature are commenced, earlier incidents do come to light and that is not unreasonable.

318. In fact, Mr McIntyre concluded that, given the date, it occurred prior to the Claimant's suggestion that some of her conduct was caused by her ill health and it was serious enough to warrant a final written warning.

319. On appeal, however, it was acknowledged that there was insufficient evidence that consumption was not monitored but, nonetheless, the occasion was unauthorised, and the Claimant should have been aware of, and followed, procedure. As a result, the sanction was reduced to a written warning.

320. Surprisingly, we note from the text messages between the Claimant and her representative during the disciplinary hearing, that she appeared to be under the impression that, on certain occasions, she was required to give the girls at least 2 glasses of alcohol, a belief she repeated before us.

321. The Claimant admitted allegation 14 which related to driving a student in breach of school policies and specifically, not notifying the safeguarding lead, using a private vehicle and not having another adult present.

322. Whilst the Claimant was well intentioned, and notified safeguarding afterwards, Mr McIntyre considered this to be another example of a cavalier attitude to school policies worthy of a written warning and we cannot say that was unreasonable. It appeared that the Claimant knew what she should have done.

323. Allegation 15 related to speaking negatively of colleagues and, specifically, asking AC to take her side against HB in an investigation.

324. The Claimant said that she was merely seeking the advice of a trusted colleague, who she admitted, in this context, that she often turned to for support, as was intended.

325. Given their close relationship, Mr McIntyre preferred AC's evidence that it was more than seeking advice [1180] and that the Claimant was seeking to influence him in the context of the pending investigation which, understandably, had made him uncomfortable. Moreover, IM did not accept that there could be any link to the Claimant's disabilities, considering the Claimant was acting in a calculated manner.

326. He was also concerned by the lack of any apology or remorse and expressed his findings in strong language and, again, concluded a final written warning would be the appropriate sanction which was, in our view, reasonably upheld on appeal.

327. The Claimant's conduct towards HB was the next allegation (16), including over the Halloween weekend and

a. Shouting at her within the earshot of students
b. Reluctance to deputise
c. Referring to her as "young" and "giddy"
d. Preventing her from attending to a student in distress

328. The Claimant admitted b and d but said it was due to covid concerns. She also admitted c. We saw evidence from students about a.

329. Mr McIntyre was more balanced in this outcome. He acknowledged the difficulties in the relationship that, seemingly, arose from differing expectations from the outset and then deteriorated, despite management efforts to mediate.

330. He also recognised that both HM and deputy were new to the role and the additional challenge of the Claimant's induction being primarily online but, nonetheless, found some of the language used, and the confrontational approach, unacceptable and still worthy of a written warning.

331. The Claimant's appeal was, rightly, partially upheld [1533] in relation to the use of inappropriate language as this had been dealt with informally at the time.

332. Allegation 17 was similar, relating to management style and unreasonable demands allegedly made of the house matron, SH.

333. The Claimant again felt this was part of a conspiracy against her, with HB and SH acting together and seeking to link this to the covid concerns she had raised about them.

334. She also linked her "urgency" to her disability but, before us, accepted her tone was unprofessional.

335. We would acknowledge that there did appear to be allegation and counter allegation between the Claimant, HB and SH, although whether that related to covid measures or other matters was incidental.

336. It was difficult to make the link, on the very limited medical evidence before us, that increased stress may have affected the Claimant's communication style. That said, there were many examples, at various times and with an assortment of colleagues, contractors and students that her direct and, at times, demanding approach did not fit with the culture at the Respondent.

337. Again, a written warning was deemed appropriate.

338. Allegation 18 was similar again, this time in relation to speaking inappropriately to the contract caterer in relation to sub-standard food.

339. It was also deemed worthy of a written warning but overturned on appeal as a matter that had been raised and dealt with informally at the time.

340. The next allegation (19) was also overturned on appeal but related to the Claimant allegedly having said to a parent in relation to covid "nobody cares about the old people" in an aggressive manner.

341. The Claimant could not recall the specific incident but, understandably, said that the context was everything. Whilst Mr McIntyre concluded that this was conduct likely to bring the school into disrepute, Charlotte Marten, rightly in our view, accepted the context point.

342. Finally, it was said that the Claimant had used inappropriate and derogatory language about the cleaners including “they are on minimum wage and need more help” and were “likely doing two jobs” in the context of asking students to donate £1 each to thank them for cleaning up after cross country.

343. The Claimant accepted the comments but saw nothing wrong as her motive was not intended to be derogatory.

344. That did not appear to be in dispute. We can also see how the comments could be considered patronising, however well intentioned. We doubt that they would have been deemed worthy of a written warning in many working environments.

345. It was, arguably, excessive to identify 19 sanctionable offences. However, Mr McIntyre did then go on to simply consider the aggregate position, determining that, whilst summary dismissal was an option, he would take into account some of the mitigation evidence and reduce that to a final written warning.

346. He also removed the HM role due to his findings of a lack of suitability for the role and the physical and emotional risk to students were she to continue. This meant that the Claimant would lose the additional pay that came with the role, around £7-8k pa. She would be offered alternative school accommodation.

347. Mr McIntyre also extended the Claimant’s probationary period, given that she had only been in active employment for a couple of months.

348. Once more he rejected all the Claimant’s attempts to lay any blame on the school saying they had “no basis whatsoever” and again invited her on more than one occasion to reflect before taking further action.

349. That said, we would accept his conclusion that the principal reason for the Claimant’s treatment was her own conduct and any alternative theory was incredibly unlikely.

350. He then proposed various health, training, mentoring and support measures that would be necessary to secure a return to the Claimant’s teaching role all of which were eminently sensible and supportive.

351. In his final paragraph, Mr McIntyre, yet again, appeared to advise the Claimant against both appealing and pursuing her second grievance but, rather, to accept his decision that her health and disclosures played no part in the school's actions.

352. We would accept that allegation 1 and, even a couple of the others were, potentially, gross misconduct.

353. We would also accept that these, as well as some of the allegations of unprofessionalism and poor judgment around privacy, language and safeguarding, indicated a lack of suitability for the HM role that couldn't realistically be materially attributed to the Claimant's disabilities despite her other qualities.

354. We would stress that wasn't the case in all circumstances and we would also accept that, on the limited evidence available, the Claimant's outbursts may have been impacted by her disabilities. Her stress more generally may have impacted some of the other circumstances.

355. There would also be a foreseeable risk of a repeat, including of violent outbursts, not only in times of inevitable stress, but also by virtue of the number of allegations that the Claimant either did not accept or where she could see nothing wrong or showed no remorse or willingness to change.

356. The school had done a lot to support the Claimant. Whilst there are always lessons to learn and more could, perhaps, have been done had the Claimant returned, the medical professionals suggesting more mentoring and support were reporting what the Claimant had told them, potentially unaware of what was already in place.

357. On the evidence before us, it would have been right to treat the Claimant's health, along with her being in a new job, with associated pressures and her inexperience in a pastoral role as mitigating factors.

358. Mr McIntyre, seemingly, did not accept the former in his primary outcome, albeit he did in the alternative and before us. Charlotte Marten did too.

359. We doubt, notwithstanding the medical evidence, that any school would have treated the Claimant's disabilities as a blanket excuse, or the sole cause of each and every act of misconduct. At times before us, the Claimant's case on the allegations she disputed was that, nonetheless, if they did happen, it was because of her disability.

360. We would also accept that the allegations were genuine and were mounting over the first term, culminating in the suspension events and it was difficult to imagine a reasonable alternative course that the Respondent could have taken at that stage. The decision to investigate predated the Claimant's alleged disclosures in any event.

361. Moreover, it seems to us highly implausible that the Claimant's allegations, similar to what we imagine were not infrequent covid protocol breaches by others around the country doing their best in difficult circumstances, would have caused the school to act as it did.

362. It was equally unlikely that the disciplinary process was some kind of punishment or means of removing the Claimant because of her disabilities, which, rightly or wrongly, were largely unknown by the majority of those involved.

363. A number of the lesser allegations were more about the Claimant's professionalism and management style and not abiding by the culture and approach of the Respondent. She was forceful in her communications from the outset, knew that to be inappropriate, yet continued. She was often resolute that, as she had an unblemished record previously, the problem could not rest with her.

364. That said, it did appear that Mr McIntyre felt strongly that the Claimant's grievance and defence to the allegations, which included protected acts and disclosures, was an ill-advised approach that sought to deflect blame and avoid personal responsibility.

365. Whilst we have some sympathy with that view, by

a. Rejecting her grievances in their entirety, on more than one occasion, when some had a degree of validity,
b. Repeatedly advising against pursuing her grievances or an appeal,
c. Treating the allegations separately with individual notional sanctions, including one or two duplicates, creating a more negative picture than the occasional references to the Claimant's abilities and successes
d. Upholding those that were overturned on appeal that were not adequately supported by the evidence or had been dealt with previously,
e. Not accepting that her disabilities played any part in her conduct at the time, despite some medical evidence supporting this, however generic

and his overall tone, indicated a level of annoyance and frustration with the Claimant's approach.

366. His irritation was not so much the initial alleged disclosures themselves. Rather, it was using them as part of lengthy grievance, as a defence to the

allegations, blaming the school and in support of her conspiracy theories that irked him.

367. It did, however, seem to extend to the raising of her disabilities, and alleged discrimination arising therefrom, in her defence.

368. In the appeal outcome, Charlotte Marten took a more balanced approach, some aspects of which we have already highlighted. Others are addressed below.

369. Knowing she wasn't dismissed; the Claimant signed the NatMatSCi confidentiality agreement with the September start date on 20 May 2021.

**Accommodation**

370. The Claimant had been in temporary accommodation, at her request and the Respondent's expense, since the students had returned post lockdown in March 2021.

371. On 17 May 2021, the Claimant texted Mr Dale to see if it would be reasonable to call the Respondent about the possibility of moving back into Southfield and he advised that she should ask what she could or couldn't do.

372. She then emailed Mr Govorusa but only asked to return to work as soon as possible. He responded promptly confirming the need for an OH assessment first and offering further support in the meantime, if required.

373. There followed a call and a further email exchange with the second Respondent in which the Claimant sought to confirm her understanding that she

a. was not to return to Southfield until OH had assessed her and
b. she could speak to staff and explain her absence as a suspension during an investigation

374. Mr Govorusa replied, at 12.38 that he understood that the Claimant had agreed that it was sensible to wait for an OH report before returning to Southfield. He also said that she could explain her absence in those terms, <u>if asked</u>.

375. Nonetheless, the Claimant returned to visit both sides of Southfield that day, although the precise time was unclear.

376. She was aware that she was no longer the HM. The various measures that IM had deemed necessary prior to her return to work had not, at that stage, been put in place.

377. The Claimant claimed that she had understood the instruction / agreement as only relating to moving back into Southfield, as opposed to visiting it. That appeared to us to be, at best, difficult to justify, on the evidence, not least because we now know that she had been expressly advised to clarify what she could and couldn't do.

378. In those circumstances, we can only guess what her motivation may have been from what happened.

379. The Claimant started to engage with students and staff, even walking into the end of the tutor meeting with the acting HM. These actions gave rise to further complaints that included claims that she had said that she

a. was now allowed to be in the house
b. would be around more from now on
c. could speak to anyone
d. had read every report made about her
e. had been cleared

380. The Claimant disputed some of the details but, even on her case, her actions were provocative and unwise. Surprisingly, she then emailed to ask if she could be involved in the Southfield house photo the following day.

381. On learning of the visit, Mr Govorusa emailed again, copying the Claimant's representatives, to confirm that she was not to return to the workplace until receipt of the OH report and appropriate messaging and a strategy to rebuild relationships had been agreed.

382. The next day, Mr Dale responded, agreeing with the need for a return to work meeting, strategy and OH assessment. However, he disputed that this should prevent her returning to her home in the private side of Southfield, even suggesting that this was an act of victimisation.

383. The second Respondent replied in some detail, explaining his rationale for not permitting this which included that the Claimant was no longer HM and her return could

a. undermine the acting HM
b. cause disruption for the girls and
c. adversely affect the Claimant's reintegration

not least because of her actions when she did visit on 17 May 2021. He confirmed that, should she need to return to collect any property, he would facilitate this, before subsequently clarifying that she could still visit private side on assurances of no repeat of her actions.

384. We are satisfied that those were not only valid reasons, but the Claimant's actions potentially warranted further disciplinary action. She left the Respondents with little alternative. Previously, she had been allowed to visit private side at will. It was only for a period of 1 week, following her disruptive return to school side, that there was any possible confusion over whether this had been fettered.

385. That is not to say that we do not recognise how difficult it must have been for the Claimant and, at times, her children (albeit they could now stay with her estranged husband), to have been in a variety of temporary accommodation since the school reopened in March 2021, notwithstanding that this had been at her request until this point.

386. The Claimant felt it was unacceptable for the Respondent to require an OH report prior to facilitating her return to work, including a return to Southfield, not least because IM had rejected her disability related defence. However, we consider that it was reasonable for the Respondent to adopt this approach because:

a. It was part of the Claimant's defence that her conduct had been adversely impacted by her health and there was some evidence to support this. As a result, it was important to ensure that
    i. she was stable and
    ii. minimise the risk of any repeat and
    iii. potentially put in place any further adjustments.
b. The Claimant had been signed off sick in January / February 2021 and hospitalised in March 2021 and so there was evidence that her health may have deteriorated;
c. Any return to work in the circumstances of this case would carry its own stresses, not least in rebuilding relationships with the Claimant's accusers.
d. Mr Dale had expressly approved the approach in relation to any return to work (albeit not in relation to a return to Southfield)

In addition to the other reasons already given.

387. Ultimately, of course, assuming her appeal was unsuccessful, the Southfield private side house would become the home of the new HM and the Claimant was to be provided with alternative accommodation on site to continue in her teaching role. As a result, even if she had returned to Southfield to live, it would only have been, we imagine, for a few weeks.

388. The Claimant was, ultimately, offered suitable alternative accommodation in the private side of New House [1636].

389. She felt this proved that there was no valid reason why she could not have returned to Southfield. However, given that

a. The majority of the disciplinary and grievance issues arose in and around Southfield and the staff and students there;
b. It was reasonable, as stated above, for the Respondent to require an OH report;
c. The Claimant's alleged conduct on her attempted return on 17 May 2021 served only to reinforce the challenges of reintegration.

390. In any event, she obtained more permanent alternative accommodation, off site, from early July and the Respondent covered her accommodation costs until then and her reasonable removal costs, albeit a dispute arose in relation to the latter.

**Appeal, grievances and other measures**

391. On 25 May 2021, the Claimant appealed the disciplinary and grievance outcome [1419].

392. She also raised a further grievance against Mr Govorusa, the second Respondent, largely, initially at least, in relation to the accommodation issues [1989].

393. Mr Govorusa, upon receipt, called Mr Dale who reported his reaction to the Claimant by text "as I expected he's not happy at all" followed by a laughing emoji.

394. The Claimant gave consent to the further OH report recommended by Mr McIntyre on 26 May 2021.

395. As mentioned, there followed various exchanges about when and whether the Claimant could return to Southfield or attend school events etc. We have already addressed the former.

396. There was a drinks event for staff on 28 May 2021, prior to receipt of the OH report and any agreed communication / reintegration strategy, that the Claimant was asked not to attend for similar reasons.

397. We also note at this stage an email from Mr Dale to the Claimant, on 3 June 2021, which said "everything we do now has to have the desired outcome in our minds, and we can still email to put pressure on them".

398. Whilst the Claimant was no longer suspended, we understand the school's position that it was important to fully understand the Claimant's health (particularly given the advent term events, her ill health in early 2021 and

hospitalisation in March). They would then need to manage her return to the various aspects of school life with clear communications to staff, students and parents about her absence and new role, not least because of the Claimant's alleged actions on 17 May 2021 and pending appeal.

399. The Claimant was seen by her psychiatrist on 8 June 2021 [2224] who considered that she was fully fit to return to work and her disabilities were having no adverse effect on her.

400. She was assessed by OH [3412] 3 days later who had a somewhat different opinion, albeit both relied heavily on what the Claimant reported. The OH physician considered that the Claimant was not fit to return due to her anxiety, principally related to the disciplinary outcomes. It was also felt that a more permanent accommodation situation would assist.

401. The same day, 11 June 2021, NatMatSci publicly announced, alongside a podcast interview with her, that the Claimant was their new Assistant Principal. The Respondent soon found out about this, and Ian McIntyre twice asked her to confirm her intentions.

402. He initially received an obtuse reply from Dr Kemp, saying no start date had been agreed, before Mr Dale asserted that her intention was to return to Rugby.

403. The Claimant's appeal was arranged for 16 July 2021 before Charlotte Marten, one of the school governors. Again, the Claimant only sent her appeal grounds and some additional points shortly before the hearing. The hearing was also to consider the second and third grievance, but the Claimant withdrew the second one on the day.

404. These documents were said to include disclosures relating to alleged reporting failures by the SMT. Specifically, this related to the lesser allegations from the disciplinary process that were initially deemed not to meet the threshold for reporting to the LADO which we have already addressed.

405. She was again represented by Mr Dale who, again, covertly recorded the meeting despite being expressly asked to confirm that he wasn't doing so.

406. In the appeal hearing the Claimant acknowledged that she did not consider herself impacted by her disabilities prior to 30 September 2020 and repeated many of the points in her original defence and grievances.

407. Oral representations were said to again include allegations of discrimination (protected acts).

408. The Claimant raised the issue of when the investigations into the lesser allegations had been instigated but this had already been addressed with ED in the original grievance and appeared to be at the end of October 2022.

409. She also wanted to know who, beyond HR, had been made aware of her disclosed disabilities prior to her suspension. There was no evidence that anyone was, other than GPJ who reviewed the disclosures following a concern being raised by SR on 30 October 2020.

410. The Claimant had sought disclosure of all communications with Narrow Quay HR via her subject access request. We had the letter of engagement and various emails seeking information or interviews in relation to the grievance investigations. There was no evidence to suggest there was anything more.

411. She also wanted to again raise the lack of direct investigation into the alleged “shot across the bows” comment as well as requesting information about what parents had been told about the conduct allegations (given the requirements of KiCSE).

412. Charlotte Marten was well versed In KiCSE and was satisfied that the school had complied with all their obligations. She endorsed the approach in relation to the two allegations that were dropped (by agreement and to the Claimant’s advantage) given that it would potentially further damage the Claimant’s reputation to contact parents unnecessarily. We would acknowledge that the same would apply to the school, but we were not shown any evidence that there was an obligation to contact parents where the reporting threshold was not met.

413. The Claimant wanted to understand what alternatives to suspension had been considered but Charlotte Marten felt the school had little alternative and we are inclined to agree. She expressly referenced the risk of further conduct concerns and risks to children. She also was concerned about the risk of interference with the investigation, with some evidence to support that.

414. Ms Marten noted that it appeared inconsistent that the Claimant was saying that she had been fit to work at the same time as she was alleging that the school had made her unwell and caused her misconduct.

415. Indeed, she went further, asserting that the Claimant’s safeguarding concerns were unsubstantiated and not raised with the interests of children in mind. She noted the Claimant’s failure to call any supporting evidence / witnesses and the fact that the LADO was involved throughout and would have raised concerns with the school’s approach had there been any.

416. Those observations appeared justified.

417. It was unclear why the Claimant continued to maintain that all of these matters remained unanswered.

418. Mr Dale sent in some case law after the meeting.

419. SMB, another external HR Consultant from Narrow Quay, was tasked with investigating the appeals (and the third grievance) on behalf of Charlotte Marten, and she carried out various interviews, including with the Claimant and R2, between 28 July 2021 and 2 August 2021.

420. Charlotte Marten largely rejected the Claimant's appeal by letter on 9 August 2021, upholding the overall conclusions and sanctions.

421. We have already highlighted where the appeals were upheld in relation to some of the disciplinary allegations and will not repeat those here. We found Ms Marten to have taken a reasoned and balanced approach and she was credible in relation to both her experience, and before us, in justifying her conclusions. Indeed, it appeared at the time, albeit prior to the outcome, that the Claimant was content with how her issues were being addressed.

422. Ms Marten took into account the Claimant's "mitigations", including

a. that she was new to the school and the role,
b. her induction was impacted by covid
c. positive feedback received from some students and parents as well as former and current colleagues and
d. her disabilities

423. She was satisfied that, with regard to the September investigation and the lesser allegations prior to 7 November 2021, it was reasonable to commence a preliminary investigation, to see if there was a pattern or a case to answer, prior to informing the Claimant. That is not unusual in our view.

424. Ms Marten acknowledged that the listing of 20 allegations, including some that were duplicates, or had been addressed previously, lacked care but it was right that the Claimant was forewarned of them all. Whilst addressing them individually, she focussed on what she considered to be the reasonableness of the aggregate final written warning and demotion. She considered that some of the allegations were potentially gross misconduct and, hence, that dismissal was a possible outcome, especially for someone still in their probation period.

425. She considered the Claimant's disabilities and health as part of the mitigation but did not accept that they justified her conduct which she principally put down to temper and a lack of judgment and professionalism.

426. Express reference was made to the OH findings who, when asked if the Claimant's condition had any impact on the conduct subject to disciplinary proceedings, responded that "other than raising her voice ….which she feels was not ideal…and misunderstandings, she sees little wrong in any way with her conduct". We accept that was a troubling self-reflection.

427. It was, however, the only medical opinion to expressly address the Claimant's alleged conduct in the context of her disabilities. Dr Malfatto only identified a generic possibility of outbursts above a certain stress threshold.

428. In fact, the Claimant's lack of insight and remorse and her approach that included denial, deflection and blame, may have led some employers to take more robust action, notwithstanding the mitigation. That is even before consideration of her actions on 17 May 2021.

429. Ms Marten also went through each area of the grievance. She rightly considered certain areas where improvements could be made but none that she believed rendered the Respondent's conduct unreasonable.

430. We will not repeat them all here as, save where we may have expressed a differing view elsewhere in this judgment, we agree.

431. Overall, we find that the appeal outcome was reasonable, balanced and fair. It acknowledged the Claimant's struggles and successes as well as her failings. It made sensible and helpful suggestions about endeavouring to ensure her successful return to work and reintegration, including a mentor with an understanding of neurodiversity.

432. We stress, however, that, prior to her suspension, neither the Respondent, nor the Claimant, had any reason to believe that her ADHD was anything other than well controlled in accordance with the original OH report.

433. Even in the internal proceedings, the Claimant principally referenced her alleged PTSD, for which there was no supporting evidence. That is not to deny that she was impacted by stress, the evidence supporting an anxiety disorder and the potential interaction of mental health conditions.

434. Ms Marten also recommended mediation with all affected staff and safeguarding training for the Claimant. She noted that the most recent OH report had indicated that she was not, at that time, fit to return to Rugby due to the outstanding issues.

435. Nonetheless, she was encouraging the Claimant to view this episode, which could have ended her career, as a valuable lesson before focussing on all she had to offer as a teacher, which was not in dispute.

**The Claimant's resignation**

436. The Claimant resigned on 17 August 2021 [1801]

437. She did so giving a term's notice to expire on 9 January 2022. It was unclear why she did so, given that she was in her extended probationary period, such that only a month was required.

438. We appreciate that a term's notice would be the norm for a teacher and so this could have been a misunderstanding, albeit the Claimant was in receipt of legal advice at the time.

439. Moreover, by the time of her resignation, even on her own case, the Claimant was clearly wanting to start at NatMatSci the following month, as was confirmed in subsequent text exchanges with Dr Kemp. It may be, therefore, that the extended notice period was part of some ongoing strategy, possibly related to the ongoing education of the Claimant's sons.

440. On 25 August 2021, the Respondent served a counter notice on the Claimant to bring her contract to an end on 17 September 2021, which it was acknowledged was a week early but, it appeared, that error was subsequently rectified.

441. On the same day, Dr Kemp requested a reference for the Claimant from the Respondent, as required.

442. The Respondent advanced various reasons for the serving of the counter-notice and the parties disagreed about whether that amounted to a dismissal in law.

443. They did not, however, call evidence from the decision maker(s). In submissions they advanced the potentially fair reasons of conduct or some other substantial reason, albeit there was no need to do so given the Claimant did not have qualifying service to claim "ordinary" unfair dismissal.

444. The reasons given at the time focussed on the Claimant having stated that she had lost trust in the Respondent and the fact that her new role had been publicly announced.

445. We have now seen considerably more evidence (see Decision section below) supporting the fact that both the Claimant and her new employer always wanted and intended for her to start in September.

446. In any event, having resigned, it would have been in nobody's interests for her to remain at the Respondent, especially as they offered to maintain her staff discount for her sons' education for the advent term.

447. It seems to us to have been entirely sensible for the Respondent to bring the Claimant's employment to an end as soon as her contract permitted given that

a. She had resigned;
b. She wanted to start her new employment;
c. There remained health concerns with regard to her return to the Respondent;
d. Potential disruption would be caused by seeking to reintegrate her into the school for a relatively short period;
e. There were previous genuine conduct concerns and also the allegations about the Claimant's actions on 17 May 2021;
f. Everyone needed to move on.

448. Early conciliation ended on 5 September 2021 and the Claimant's claim was presented the same day.

449. Dr Kemp's evidence was that the Claimant started her new employment on 7 September 2021, the date of the reference from GPJ.

450. The reference was factual but not derogatory indicating no ill will on the part of the Respondent. We do not accept, however, that this in any way indicated that the Respondent's conduct concerns were not genuinely held.

**The third grievance**

451. The Claimant's third grievance was the one raised on 25 May 2021 against Mr Govorusa, the second Respondent. It initially largely related to issues around the Claimant's accommodation but was expanded on subsequently to include complaints such as being prevented from social contact with colleagues and evidence that it was claimed suggested that the disciplinary appeal outcome was predetermined.

452. The Respondent suggested that at least part of the reason for raising this grievance was strategic. Mr Dale appeared pleased that it was unhappily received by R2 and subsequently referenced it, along with the appeal etc as "a cost to them and a pain to deal with". That does not, however, mean that it was entirely disingenuous.

453. This outstanding grievance was, perhaps, less of a priority following the Claimant's resignation and the issue of these proceedings although we did not hear evidence from SMB and neither party spent much time on this issue.

454. SMB ultimately produced her report on the third grievance on 18 February 2022 [1596] and Charlotte Marten sent her outcome letter to the Claimant on 6 April 2022 [1775].

455. It had been suggested that the Respondent was deliberately delaying the reintegration of the Claimant into school life and had no intention of her ever returning.

456. For example, the Claimant referenced the fact that she was due to move out of Southfield and the HM role being advertised prior to her appeal outcome as well as not being included in the staff list and timetable for the advent term.

457. However, it transpired that the Respondent had arranged temporary cover for the HM role until the autumn half term and it was not unreasonable to be looking for a solution thereafter should the Claimant's appeal be unsuccessful and/or she remained unfit to return. Even then, the Respondent was still only advertising for a temporary HM and the permanent role remained available.

458. Similarly, given the public announcement that the Claimant would be joining NatMatSci, and her failure to give the Respondent the assurances requested if that wasn't the case, we would accept that it would not have been unreasonable for the Respondent to timetable on the assumption that she would be leaving, which was as it transpired.

459. We heard, and accept, that it was far easier to timetable an additional teacher in, than to take one out. We understand that NatMatSci took the same view.

460. The Claimant said that her name was not on the Respondent's staff list published on 12 July 2021. The third grievance concluded that this was unintentional [1782]. There was certainly no evidence this arose from an instruction from management but, in any event, given that the Claimant's new role had already been publicly announced, her omission was hardly surprising.

461. We do not accept that any of the above indicated any prejudgment. In fact, only looking for temporary HM cover suggested otherwise. We accept that Charlotte Marten was able to form an independent view as a governor and did so.

462. Ultimately, the allegation of there being no intention of the Claimant returning applied far more to her than the school, although we would

acknowledge that her departure and a fresh start was probably in everyone's best interests and the Respondent probably recognised that.

463. The third grievance, therefore, was not upheld. The Claimant had a right of appeal but did not exercise it.

464. It was acknowledged that this represented a significant delay, albeit denied this was in any way because of the Claimant's alleged protected acts or disclosures. CM wrote to the Claimant on 8 September 2021, apologising for the delay caused by summer holidays [1786]. Prior to that, the parties had understandably been focussed on attempting resolution, arrangements for a return to work and addressing the Claimant's appeal.

465. Further information was sought and received from the Claimant over the next couple of months. Interviews were carried out with relevant staff between September and November 2021.

466. By this stage, of course, these tribunal proceedings were well under way.

467. The report and outcome were, again in our view, thorough and appropriate. The complaints were rejected. The allegation that the Respondent failed to deal with the third grievance was invalid.

468. Amongst other points it was explained why it was necessary for the Claimant's return to school life, accommodation, work and interactions with colleagues to be subject to OH advice and clear and careful management and communications, not least because of the Claimant's actions on 17 May 2021.

469. The Claimant had also claimed that the alleged bar on her attending the school and meeting staff and parents had meant that she couldn't pick up her own children or attend parents' evenings without consent.

470. There was, however, clear documented evidence from SR to the Claimant, stating that there was no need for permission in relation to any family related matters or events and being generally supportive.

471. It was surprising, therefore, that the Claimant had alleged this. Ms Marten affirmed her view that it was only the disciplinary processes that should not be discussed and that this was reasonable. We agree.

472. There was a suggestion that, in fact, the alleged detriment in relation to this grievance should be amended to include the delay in providing the outcome.

473. We would acknowledge that it did take almost a year and that was excessive. However, at least some of that time was readily explained, certainly

up to the end of 2021. There was no evidence that the Claimant's previous protected acts and disclosures played any part in the subsequent delay which was, in any event, largely academic given that the Claimant had moved on.

**NLM**

474. The Claimant identified NLM as a non-disabled comparator for the purpose of her direct discrimination claims.

475. NLM was an English teacher who joined the Respondent at the same time as the Claimant. She had previously been named in an incident in an overseas school that resulted in a student suicide. We would stress, however, that there did not appear to be any evidence of adverse findings having been made against her.

476. Comparator documentation was produced during the hearing relating to complaints from students and parents about NLM's robust style of teaching in her first term, alleging that certain students were, for example, picked on unfairly, albeit a suggestion a student may have been targeted for having dyslexia appeared entirely without merit.

477. Overall, however, we accept the Respondent's view that an alleged aggressive teaching style was not comparable to many of the allegations against the Claimant, which included physical and threatening aggression, poor judgment around sexual comments and alcohol, attempting to influence witnesses etc.

478. As a result, NLM was not an appropriate comparator for the Claimant's direct discrimination claims.

479. NLM was also the teacher / parent to whom the Claimant made the "bratty" comment.

480. According to documents before us, she also complained to the Respondent in December 2020 alleging that the Claimant contacted colleagues from her previous school, KES, saying NLM was responsible for her suspension, albeit that did not appear to have been taken further.

**Mark Dale**

481. We had significant concerns around the approach of Mr Dale to supporting the Claimant in the role as Union Representative. For example, covertly recording the meetings he attended with, or on behalf of, the Claimant whilst aware of the Respondent's policy prohibiting this. Indeed, in the appeal

hearing on 16 July 2021, he was expressly asked to confirm that no recording was taking place and said he wouldn't know how to, yet he did.

482. He claimed before us that this was due to dyslexia, but, if that were the case, he could have disclosed it and been open.

483. In previously undisclosed texts, we saw that he had advised the Claimant, when asked, that she should cry as "crying and getting upset shows that you are genuine".

484. In addition, the Claimant said that he had a practice of deleting all texts, emails etc between him and those that he represented prior to issuing proceedings to avoid disclosure obligations and, seemingly, encouraged her to do the same.

485. However, in cross examination, prior to the disclosure of the texts and the Claimant's evidence on the point, Mr Dale claimed he had not retained them as he never expected to end up in a tribunal. That was despite retaining the covert recordings and completely contrary to the alleged rationale given to the Claimant.

486. In deliberations, we felt it was important that Mr Dale had an opportunity to respond to the suggestion that he deliberately destroyed evidence. He did so, in writing, denying the allegation. That said, no alternative explanation for the absence of the documents was offered.

487. The Claimant also said in oral evidence that she believed that she had texted Mr Dale asking him not to covertly record meetings but, if so, that was another text that was not disclosed.

488. A few emails were found on the Respondent's servers due to the Claimant having used her work address. There were clearly others, however, referenced in text messages, using the Claimant's private email, which we never saw.

489. The claimant did, during the course of the hearing, produce a significant number of WhatsApp exchanges with Mr Dale, having, she said, previously believed these had not been retained. That said, it appeared likely that these, too, were incomplete. For example, and tellingly perhaps, the email from Mr Dale, on 3 March 2021, responding to the Claimant's email and texts (plural), congratulating her on her new employer. Only one other email and text were before us and neither referenced her job offer from NatMatSci.

490. There is, of course, nothing wrong with receiving union advice during a meeting. However, merely by way of example of another of our concerns, in the meeting with Mr McIntyre, on 27 July 2021, about a possible return to work, the

Claimant had said her health was “pretty good” and she was “fit to return” to work with appropriate measures [1444]. At around this point, a few minutes into the meeting, Mr Dale texted her to say “still anxious”, “need to wait for outcome” and “be careful”. The Claimant seemingly then took a short break and returned saying that she was “incredibly anxious” 3 times.

491. Further on in that meeting, on 27 July 2021, [1448] aligning the text messages with the minutes, it appeared likely that Mr Dale sent the Claimant a thumbs up emoji whenever she said she had “no intention” of taking up the job with NatMatSci. In any event, whilst not expressly put to them, even on their own evidence before us, both knew that was not the case. Mr Dale had made a similar assertion to Mr McIntyre a few weeks earlier.

**The Issues**

492. The issues had been set out by EJ Wilkinson on 1 February 2022 at a Preliminary Hearing, albeit they were subject to a few relatively minor amendments before us.

493. The issues were, therefore, as follows:

[Numbers in brackets reference the paragraphs from the details of claim. Comments in italics in brackets relate to amendments agreed at the hearing or the tribunal’s observations. Numbering errors in the original document amended]

**Public Interest Disclosure (ss47B Employment Rights Act 1996 (ERA))**

1. Did C make any protected disclosures?

2. In particular, C relies on the following alleged disclosures:

2.1. C’s request on 4 November 2020 (amended before us to potentially include emails from 31 October 2020) for an investigation into health and safety risks to which she believed the Deputy Housemistress was exposing the girls in Southfield **[18]**.

2.2. C’s grievance of 10 November 2020 (amended to include the particularisation of the grievance provided on 31 December 2020) alleging breaches of health and safety in relation to the children in Southfield and breaches by R1 of GDPR in relation to pupils’ personal information. **[31-32]**.

2.3. The Claimant‘s grievance of 13 April 2021 (attaching the 10 November 2020 grievance) alleging safeguarding issues and breaches by R1 that engaged the public interest **[56]**.

2.4. Mark Dale's Statement of Case, made on behalf of C, for the combined disciplinary and grievance hearing of 13 April 2020, alleging safeguarding issues **[60].**

2.5. Mark Dale's oral statements, made on C's behalf, at the hearing on 13 April 2020 about R1's failure to report incidents to the LADO in accordance with Child Protection Policies **[61-63].**

2.6. C's Timeline sent to R1's Governors on 14 April 2021 which referred to R1 unnecessarily exposing pupils at risk of Covid and poor health and safety practices.

2.7. Mark Dale's email to Barry O'Brian of 24 April 2021 (amended to 28 April 2021) highlighting R1's policy, the LADO's policies as well as the statutory guidelines. "They all confirm that any issues concerning safeguarding have to be reported within 24 hours" and references to breaches of "Keeping Children Safe in Education (2020)" (KiCSE).

2.8. The reporting failures by the SMT set out in C's 'Additional Points for the Appeal' **[78]**.

3. In respect of each disclosure, the Respondents accept that the alleged protected disclosures were within s43C ERA (i.e. to the employer or other responsible person).

4. In respect of each disclosure, did C hold a reasonable belief that any information disclosed showed relevant failures? i.e. s43B(1)(b),(d) and (f) ERA (breach of a legal obligation, health or safety endangered, and concealments of these).

5. In respect of each disclosure, did C hold a reasonable belief that any information disclosed was in the public interest?

**Detriments (s47B ERA)**

If C made a protected disclosure(s):

6. C relies on the following alleged acts/failures as detriments:

6.1. R1 and R2 adopting Sarah Martin's report of 11 March 2021 that it is alleged trivialised and failed to address adequately C's concerns **[49]**.

6.2. R1 not upholding C's grievance, in a letter from Ian Macintyre dated 21 May 2021, by rejecting it "*in its entirety*", and giving C a final written warning, demotion and salary reduction **[65 & 67]**.

6.3. Ian McIntyre warning C off pursuing her grievances and appealing his decision in his letter to C of 21 May 2021 **[73 & 74]**.

6.4. R1's failure (amended to "delay") to address C's grievance against R2 of 25 May 2021 **[90 & 91]**.

6.5. R1 failing to uphold C's grievance or disciplinary appeal heard by Charlotte Marten in an outcome letter dated 9 August 2021 **[92]**.

6.6. Cutting short C's employment to 17 September 2021 as set out in Peter Green's letter dated 25 August 2021 **[106]**.

6.7. R1's continuing failure to pay for C's accommodation in July 2021 or her removal costs *(amended to remove accommodation costs and to only reference "full" removal costs)* **[111]**.

7. If the Rs did those things, was C subjected to any detriment?

8. If so, was the detriment on the ground that she made the protected disclosure(s)?

**Time limits**

If C was subject to a detriment(s):

9. Is the claim within the jurisdiction of the Tribunal with regard to the applicable time limits in s 48 ERA?

Specifically:

10. Does the alleged conduct of R1 and / or R2 set out above amount to part of 'a series of similar acts or failures' within the meaning of s48 (3) ERA?

11. Were any of C's complaints brought outside the relevant time limit specified in s48 (3) and (4) ERA?

12. If so, was it not reasonably practicable for those claims to be brought in time and, if not, was it presented within such further time as would be reasonable under s 48 (3)(b) ERA? (*amended by this tribunal to reflect the statutory test*).

**Constructive Dismissal / Dismissal / Automatic Unfair Dismissal (s103A ERA)**

13. Was C dismissed by R1 having regard to 95 (1) (c) ERA 1996?

14. Was there a breach of C's employment contract by R1?

14.1. C alleges breach of the implied duty of trust and confidence based on the final straw doctrine **[102]**. This was based on the rejection of her disciplinary appeal and grievance by Charlotte Marten, and the detriments to which C had

been subjected after protected acts, and protected disclosures concerning safeguarding that C raised - the subject matter of her grievances and her defences to the disciplinary allegations. C says that this engages s103A ERA.

14.2. R1's case is that she resigned on around 5 months' notice, and it served a counter-notice with a shorter period of notice which terminated the contract earlier such that there was an express dismissal pursuant to s 95 (1)(a) ERA. R1's alternative case is that if C terminated the contract, there was no constructive dismissal.

15. Did R1 and R2's conduct amount to a fundamental breach of contract entitling C to resign from her employment with R1?

16. If so, did C resign as a result of such alleged breach?

17. Did C affirm the alleged breaches of contract?

18. When did C's contract terminate? The effective date of termination became agreed during the hearing as 17 September 2021.

19. (This tribunal observes that the claimant did not have qualifying service for a claim of "ordinary" unfair dismissal, constructive or otherwise. As a result, any alleged breaches relied on must include protected disclosure (but not protected act) detriments for the purposes of s103A ERA.

**Wrongful Dismissal (*dismissed on withdrawal during the hearing, albeit referenced in C's submissions as if still "live")***

20. What was C's notice period?

21. Was C paid for that notice period?

22. If not, did C do something so serious that the Respondent was entitled to dismiss without notice?

**Breach of Contract (*dismissed on withdrawal in part during the hearing and subsequently during submissions*)**

23. Did the claim arise or was it outstanding when the C's employment ended?

24. Did R1 do the following:

24.1. Fail to pay for C's accommodation in July 2021[*dismissed on withdrawal during the hearing*]

24.2. Fail to pay *all [clarified during hearing]* her removal costs.

25. Was that a breach of contract?

26. If so, how much should C be awarded as damages?

**Disability**

27. At all material times, did C have a disability within the meaning of s6(1) EqA?

28. The Claimant relies on the following alleged disabilities: (i) clinical depression, (ii) attention deficit hyperactivity disorder (ADHD), (iii) a migraine disorder (including cyclical vomiting syndrome) and (iv) post-traumatic stress disorder (PTSD) – [*the latter from 30 September 2020 only]* **[4]**.

29. When was R1 and R2 aware of the alleged disabilities?

30. Alternatively, should R1 and R2 have had constructive knowledge of the disabilities?

**Direct Disability Discrimination (ss13(1) and 39(2) EqA)**

31. Did R1 treat C less favourably than it treated, or would have treated other persons because of C's alleged disabilities? The comparator is hypothetical except in relation to the suspension for which there is an actual comparator of NLM **[9]**.

32. C relies on the following allegations of discrimination:

32.1. R1 subjecting C to the disciplinary investigation on 30 September 2020 **[16]** (*dismissed on withdrawal during the hearing*).

32.2. R1 suspending C on 8 November 2020 and keeping her 'suspended and segregated' from staff and students **[26]**.

32.3. From 29 September 2020, R1 subjecting C to a formal disciplinary process soon after she started when no informal resolution of concerns had been attempted **[51]**.

32.4. R1 not upholding C's grievance by rejecting it, in Ian Macintyre's letter dated 21 May 2021, "in its entirety", and giving C a final written warning, demotion and salary reduction **[65 & 67]**.

**Discrimination arising from disability (ss15(1)(a) and 39(2), EqA)**

33. Did R1 treat C unfavourably because of something arising in consequence of C's disability, namely raising her voice, appearing to act in an uncontrolled manner or lacking emotional restraint when under stress?

34. The unfavourable treatment alleged by C is as follows:

34.1. R1 subjecting C to the disciplinary investigation on 30 September 2020 **[16]**.

34.2. R1 suspending C on 8 November 2020 and keeping her 'suspended and segregated' from staff and students **[26]**.

34.3. R1 not upholding C's grievance by rejecting it, in Ian Macintyre's letter dated 21 May 2021, "*in its entirety*", and giving C a final written warning, demotion and salary reduction **[65 & 67]**.

35. Was any such unfavourable treatment a proportionate means of achieving a legitimate aim within the meaning of s15(1)(b) EqA?

(The Respondent principally relied on the legitimate aim of safeguarding the children in their care)

**Reasonable Adjustments (ss20(2), 21 and 39(2) EqA)**

36. Did R1 *[or R2 – deleted]* apply a provision, criterion or practice ('PCP') to C within the meaning of the legislation?

37. C puts forward as (valid) PCPs:

37.1. suspending C and keeping her suspended and segregated from staff and students without supervision or medical supervision **[26].**

37.2. requiring C to perform the housemistress role without a proper induction, adequate support or training **[36].**

37.3. requiring C to work excessive hours because of her workload **[35].**

37.4. requiring C to leave her school accommodation and, effectively, to live offsite with her children in temporary accommodation *[from 17 May 2021 only]* **[81]**.

If the PCPs proposed by C are valid:

38. Did the PCP or PCPs put C at a substantial disadvantage in relation to the alleged disabilities in comparison with persons who are not disabled? C avers that each PCP above did because she was caused enormous stress and anxiety, thereby exacerbating her existing mental health issues at a time when she was most vulnerable and least able to cope.

39. If so, did R1 or R2 know or should it have reasonably known that the alleged disadvantage arose?

40. If so, did R1 or R2 take such steps as it was reasonable to have to take to avoid that disadvantage?

41. C contends that Rs (R1/R2) should have taken the following steps:

41.1. obtained a professional assessment of C's medical problems to ascertain her ability to cope with the requirements of her role when it became evident that she was in difficulty *[from 30 September 2020*];

41.2. responded to C's communications, enquiries and requests for assistance;

41.3. provided aid in the form of suitable training and mentoring;

41.4. refrained from pressuring and punishing C with disciplinary processes and "shots across her bows" until the medical position had been ascertained;

41.5. kept in regular and supportive contact**;**

41.6. avoided increasing C's isolation through practices including suspension, making her leave school accommodation, and restricting her social interaction and communication.

**Harassment (ss26(1) and 39(2) EqA)**

42. Did the following acts happen?

42.1. R1 suspending C on 8 November 2020 and keeping her 'suspended and segregated' from staff and students without supervision or medical evidence **[26]**.

42.2. From 29 September 2020, R1 subjecting C to a formal disciplinary process soon after she started when no informal resolution of concerns had been attempted **[51]**.

42.3. R1 and R2 harassing C with alleged safeguarding breaches for which C was being disciplined that had not been reported to the LADO which, if genuine, should have been **[63]**.

42.4. Ian McIntyre warning C against pursuing her legitimate grievances and appealing his decision in his letter to C of 21 May 2021 **[74]**.

42.5. Ian McIntyre advising R1 not to consider C's return to her house in Southfield until an occupational health report had been obtained, as confirmed in his letter of 28 May 2021, and R2 implementing this advice **[84 & 86].**

42.6. R2 refusing C right to attend a school social evening **[85]**.

43. If so, was this unwanted conduct?

44. If so, was the unwanted conduct related to C's alleged disabilities?

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

46. The Tribunal will have regard to:

46.1. C's perception;
46.2. the other circumstances of the case; and
46.3. whether it was reasonable for the conduct to have that effect.

**Victimisation (ss27(1) and 39(2) EqA)**

47. Did C do a protected act?

48. C contends that she did a series of protected acts:

48.1. Grievances dated 10 November 2020 that complained of disability discrimination contrary to the EqA **[8]**;

48.2. Grievance dated 13 April 2021 that complained of disability discrimination contrary to the EqA **[8]**;

48.3. Grievance dated November 2021 that complained of disability discrimination contrary to the EqA **[8]**;

48.4. Alleging unlawful discrimination in Mr Dale's Statement of Case for the hearing on 13 April 2020 **[60]**;

48.5. Alleging orally unlawful discrimination during the following internal grievance and disciplinary hearings and appeals **[118e]**:

48.5.1. 4 December 2020
48.5.2. 8 December 2020.
48.5.3. *7* January 2021.
48.5.4. 14 January 2021
48.5.5. 19 March 2021 *[withdrawn].*
48.5.6. 13 April 2021.
48.5.7. 16 July 2021.

48.6. Written and oral descriptions of C's concerns to the ACAS officer during early conciliation.

49. If so, did R1 and / or R2 do the following acts?

50. C relies on the following allegations of victimisation:

50.1. from 29 September 2020, R1 making C unwelcome and putting her under pressure as part of a disciplinary process so she would leave or be dismissed **[24]** *[dismissed on withdrawal during the hearing].*

50.2. R1 and R2 adopting Sarah Martin's report of 11 March 2021 that trivialised and failed to address adequately C's concerns **[49]**.

50.3. on 21 May 2021, R1 not upholding C's grievance and, separately, issuing her with a final written warning, demotion and salary reduction **[65]**.

50.4. on 21 May 2021, R1's condemnation and rejection of C's grievances as if they were "*only [to] serve the purpose of frustrating this process*" **[67]**.

50.5. on 21 May 2021, Ian McIntyre warning C off pursuing her legitimate grievances and appealing his decision in his letter to C of 21 May 2021 **[74]**.

50.6. Ian McIntyre advising R1 not to consider C's return to her house in Southfield until an occupational health report had been obtained, as confirmed in his letter of 28 May 2021, and R2 implementing this advice **[84 & 86]**.

50.7. R2 refusing to permit C to attend a school social evening **[85]**.

50.8. R1's failure to address C's grievance against R2 of 25 May 2021 **[90]**.

50.9. R1 failing to uphold C's grievance or disciplinary appeal heard by Charlotte Marten as set out in the outcome letter 9 August 2021 **[92]**.

50.10. R1 prohibiting C from social contact with colleagues for more than nine months from 8 November 2020 until termination**[101]**.

50.11. R1 cutting short C's employment to 17 September 2021 as set out in Peter Green's letter dated 25 August 2021 **[106]**.

50.12. R1's continuing failure to pay for C's *[accommodation in July 2021 – dismissed on withdrawal]* or her *full* removal costs **[111]**.

51. If so, was this detrimental treatment?

52. If so, was this because of the alleged protected acts?

**Time Limits**

53. Does the conduct of R set out above, or any part of that conduct, amount to '*conduct extending over a period*' within the meaning of s123(3) EqA?

54. Were any of C's complaints brought outside the relevant time limit specified in s123 EqA?

55. If so, is it just and equitable to extend time for the bringing of those complaints?

**Remedy (Automatic Unfair Dismissal and / or EqA claims)**

If any of C's claims are successful:

56. What compensation is C entitled to recover?

57. What compensation for injury to feelings is recoverable?

58. What compensation for personal injury is recoverable?

59. Has C suffered any loss of remuneration?

60. How likely is it that C would have been dismissed in any event?

61. Have the Rs behaved in a high-handed, malicious, insulting or oppressive manner? Should aggravated damages be awarded? **[119j]**

62. Did either party breach the ACAS Code on Disciplinary and Grievance Procedures? C says there was a breach of paras 33 to 45 of the ACAS Code on Disciplinary and Grievance Procedures by failing [*amended to delay*] to hear C's grievance of 25 May 2021 against R2 **[90]**.

**The Law**

63. We do not propose to recite the law in relation to all areas of the claims, much of which was not in dispute. However, we do observe the following:

64. The Public Interest Disclosure Act 1998 Act inserted a new Part IVA into the Employment Rights Act 1996 designed to protect whistleblowers.

65. The basic principle, set out in section 47B of the Employment Rights Act 1996, is that a worker has the right not to be subject to a detriment by any act of his employer on the grounds that he has made what is termed a "protected disclosure".

66. The term “qualifying disclosure” is defined by section 43B Employment Rights Act 1996 (“ERA”) and means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

66.1. (a) that a criminal offence has been committed, is being committed or is likely to be committed,
66.2. (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
66.3. (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
66.4. (d) that the health or safety of any individual has been, is being or is likely to be endangered,
66.5. (e) that the environment has been, is being or is likely to be damaged, or
66.6. (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be, deliberately concealed.”

67. It is clear from consideration of the section that:
67.1. there must be a disclosure of information - the authorities now establish that a disclosure of information may be made in the course of making an allegation - Kilraine v London Borough of Wandsworth [2018] ICR 1850. A qualifying disclosure has to have sufficient factual content and specificity which is capable of tending to show one of the matters identified above and
67.2. in the reasonable belief of the worker making the disclosure it must do so, and
67.3. they must also reasonably believe it is made in the public interest.

68. A qualifying disclosure becomes a protected disclosure because of the identity of the person to whom it is made, which includes employers.

69. Section 47B ERA provides that: A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. Accordingly, a worker is protected from being subject to a detriment done on the grounds that he has made a protected disclosure. The leading authority on what is meant by the term “done on the ground that” is Fecitt and others v NHS Manchester (Public Concern at Work intervening) [2012] ICR 372.

70. We have to consider whether the alleged disclosures played any part in any subsequent detriments.

71. The necessary belief is that the disclosure is made in the public interest. While the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be their predominant motive in making it.

There may be more than one reasonable view as to whether a particular disclosure was in the public interest, and it might nevertheless be made in bad faith.

72. Making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers, although, where the interest in question is personal in character, there may nevertheless be features of the case that make it reasonable to regard it as being in the public interest.

73. Section 15 of the Equality Act 2010 (EqA) provides so far as relevant: (1) A person (A) discriminates against a disabled person (B) if – a. A treats B unfavourably because of something arising in consequence of B's disability.

74. In City of York Council v Grosset [2018] ICR 1492, it was stated that section 15(1)(a) requires an investigation of two distinct causative issues:

    74.1. did A treat B unfavourably because of an (identified) "something"? and
    74.2. did that "something" arise in consequence of B's disability?

    The case makes it clear that these two causative questions require different approaches, the something must objectively arise out of the disability, whereas the question of that something being the causation of the unfavourable treatment must be examined on a subjective basis.

75. In Hall v Chief Constable Of West Yorkshire Police [2015] IRLR 893 indicates that "a significant influence on the unfavourable treatment, or a cause which is not the main or the sole cause, but is nonetheless an effective cause of the unfavourable treatment" would be sufficient to satisfy the test.

76. Pnaiser v NHS England & Anr. [2016] ICR 170 sets out that the ET must identify the unfavourable treatment and then what caused the treatment before making clear that there may be more than one reason or cause for the treatment but that the 'something' that is one cause of the treatment must have at least a more than trivial influence on the unfavourable treatment which would amount to an effective reason for it, also making the point that motives are irrelevant. There may be more than one link and a range of causal links, but, as the causal link is a question of fact, the more links in the chain the harder it will be to show the requisite connection.

77. We have considered the burden of proof provisions in the Equality Act 2010, aware that facts need to be established from which we could conclude discrimination had occurred. If they are, it is for the Respondents to show that their actions were in no way whatsoever tainted with discrimination.

78. In victimisation claims, if detriments are established, we need to be satisfied that they were in no sense whatsoever caused by the protected acts.

79. There was extensive debate about whether the termination of the Claimant's employment amounted to a dismissal in law, and we are aware of the potentially relevant appeal case pending. However, given the different circumstances and our findings below we do not need to enter that arena.

80. Section 20(3) Equality Act 2010 provides that where a provision, criterion or practice (PCP) puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, there is a requirement on an employer to take such steps as is reasonable to avoid that disadvantage.

81. In Environment Agency v Rowan [2008] IRLR 20, the EAT gave guidance on how we should approach this issue by identifying:-

    81.1. the provision, criterion or practice;

    81.2. the non-disabled comparators if appropriate;

    81.3. the nature and extent of the substantial disadvantage.

82. We also considered paragraph 6.28 of the Employment Code of Practice and specifically:-

    82.1. The effectiveness of the particular adjustment

    82.2. Its practicability

    82.3. The costs, not merely financial

    82.4. The Respondent's type, size and resources

    82.5. The availability of other or external assistance

83. It was disputed that the Respondent applied the PCPs contended for.

84. We had to consider the extent to which the adjustments proposed, or indeed any other adjustments, may have reduced or removed the disadvantage.

85. We reminded ourselves that the test is objective. An adjustment will not be reasonable if it has "no prospect" of removing the disadvantage, but "a prospect" is sufficient.

86. It is settled law that there is no distinct duty to consult on adjustments, nor can assessments, of themselves, amount to adjustments.

## Decision

### The Protected Disclosures

1. We do not propose an extended analysis of each and every alleged protected disclosure, not least because that was not how the case was put.

2. There was no dispute that the Claimant raised covid related health and safety breaches, albeit there was no evidence before us about whether these amounted to breaches of a specific legal obligation at the relevant time.

3. The Claimant had raised concerns about covid processes in her induction and in her letter to parents in September 2020, although it was not suggested that they amounted to protected disclosures.

4. They are relevant, however, as the Respondent suggested that, when the Claimant subsequently raised covid issues, she was entirely motivated by her animosity towards HB and/or as a defence to the conduct allegations she faced. As a result, it was contended that they were not raised in the public interest.

5. We would acknowledge that those factors did appear to play a significant part in the Claimant's motivations.

6. Moreover, the Respondent argued that the Claimant did not reasonably believe that there was any health and safety risk, relying on the Claimant's own words in relation to the HB social distancing incident and her comment that she was happy with the protocols in place.

7. Again, those were valid points. Nonetheless, the Claimant had raised other issues, for example about groups and "bubbles" mixing that appeared to be genuinely and reasonably believed to be valid, however mixed the Claimant's motivations in making them.

8. The Respondent acknowledged the concerns at the time and agreed to investigate.

9. Similarly, the Respondent acknowledged that the Claimant had raised potentially valid GDPR issues in her grievance, albeit, again, arguing that these were raised solely in the context of complaints about her induction and as a defence to the disciplinary allegations.

10. We would accept that the Claimant reasonably believed there were such breaches and that the public interest was engaged in relation to the personal information of the girls, even if that wasn't her principal reason for raising the issue.

11. We would also accept the Claimant's evidence that she genuinely believed that the Respondent had breached KiCSE and safeguarding procedures in matters including her suspension and the reporting of conduct concerns to the LADO, including the timing of the same, even though we consider that she was wrong in that belief.

12. We have already noted an anomaly in the drafting of KiCSE around suspension, although we consider that, ultimately, the decision must rest with the employer as was made clear elsewhere in the guidance. The Claimant's erroneous belief was, therefore, potentially reasonable.

13. We would also accept that such guidelines inevitably call for interpretation about matters which, individually or cumulatively, may have met the threshold for reporting to the LADO.

14. That said, the interpretation that every conduct concern that potentially touched on safeguarding needed to be reported within 24 hours was probably borne more out of expediency than reason. When individual concerns below the reporting threshold mounted up, not least following a more serious concern and the express request of the LADO, then reporting was appropriate.

15. It cannot be right that not reporting matters clearly below the threshold at the time meant that those matters could not be reported in a subsequent investigation into a concerning pattern of behaviour. It is difficult to see how anyone could have reasonably believed otherwise.

16. Again, the Claimant's principal concern in raising the issues was in defending the conduct allegations against her but that does not negate the inevitable public interest in compliance with safeguarding procedures.

17. The alleged covid risks and safeguarding breaches were the principal matters repeated or expanded on in the Claimant's subsequent disclosures.

18. We have, therefore, accepted that there were at least some protected disclosures made by the Claimant and they would have come to the attention of the relevant decision makers responsible for the alleged detriments.

**Protected acts**

19. Taking matters somewhat out of turn, we record that it was common ground that the Claimant made allegations of disability discrimination in her grievance of 10 November 2020 and in her subsequent grievances, statements of case and orally in grievance and disciplinary hearings.

20. Those amounted to protected acts for the purposes of s27 Equality Act 2010.

**Disability**

21. It was rightly conceded that the Claimant was a disabled person by virtue of her CVS / migraine disorder and ADHD at all material times.

22. We do not accept that there was any medical evidence that would support the Claimant's assertion that she suffered from PTSD as a result of the investigation hearing in September or at all. That is not to say that she didn't suffer a significant adverse reaction.

23. In relation to clinical depression, it appeared that the Claimant's previous episodes were historic and short-lived. As a result, in isolation, they would not meet the statutory definition of a disability as they were not long term, nor was there any evidence at the time that they were likely to recur. One of those periods was post-natal.

24. It was only towards the end of her employment with the Respondent that she was diagnosed with recurring depressive disorder. That diagnosis appeared to be retrospective but, neither the Claimant, nor the Respondents, could have been aware of it until then. We take no issue, however, with the slightly different label pleaded.

25. That said, we note that the Claimant also appeared to have a diagnosis of generalised anxiety disorder, albeit not relied upon as a disability. We would also recognise that mental health is a complex area with many conditions interlinked and related.

26. Specifically, we would acknowledge that the Claimant's conceded disabilities could be adversely affected by stress. Her new school, first pastoral role, house move and young family all came with stresses, especially during the pandemic, as did her subsequent personal circumstances.

27. It appeared to be clear that, nonetheless, she was largely managing her stress well until, at least, 30 September 2020.

**The Claimant's induction / support - reasonable adjustments**

28. The Claimant contended that requiring her to perform the HM role without a "proper induction, adequate support or training" was a provision, criterion or practice that put her at a substantial disadvantage because it caused her enormous stress and exacerbated her underlying health issues.

29. We have already largely addressed this in our findings of fact. We consider that, in the circumstances of the covid pandemic, the Respondent did provide a

comprehensive induction process, notwithstanding that it wasn't everything the claimant hoped for and in person shadowing was not an option.

30. We have identified the various meetings, training, protocols and procedures that were in place as well as access to relevant members of staff and the school's intranet.

31. Whilst regrettable that the Claimant was not expressly given a copy of the Boarding Manual, she had access to it from the outset and it was signposted in her induction, around 2 months before the students were due to arrive, which was sufficient.

32. The Respondent also provided support in a number of ways from a variety of peers and managers, as well as her buddy, AC.

33. We would acknowledge, as did the Respondent, that there were improvements that they could make going forward in relation to the recruitment of external HMs, particularly those new to a pastoral role. We also recognise the additional challenges faced by all concerned due to covid.

34. However, stepping back, and reviewing the whole induction process and what was known at the time, we cannot accept the premise of the alleged PCP, that the induction was not "proper". In our view and experience, the Respondent did more than many other employers would have done.

35. The Claimant was unable, either at the time or before us, to clearly state what more the Respondent could and should have offered her, beyond the generic PCP, other than more shadowing, which we have already addressed, and providing her with a copy of the Boarding Manual.

36. In any event, neither the Claimant, nor her initial OH assessment, gave any indication that she would be put at a substantial disadvantage without further support. We would accept that, prior to 30 September 2020, it was reasonable for the Respondent's staff to have formed the view that she was only exhibiting what would be considered normal levels of stress, given all the circumstances.

37. It was reasonable for those staff not to have been informed of the Claimant's disabilities, given that OH considered that the effects were well controlled and required no adjustments.

38. Whilst the Respondent, as a whole, cannot deny knowledge of the Claimant's disabilities, there was nothing to suggest any specific susceptibility to stress prior to her suspension. They had undertaken reasonable enquiries with OH and the Claimant did not raise it herself.

39. As a result, we cannot say that, prior to 30 September 2020, the Respondent ought reasonably to have known of any alleged disadvantage to the Claimant or other disabled persons.

40. Even then, they were taking certain steps to assist her further, when asked, such as the mediation meeting with HB.

41. Whilst it was the case that occasional requests from the Claimant were not picked up, it was also true that various measures, such as coaching / mentoring from the HM of another girls' house, she rarely took advantage of, so it is difficult to say that some undefined, more suitable support would have been of assistance.

42. JM, following the September investigation, offered coaching but the Claimant did not take him up on it.

43. With the benefit of hindsight, it was unfortunate that the Claimant, in her first pastoral role, during Covid, had a deputy who was also new to the role, albeit not new to the school. That said, we heard no evidence that there was any realistic alternative available.

44. In relation to the position after 30 September 2020, it appeared that the Claimant had an acute stress reaction to the parent letter investigation meeting, notwithstanding that we consider that the Respondent acted reasonably in calling it.

45. The Claimant had argued for a reasonable adjustment of "refraining from pressuring and punishing her with disciplinary processes and "shots across her bows" until the medical position was ascertained".

46. In relation to the parent letter, the Respondent did refrain from a disciplinary process following her reaction to the investigation. Prior to the investigatory hearing, neither she nor they were aware of any alleged disability related disadvantage and so there was no reason to consider that the original OH report needed updating.

47. Whilst no disciplinary action was taken that is not the same as the Claimant's classification of there being "no case to answer".

48. Thereafter, it was suggested that it became evident that the Claimant was in difficulty. We would acknowledge her

    a. episode of CVS on 30 September,
    b. inability to accept or process the parent letter investigation,
    c. relationship difficulties with HB,

as well as the expected pressures of the new role were all at play but the Respondent was not to blame and, in any event, it was unclear what more they could or should have done, even after 30 September 2020, given that some of the support offered wasn't taken up.

49. Similarly, the Claimant argued that "requiring her to work excessive hours because of her workload" was a further PCP applied by the Respondent.

50. There was no dispute that the Claimant was working long hours, but it is difficult to say that these were all "required" by the Respondent. Indeed, they were encouraging her to prioritise and work less.

51. They removed a couple of hours for hockey. They extended the deadline for UCAS statements which, in any event, we heard, could not be said to be an obligation on the Claimant, despite her desire to be involved. In addition, her predecessor had offered to do them.

52. The Claimant maintained, even before us, that it was necessary for her to spend time sorting out the Christmas decorations early in the term.

53. It may be that the Claimant would still have been working long hours, although that is difficult to quantify. However, by continuing to undertake unnecessary tasks and activities, she was not helping herself and, it seems to us, cannot then blame the Respondent for not doing more.

54. Accordingly, therefore, we cannot accept the PCPs pleaded. Nor can we say that they caused the disadvantage contended for.

55. We acknowledge that, post 30 September 2020, the Claimant was exhibiting signs of stress, potentially beyond what may ordinarily have been anticipated. In significant part that was a result of having been legitimately called to account for the parent letter which she obviously needed to find a way to process. It was unclear how the Respondent could help with that beyond the counselling that they offered.

56. That said, it was, at least, arguable, that the Respondent should have sought a further OH report then, or shortly thereafter, albeit that would have taken a few weeks in any event.

57. Such a report, of itself, would not amount to a reasonable adjustment. It would depend on what, if any, adjustments may have been recommended at that stage to remove any alleged disadvantage and whether they would have been reasonable to make.

58. That is a matter of conjecture, although we have seen from subsequent reports that a stress risk assessment, mentoring and a buddy were the principal

proposals. It was unclear, however, what the OH physician knew of what was already in place and how those suggestions would have been different from the support available to the Claimant from, amongst others Mr Bell, SR, JM, AC, the school counsellor and the HM of a girls' boarding house.

59. It is far from clear whether an earlier OH report would have picked up on anything more than the Claimant's CVS, general stress and acute reaction to the investigation. Specifically, there was no evidence that the Claimant's ADHD would have been identified as having a negative impact on her prior to her suspension. The Claimant did not appear to either make such a link, nor to share it with the Respondent.

60. We would acknowledge the subsequent recommendation that her mentor, ideally, would have an understanding of neurodiversity. However, working in education, many of those involved, we heard, would have had an above average level of awareness.

61. In any event, this was not an adjustment specifically contended for. There was no evidence of whether such an individual would have been reasonably available, who they were and what difference, if any, this would have made.

62. From what we have seen, the Claimant wanted to be all over everything, which is not a criticism. When she was told that certain tasks were unnecessary, she did them anyway. When she was relieved of duties over the Halloween weekend, she intervened. More shadowing would have taken time out of her already busy schedule.

63. It is possible that some of those matters were influenced by neurodiversity but that was not how the case was put, either at the time, or before us.

64. There was no evidence that a stress risk assessment may have made suggestions that would, in practice, alleviate this, let alone the principal cause of the stress, being legitimately called to account for the parent letter.

65. Had it been possible for her to receive more direct and immediate supervision, we doubt it would have been well received or beneficial. Certainly, when criticisms were subsequently raised about the Claimant's conduct, management style and judgment, they were often disputed or blamed on others rather than accepted as points from which to learn and improve.

66. As previously mentioned, her characterisation of the September investigation best illustrates this. She sent a letter to parents suggesting that she disagreed with the school's senior management and their covid protocols were not strict enough.

67. Many employers would have viewed that very seriously, yet the Claimant characterised their response as “unnecessary, unwarranted, heavy handed and insensitive” when it was none of those.

68. She went on to allege that she was being punished for her disabilities, and the investigation was to break her to avoid making accommodation for them. There was no evidence that anyone involved was even aware of her conditions at that stage.

69. That lack of perspective and insight was effectively confirmed in the Claimant’s subsequent self-appraisal and the OH reports.

70. Overall, therefore, whilst we acknowledge that the Claimant was exhibiting signs of stress on, and potentially after, 30 September 2020, the causes were largely circumstantial or of her own making. We cannot say that was caused by any failures of the Respondent nor that there was more that they could reasonably have been expected to do at the time.

71. They did

    a. largely respond to her requests for assistance, albeit she did not accept all the help offered,
    b. provide suitable training and mentoring,
    c. keep in regular and supportive contact.

72. The Claimant’s second and third claims for a failure to make reasonable adjustments fail.

73. These matters would, in any event, as stand-alone claims, have been presented many months late.

**Parent letter investigation – harassment / s15 EQA**

74. The claim that the September investigation amounted to direct discrimination was dismissed on withdrawal.

75. However, it was also suggested that this amounted to disability related harassment and/or that it was unfavourable treatment arising from the Claimant’s disability.

76. There was no evidence that either the writing of the letter, or the Respondent’s response to it, was in way related to, or arising from, the Claimant’s disability. Those involved had no knowledge of the Claimant’s disability, nor was it raised in mitigation at the time.

77. In the issues, the Claimant contended that “raising her voice, appearing uncontrolled or lacking emotional restraint when under stress” was the “something arising” in consequence of her disability.

78. There was medical evidence to support the possibility of outbursts but that couldn’t be said to apply to the preparation of this letter. The Claimant sought, before us, to rely on generic NHS advice that ADHD symptoms could include impulsivity, but this was not how she had put her case.

79. There was no evidence that this was one of her symptoms, nor that this is what may have influenced her in September or subsequently. She did not raise this as possible mitigation at the time.

80. There was also no evidence regarding which other potential symptoms of ADHD may have applied to the Claimant.

81. In any event, we have already found that the Respondent was justified in acting as they did. Those claims fail.

**The Claimant’s suspension**
**ss13,15,20,21 and 26 EqA**

82. The Claimant argued that “suspending her and keeping her suspended and segregated from staff and students” was an act of direct disability discrimination or unfavourable treatment under section 15 Equality Act 2010 or disability related harassment. She also said it was a failure to make reasonable adjustments.

83. There was no evidence, however, that the Claimant’s ADHD or CVS were the reason for her suspension or its consequences, nor could it be said that they played any part in the decision to use a formal disciplinary process in September or November 2020.

84. We were satisfied that the reason for the suspension was, as claimed by the Respondent, the Claimant’s actions on 7 November 2020, following on from earlier issues that were already being investigated, and a need to protect students from the risk of further safeguarding concerns.

85. We would, however, acknowledge the subsequent medical evidence that gave support to the suggestion that the Claimant was vulnerable to stress which could, potentially, lead to emotional outbursts. We do not accept that the Respondent ought reasonably to have known this at the time.

86. Nonetheless, it was at least arguable that some of the Claimant’s actions on 7 November 2020, and previously, were impacted by her disabilities.

87. We would also accept that suspension can amount to unfavourable treatment.

88. That said, we consider that, at the time, the Respondent had little alternative but to suspend. They did not, at the time, have the Dr Malfatto report and, in any event, could not risk a further outburst around students whether in the house, class or elsewhere around the school.

89. There were other matters already being investigated and some evidence that the Claimant was already trying to influence other staff members to support her.

90. It would have been entirely unsatisfactory to allow her to continue to interact with students at all or to discuss the allegations with anyone potentially involved.

91. In those circumstances, seeking to protect students and the ongoing investigation was a legitimate aim and suspending the Claimant a proportionate response. As was the decision to use a formal disciplinary process. The allegations were too serious and too numerous for an informal route to be appropriate.

92. There was no evidence to support many of those allegations being disability related.

93. Indeed, informal action was the ultimate result of the September investigation. There had been attempts to mediate with HB. The Claimant's alleged breaches of covid protocols relating to her own children were also dealt with informally.

94. The length of the suspension was also justified by the initial need to further investigate the conduct allegations, followed by the need to investigate the very lengthy grievance submitted several weeks later which was the principal cause of the delay.

95. There were then issues with the Claimant's health and so, whilst regrettable that the process took around 6 months, it was reasonable to maintain the suspension until the outcome of the grievance and disciplinary process.

96. We would acknowledge that the LADO urged the respondent to try to understand what had caused the Claimant to act as she did, and that the Claimant first alluded to her mental health as a factor in her grievance on 10 November 2020. She produced more and the Dr Malfatto letters in her extended grievance on 31 December 2020.

97. We also recognise the OH report at the end of January 2021 that identified the potential impact of stress on the Claimant in relation to outbursts and also the effect on her of suspension. That said, it was also reported that the Claimant

"saw little wrong with her conduct" which was potentially enough to justify her ongoing suspension on its own.

98. It was clearly in everyone's interests to endeavour to resolve matters as swiftly as possible but that did appear to be what the Respondent was trying to do. There was no undue delay on their part.

99. Once they had that medical information, there was still no way they could have simply lifted the suspension. Indeed, at that time, the Claimant was signed off sick in any event. The original hearing was then postponed when she was hospitalised in March 2021.

100. Even if the outbursts could be entirely attributed to disability, with no culpability on the part of the Claimant, the Respondent still wouldn't have been able to lift the suspension without ensuring that all necessary measures were in place to ensure no repeat.

101. That was not, however, the case. In addition, as mentioned, there were still many allegations with no discernible link to the disabilities that needed to be addressed.

102. Whilst it was entirely appropriate for the Claimant to be segregated from students until the processes concluded, we do not accept that she was segregated from staff.

103. She was, understandably, told not to discuss the matters under investigation without prior approval. That is often the case in our experience.

104. Her contention that she was not allowed to speak to staff members more generally, or even that she believed that to be the case, could not have been right, given that she started a relationship with a colleague during her suspension.

105. The suggestion that she could not even collect her children from school was shown to be without basis.

106. It was the Claimant's decision to leave the site when the school was open.

107. In relation to the harassment claim, it was clear that the Claimant considered her suspension unwanted conduct and that she felt it violated her dignity and created a hostile environment.

108. It was less clear whether it could be said that the suspension "related to" the disabilities given the various causes and reasons for it. The potential chain of causation was from the disabilities to the susceptibility to stress, allegedly

resulting in emotional outburst that gave rise to a safeguarding concern, that played a part in the suspension.

109. In any event, we do not consider that there was any evidence that the Respondent's purpose was to harass the Claimant nor was it reasonable, in all the circumstances, for that to have been considered to be the effect when, on our findings, the Respondent had little alternative but to go down a formal disciplinary route and suspend.

110. It is troubling that the Claimant seemingly still does not accept that.

111. The Claimant also put her suspension and segregation forward as a PCP for the purposes of her reasonable adjustments claim but was unable to persuade us of any reasonable alternative to suspension in the circumstances.

112. The suspension was handled sensitively, she had the support of the school counsellor, SR and her own medical team so that aspect of the alleged PCP clearly did not apply. When she asked for alternative accommodation, the school agreed to pay for it.

113. When a possible OH report was mentioned shortly after her initial grievance was submitted, the Claimant was willing but foresaw no immediate benefit.

114. As a result, we are satisfied that suspension was necessary and the school took all reasonable steps to minimise any adverse impact on the Claimant.

115. All her claims related to the suspension fail.

**Disciplinary and grievance outcome**
**ss 13,15,26 & 27 EqA and 47B ERA**

116. The Claimant contended that Sarah Martin's investigation report trivialised and failed to adequately address her grievances and that IM, on behalf of the Respondent, should not have adopted it and rejected her grievances in their entirety.

117. She claimed that this amounted to a detriment as a result of having made protected disclosures or done protected acts. She also alleged it was because of her disabilities or something arising from them.

118. We were satisfied that Sarah Martin conducted a reasonable and proportionate investigation and came to reasoned and appropriately detailed conclusions.

119. It was not within her remit to consider the Claimant's mental health and how that may have impacted some of the disciplinary allegations.

120. Sarah Martin was independent, albeit engaged by the school, and the Claimant's initial impressions of her were positive.

121. She did acknowledge some of the Claimant's points and recommend certain actions on the part of the Respondent.

122. It is right that she did not speak to either PG or AC about the alleged "shot across the bows" comment but it is difficult to see how that alleged failure could relate to any of the claims made.

123. Whilst perhaps regrettable, with the benefit of hindsight, that she did not do so, we accept her rationale that the Claimant did not want her to speak to AC and she did think it right to put an allegation to PG that was no more than hearsay in circumstances where there was a clear case to answer. As a result, her decision to ascertain whether there were justifiable grounds for the disciplinary investigation in September was a reasonable one.

124. We have already detailed why we, too, accept that there were such grounds and the Claimant's conspiracy theory was inherently implausible.

125. We would accept that the focus on when and whether individual managers may have known of the Claimant's ADHD, rather than what the Respondent knew collectively from her initial disclosures and subsequent struggles, was an error.

126. However, the relevant individuals were aware of the Claimant's stress and CVS and were trying to assist her with managing it and, as we have already found, we also do not consider that there was more that they could reasonably have been expected to know or adjust for at the time.

127. Had an OH report been commissioned sooner, we consider that it was unlikely to have highlighted the risk of outbursts above a certain stress threshold, nor to have identified any ADHD related disadvantage, nor clarified how the adjustments that had already been made or offered could have been improved upon at that stage.

128. We do not accept, therefore, that the Claimant's grievances were trivialised, nor was it inappropriate to observe that they were raised in response to the disciplinary allegations.

129. There was nothing to suggest that the findings were adversely influenced by the Claimant's mental health or any consequences thereof. In fact, her

struggles were acknowledged, and a recommendation made that this should be considered in the context of the disciplinary proceedings.

130. Similarly, there was no evidence that any of her findings or approach were adversely influenced by the alleged protected disclosures nor any reason why they may have been.

131. As a result, we cannot say that Mr McIntyre was wrong to adopt her findings nor that, in doing so, he was discriminating against the Claimant, or subjecting her to a detriment.

132. However, he appeared to go further in both tone and approach.

133. He rejected the grievances “in their entirety”, suggesting that they were totally without merit, which was not Sarah Martin’s conclusion. He effectively stated that the Claimant was wrong to have brought the grievances at all, notwithstanding that they included protected acts and disclosures.

134. He repeated this idea several times, suggesting they served only to frustrate the process, as well as seeking to dissuade the Claimant from taking them further.

135. We can understand his viewpoint, but the outcome letter indicated a level of frustration and annoyance that was, in our view beyond reasonable. He also upheld a couple of allegations that were inadequately evidenced or had been dealt with informally at the time. His approach expanded the events of 7 November 2020 to 3 allegations and even included some duplication, leading to 19 potential disciplinary sanctions.

136. In the outcome letter, he also rejected any suggestion that the Claimant’s conduct on 7 November 2020 may have been influenced by her disabilities, despite the medical evidence offering a level of support and both the LADO and Sarah Martin, having encouraged him to look into that.

137. It was a conclusion he struggled to justify before us.

138. We accept, therefore, that aspects of his response were unduly harsh, and he was unable to demonstrate that he was not in any way influenced by the Claimant’s protected acts or disclosures.

139. Whilst there was nothing to suggest that his actions were because of the Claimant’s disabilities, it could not be said that the sanctions imposed, in no way whatsoever, potentially related to, or arose from, the consequences of them.

140. In that regard, however, we accept that he did, in fact, reduce the sanction from dismissal, having regard to mitigating factors including the Claimant's health.

141. This was his position in the alternative in his outcome letter and his only position before us. That, in our view, was a more reasonable response.

142. Considering the outcome as a whole, there were numerous allegations (eg numbers 4, 8, 9, 13, 14) over a short period of time that illustrated poor judgment, sometimes very poor, that was not evidenced as arising from her disabilities and which seriously called into question her suitability for an HM role.

143. There were also a number of conduct issues around the Claimant's dealings with staff and contractors (eg 15 – 18) that, to put it mildly, appeared to reflect a personality and style unsuited to the culture of the Respondent. Again, they did not appear to be related to her disabilities or, at least, were not evidenced to be.

144. Some of the allegations were at a level of seriousness that some employers may have considered to be potential gross misconduct (eg 4 and 15).

145. That is before considering the events of 7 November 2020 which, in our view, were reasonably considered to be potential gross misconduct.

146. We consider that any non-disabled recent starter who had done as the Claimant did would almost certainly have been dismissed and so she cannot be said to have been treated less favourably or even unfavourably.

147. There was evidence, however, that her outbursts that day were potentially influenced by her conditions.

148. It was, therefore, right for Mr McIntyre to consider this possibility in the alternative, along with the other challenges the Claimant had faced in her new role, as potential mitigation.

149. He was also right to be concerned by the Claimant's failure to take much, if any, personal responsibility for her actions across the board, a position that she largely maintained before us.

150. We do not agree that the Claimant bore no responsibility for the events of 7 November 2020. We do accept that the Respondent had a legitimate aim in safeguarding the children in their care.

151. So, whilst accepting that the Claimant's disabilities may have played a part in her susceptibility to stress and a possible resulting outburst, there was no clear evidence that was, necessarily, what happened, nor the extent to which she may have been unable to control herself.

152. That is before recognising her own responsibility for managing her stress levels, not taking on unnecessary tasks, accepting support when offered, telling the Respondent clearly how her disability may affect her and what they could do to help.

153. For the avoidance of doubt, we are not suggesting that the Respondent had no such responsibilities.

154. It was also not unreasonable to consider some of the earlier allegations as illustrating a pattern of robust and often antagonising communications, predating any realistic possibility of contentions that they were disability related.

155. There was also the attempted manipulation of AC, which was reasonably upheld and, concerningly, appeared calculated, as did some of what followed

156. The incidents where the Claimant snatched away a student's phone, or where she entered a student's room throwing her dirty washing into the hallway could, perhaps, have been characterised as a pattern of milder outbursts but, if so, they should have been readily admitted and the Respondent made aware.

157. Taking all of the allegations together, therefore, we would acknowledge that dismissal was a potentially reasonable sanction open to the employer.

158. Discounting that to a final written warning was a proportionate response to the Claimant's disability related claims. As was removing the HM role. It was not unreasonable for the additional pay allowance, attributable to the HM role, to be lost with the position.

159. There was ample evidence that the Claimant was not suited to the role. Several serious errors of judgment including around sex and alcohol, antagonising colleagues, being unable to manage the workload and stresses were among those reasons, before consideration of the risk of further aggressive conduct.

160. The Respondent, understandably, could not risk a repeat, or worse. There was, however, clearly such a risk whether by virtue of the pattern of behaviour, largely denied, continuing and / or the Claimant being unable to manage her stress levels at certain times, even with further assistance, leading to another outburst. This was not solely the Respondent's responsibility.

161. It was reasonable to believe that returning to a purely teaching role might obviate that risk.

162. We do, once more, want to stress that we are aware of the Claimant's skills and successes, including some in her pastoral role but, overall, we cannot say the Respondent's conclusions were not justified in all the circumstances.

163. Accordingly, therefore, we cannot say that the effect of the overall disciplinary sanctions could objectively amount to harassment, nor do we consider that the overall outcome would have been any different had the Claimant not done protected acts or made protected disclosures.

164. It was not unreasonable to conclude that the Claimant's principal motivation in raising those was, initially, her troubled relationship with HB and, thereafter, as an attempt to avoid personal responsibility, lay blame elsewhere and deflect from her own conduct.

165. That said, we do accept that a number of the matters raised by the Claimant, whether about her disabilities, covid safety, or otherwise, were genuinely believed. The fact that she raised them, not just the manner of, and motivation for, doing so, irritated Mr McIntyre to the point that he repeatedly suggested that it would not be in the Claimant's best interests to pursue them further.

166. He may well have been right but his tone, the manner in which he did so, and the repetition was unnecessary and, understandably, viewed as detrimental. It is impossible to completely sever this reaction from the acts and disclosures themselves.

167. That raises the question of whether those facts were such that we could conclude that the overall sanction was detrimental and / or discriminatory reversing the burden of proof.

168. However, given that we have found that it was actually reduced from dismissal and, in any event, justified we cannot say that it was either.

169. We were also satisfied that the sanction would have been at least as severe, whether or not there had been protected disclosures.

**The appeal**

170. We observe at this stage that we consider that the failings in the disciplinary and grievance outcome were rectified at appeal.

171. Charlotte Marten was a credible witness who approached her task with independence and objectivity. She overturned weak or inappropriate

allegations and upheld elements of the grievance, suggesting lessons that could be learned.

172. She did not suggest that the Claimant was wrong to raise her disability in her defence, nor some of the challenges she had faced in the role. She took the reasonable view, however, that they did not excuse or justify the Claimant's conduct but were relevant to mitigation.

173. She did not overly criticise the Claimant for her approach, despite, understandably, questioning her motives.

174. Contrary to the Claimant's claims, she did appear to address the Claimant's outstanding points. We were satisfied that she understood the Respondent's obligations. She was able to clearly explain her processes and conclusions.

175. Not least, she satisfied us that

a. some of the conduct was potentially gross misconduct warranting dismissal and
b. whilst the Claimant's disabilities may have had an impact on the outbursts, the primary responsibility still rested with the Claimant,
c. there were numerous allegations that were not disability related at all, several of which simply demonstrated a lack of judgment and professionalism,
d. The Respondent had the legitimate aim of safeguarding children in their care,
e. It was proportionate to discount the sanction of dismissal to a final written warning but, given the seriousness, not further,
f. It was also proportionate to remove the HM position given that
    i. many of the allegations demonstrated a lack of suitability for the role,
    ii. the school needed to act appropriately to safeguard students and be seen to have done so,
    iii. the Claimant struggled in the role,
    iv. she was largely unable to take responsibility for her actions or learn from her mistakes,
    v. she was also unable to manage her stress, even with support,
    vi. the above created a material risk of further aggressive conduct.

176. In any event, the appeal outcome was not argued as any form of discrimination. It was said to be a detriment that arose because the Claimant had raised protected acts and / or disclosures but we do not accept that.

177. We have already found that, if anything, the disciplinary sanctions were reduced on account of the Claimant's mitigations, including her mental health. As a result, they were not detrimental.

178. In any event, there was no evidence that Charlotte Marten's outcome was in any way adversely affected by the Claimant's protected acts or disclosures.

179. Those matters were relatively minor and incidental in the wider picture, which is not to say that they did not raise important points. They were not directly relevant to many of the conduct concerns and were, we accept, principally raised as part of the Claimant's strategy of defence.

180. Their contents were often factually incorrect (for example around KiCSE) and, in any event, they were properly responded to. As a result, there was no reason for Ms Marten to subject the Claimant to any detriments for raising them.

181. Indeed, we were satisfied that, where valid concerns were raised, she welcomed them as opportunities for the school to improve.

**Unfair dismissal**

182. In those circumstances and having rectified our concerns with the first instance outcome, we also cannot accept that the appeal outcome could amount to a final straw in the context of the claim for constructive unfair dismissal.

183. In any event, the Claimant did not have qualifying service so she would have to show that the sole, or principal, reason was her protected disclosures and the alleged detriments arising therefrom.

184. It should be clear from out other findings that we do not accept that proposition. Indeed, we set out below our reasons for concluding, on balance of probabilities, that the Claimant decided to leave from the moment she accepted an alternative job offer on 1 March 2021.

185. We would acknowledge that her decision to leave doubtless arose, at least in part, from the disciplinary allegations that she faced but, we have found, that they were genuinely and reasonably raised.

186. The Claimant said that, at the time of acceptance of the job offer (notwithstanding that she denied that was what it was), she believed she was going to be dismissed. That may be right but only confirms that she was aware her conduct potentially amounted to gross misconduct, and she was, after all, still in her probation period.

187. However, her actions once it was clear that she wasn't dismissed, reaffirmed her decision, albeit she and her representative sought to present a different position to the Respondents.

188. That said, the Respondent served a counter notice to end the Claimant's employment. This followed the extended period unnecessarily offered by her for reasons we can only surmise, given her desire to leave and start with her new employer in September 2021.

189. That is not the same as the Respondent making a payment in lieu of notice but we would accept that it amounted to a dismissal in law.

190. We have already found that it was in the best interests of all concerned for the Respondent to act as they did.

191. Their reasons for doing so were, self-evidently, those given at the time. Principally, that the Claimant had resigned, had lost trust in the Respondent and wanted to start her new employment.

192. There was no reason to believe that her protected acts or disclosures had any bearing on that decision. Indeed, it would have been surprising had the Respondent not acted as they did.

193. Moreover, it could not, in the circumstances of this case, amount to a detriment, given that the Claimant wanted to go and start her new job, which she did and was offered discounted school fees for her boys for the term in any event.

**Breach of contract / wrongful dismissal**

194. The panel have checked our notes and agree with the Respondent that both of these claims were withdrawn, the former in submissions and the latter during the hearing.

195. Nonetheless, for completeness, we accept that the Respondent was entitled to serve a counter notice, given that the Claimant was still in her probationary period and so only 1 month was required under the contract.

196. We acknowledge that the Respondent appears to have initially believed that the 1 month period ran from the date of the Claimant's resignation, rather than a week later when they served the counter notice. However, we heard, that the financial aspect of that error had subsequently been rectified. Beyond that it was to the Claimant's advantage to be released as soon as possible.

197. The Respondent recognised this and did not even hold her to the period required.

**The Claimant's new job**

198. The Claimant had applied for an alternative role at another school towards the end of 2020, whilst suspended. She seemingly had no qualms about asking the Respondent for a reference at that stage, albeit, ultimately, her job application was not progressed.

199. She then applied for a role as Assistant Principal of the National Maths and Science College (NatMatSci) in Coventry on 17 February 2021, whilst signed off sick from the Respondent. It had been advertised on 2 February 2021 and, on 3 February 2021, the Claimant had told Mr Dale that she had seen a job she wanted to apply for

200. At the time the Claimant was living in the private side of Southfield as the school was, again, closed to students due to covid, between January and mid-March 2021. She was, understandably, concerned about the students returning while she was still suspended and was looking for external accommodation, to be funded by the Respondent.

201. Having been signed off as fit for work, the Claimant was interviewed for the new role on 24 February 2021. She was, it appears, then focussing her search for alternative accommodation on Coventry [1863].

202. Following a second interview on 1 March 2021, the Claimant was offered the role, which was confirmed that evening by email, albeit subject to the usual references and DBS checks.

203. Whilst the Claimant sought to characterise this as an "informal" offer, there was nothing in the documentation to support that. There had clearly been discussions about salary and an improved offer was made. The Claimant claimed, in fact, that she was not formally offered the role until after the start of the September term, once her reference from the Respondent had been received, but that alleged offer was never produced before us. It would be odd for there to have been a second such offer when one already existed.

204. The fact that the offer was by email rather than on formal letterhead was, we heard, simply the way that NatMatSci did things. They did not even have a formal contract for her, albeit they said this being reviewed.

205. The offer did not expressly state a start date. However, it appeared clear, from the Claimant's response, that it was intended that she would start in September, which was how it transpired. This would be the normal timescale

for teacher recruitment at this time of year, similar to the Claimant's recruitment by the Respondent the previous year.

206. We note that these documents were discovered by the Respondent on their systems, as a couple of the emails had been sent to the Claimant's work address.

207. Further emails between Dr Kemp and the Claimant were only produced following an express request, during the hearing, on day 6, despite having been requested previously. Even those stopped abruptly in May 2021. The only text messages disclosed between the two in the bundle were from August 2021.

208. The Claimant's response to the offer appeared to be an unequivocal acceptance. She stated

"Thank you so much for this opportunity, I would relish the opportunity to join your team and can make the salary you propose work…"

209. The Claimant asked Dr Kemp to hold off on seeking references from the Respondent but offered to provide a couple from her previous employers, which she duly did.

210. That was understandable, given the circumstances and there was, of course, nothing untoward about the Claimant seeking to find alternative employment when facing serious disciplinary allegations nor, indeed, wanting to keep her options open. That said, whilst not uncommon, formally accepting a role without intending to take it up would, perhaps, be a step too far.

211. Dr Kemp replied to say that he was "delighted" and "so excited for the college" and wanting to arrange a further visit to "meet people properly".

212. It appears that, the following day, the Claimant and Dr Kemp had a conversation in which the Claimant must have disclosed, to some extent at least, her predicament in her employment with the Respondent, such that she did not want to ask them for a reference at that stage.

213. She claimed, supported by Dr Kemp, that she made it clear that she was keeping her options open and wanted to stay with the Respondent and would only take up the job offer if that did not work out.

214. All of the contemporaneous documentation, however, suggested otherwise and, as mentioned, was often only disclosed during the hearing. It appeared it was still incomplete. The emails with Dr Kemp were only disclosed when ordered during the hearing and, even then, stopped abruptly in May 2021.

215. To illustrate this, on 3 March 2021, Mr Dale emailed the claimant in response to her "email and texts". The texts between the Claimant and Mr Dale

were not produced until the hearing and there was still only one to which he could have been replying and none which referenced the job offer. His response, however, said “congratulations on your new employer”, not even job offer.

216. It was suggested that he may have been informed of the new role by phone but there was no evidence of such a call and, had there been one, he would, doubtless have offered his congratulations at the time, would have referenced the call (or message) in his email and would not have mentioned the new job again (as if for the first time) in his email, nor needed to respond to the Claimant’s other queries.

217. Moreover, in that same email, Mr Dale’s advice was that it was important “given what you are trying to achieve” to “give the impression” that she wanted to “return to work asap”. This only really makes sense if it was well understood that the Claimant did not want, or intend, to return. The previous email [3469] referenced seeking a negotiated exit.

218. All of that suggests, therefore, contrary to the oral evidence of the individuals involved, that the decision to leave was already taken but, understandably, the Claimant and her representative did not want the Respondent to know at that stage.

219. Dr Kemp, initially at least, was in weekly contact with the Claimant by email.

220. On Monday 15 March 2021, the Claimant was invited to the disciplinary and grievance hearing on 19 March 2021. In her email exchange with Dr Kemp that evening, however, she said it was the following week.

221. In that exchange, the Claimant also said that she was staying in Cambridge, where Dr Kemp lives, for the week and suggested they meet for a walk. This was arranged for lunchtime on Wednesday 17 March 2021 at the Cambridge botanical gardens.

222. The following day, Thursday 18 March 2021, the Claimant was seen by a consultant psychiatrist [2224]. She reported that she had taken an overdose on Tuesday 16 March 2021 [C impact statement 2249] albeit there was no evidence that had required medical intervention on the day.

223. As a result of the reported overdose, the Claimant was admitted to a psychiatric hospital the following day, 19 March 2021, the day originally planned for the disciplinary hearing.

224. It appears Dr Kemp was unaware of this as he emailed the Claimant on 24 March 2021, asking how things were progressing. Despite being

hospitalised, the Claimant responded promptly saying, surprisingly, that she was hoping for some news that day.

225. Dr Kemp emailed again the following week to "check in" and saying "hope you are keeping well". The Claimant was still in hospital but was under no obligation to fully disclose her personal circumstances.

226. She was discharged on 2 April 2021, Good Friday.

227. On 6 April 2021, the Claimant emailed Dr Kemp to say "my rep thinks we might be done with things this week" albeit there was no prospect of that.

228. It is, perhaps, understandable that the Claimant wanted to buy more time before Dr Kemp sought a reference from the Respondent. It could also, feasibly, have been the case that, as claimed, she believed that she was going to be dismissed and wanted to keep her options open. However, as mentioned, the documentation did not support that.

229. Dr Kemp continued to check in with the Claimant regularly and, on 22 April 2021, wrote

> "….I'm conscious things are still messy at that end but hope we can start to progress things at this end soon. I'm keen to have you interviewed for the new College Podcast….."

230. As was the case throughout, but contrary to their oral evidence, there was nothing in the exchanges between the Claimant and Dr Kemp that expressed any doubt or ambiguity about the fact that the Claimant would be joining NatMatSci.

231. The Claimant willingly agreed to participate in the podcast.

232. On 29 April, Dr Kemp suggested that the Podcast be titled "Meet our new Assistant Principal (Academic)". He also asked the Claimant to visit NatMatSci the following Thursday, to meet with him and the Vice Principal to chat about "plans for next year and what she could usefully help with this summer". He also asked if he could start progressing her DBS check.

233. The Claimant agreed to all these requests and visited NatMatSci on 6 May 2021, starting at noon and with an afternoon "programme".

234. The following day, Dr Kemp sent an email to the Claimant stating

> "Really lovely to see you yesterday and we are really looking forward to working with you. So I can get you set up on the system etc can I ask you to read the attached and send me a signed copy back for the file?"

235. The attachment was a confidentiality agreement, stating “As you know, your employment with the College starts on 1 September 2021” and that it was to enable the Claimant to familiarise herself with the College’s IT systems and prepare for “the start of the autumn term”.

236. The Claimant’s representative was informed that the Respondent was lifting her suspension and that she was not going to be dismissed on 13 May 2021, albeit the Claimant was in hospital at the time for a minor operation. That decision was confirmed in writing on 17 May 2021.

237. Knowing that she wasn’t going to be dismissed and that her boys would, as a result, remain entitled to heavily discounted school fees at the Respondent, the Claimant, nonetheless, signed the NatMatSci confidentiality agreement, with the September start date, on 20 May 2021.

238. On 17 May 2021, at around 9am, the Claimant asked Mr Dale whether she could return to Southfield, and she was advised to ask the second Respondent what she could or could not do.

239. Contrary to that advice and SG’s instructions, she returned that day and started engaging with students and staff about her suspension and return, resulting in 5 complaints.

240. Whether her actions were deliberately disruptive, or merely provocative and unwise, was unclear.

241. On 19 May 2021, Mr Dale advised raising a further grievance, this time against R2. It was submitted on 25 May 2021 and Mr Dale recorded his response as “he’s not happy at all [laughing emoji]”

242. The Claimant attended the NatMatSci senior team away day on 25 May 2021 to talk about “the bigger areas for next year that need to be settled before the summer”. She submitted her DBS application the same day.

243. All email correspondence between Dr Kemp and the Claimant then abruptly stopped. Neither of them could explain that. It seems to us that the most likely explanations are that this was a serious disclosure failing (possibly because the Claimant’s emails had moved onto NatMatSci’s systems but that would not excuse their non disclosure) and / or it was now confirmed that the Claimant would be joining and so the need for regular updates became unnecessary.

244. Seemingly confirming this, the Podcast was broadcast on 11 June 2021, along with an announcement that the Claimant was NatMatSci’s “new Assistant Principal”. It appears to us that, either the Claimant and Dr Kemp were

knowingly misleading the public and current and potential NatMatSci students and parents, or they were misleading us by suggesting that, despite the broadcast, they both knew the Claimant may not be joining. Indeed, the Claimant subsequently claimed to the Respondent that she had no intention of doing so.

245. Dr Kemp, surprisingly, had suggested that, despite the offer and acceptance, on 1 March 2021, he only thought it was 50% likely the Claimant would join at that stage. Of course, that was at a time when the Claimant thought she was going to be dismissed. Once it became clear that the Claimant was not going to be dismissed, he suggested that his certainty had increased to 70% by the time of the podcast.

246. The Claimant maintained, even before us, that she had not been "formally offered a role" until after Respondent provided her with a reference early in September 2021, albeit no such offer or acceptance was ever produced. Dr Kemp had suggested the same to the Respondent in August 2021, claiming he "intended to offer her the post" despite having previously confirmed that he already had.

247. If the Claimant and Dr Kemp were right, that no offer had been made, it seems to us that they shouldn't have been misleading students and parents by announcing the College's "new assistant principal".

248. The Claimant said that "safeguarding rules" meant that no such offer could be made until satisfactory references were received but that was not accurate. All KiCSE provides is that offers must be conditional on receipt of satisfactory references and DBS checks, as was the case here.

249. Whether that was deliberate obfuscation was unclear.

250. Also on 11 June 2021, there was an email from Mr Dale to the Claimant confirming their strategy of settlement and referencing the 3rd grievance and appeal as a "cost" and a "pain" to the Respondents. It seems clear that, unsurprisingly, the Claimant was looking to agree an exit package. There is nothing intrinsically wrong in that. The question is, had she already made up her mind to leave?

251. An earlier email from Mr Dale to the Claimant, on 3 June 2021, said "everything we do now has to have the desired outcome in our minds, and we can still email to put pressure on them". That makes more sense in the context of seeking an exit package as opposed to someone simply wanting to return to work and rebuild relationships.

252. The only documented entry that provides any possible support to the Claimant's suggestion before us, that the decision was not made until the

conclusion of her appeal, was a text to Mr Dale on 21 June 2021 in which she stated

"one of the girls found out about my new job so R2 will know very soon. There is no mention of a start date and I haven't actually signed a contract. I would like to leave but will not be able to if it damages my children's futures"

253. Overall, however, we do not think that particularly assists the Claimant, given the context of all the above.

254. Firstly, it refers to the Claimant's new job, not an offer or potential job. The fact that she says that there is "no mention of a start date" suggests that there was one, albeit not mentioned in the podcast. Otherwise, we imagine, she would have said that no start date had been agreed (notwithstanding the signed confidentiality agreement with such a date).

255. Similarly, stating that there is no signed contract, seems to be an attempt to provide wriggle room from the otherwise clear position as expressed in the podcast that the Claimant was joining NatMatSci as their new Assistant Principal.

256. The Claimant is clear that she "wants to leave". So, the only part, of the only documented entry, that potentially supported the Claimant's stated position before us was that she would not be able to leave if it damaged her children's futures.

257. This was an understandable concern in reference to the heavily discounted school fees available for children of staff at the Respondent. However, as we have seen, this was already guaranteed as the Claimant had not been dismissed. In those circumstances, the only plausible explanation for this text was in the context of negotiating an exit in accordance with the "strategy" agreed with Mr Dale.

258. We remind ourselves that this strategy included giving the "impression" that the Claimant wanted to return to work. The text, therefore, cannot be read to suggest that the Claimant was not already set on leaving the Respondent's employment.

259. She intended to leave. She had accepted alternative employment, and this had been publicly announced. She was already becoming integrated into NatMatSci and had even been given an email address albeit, on the limited evidence before us, with less of an induction than that offered by the Respondent a year prior, about which the Claimant complained before us.

260. The issue of, in her view, "damaging her children's futures" did not prevent the Claimant from resigning in August 2021, when her position was, if anything, better than in March or June that year, following a number of her

appeals having been upheld. Indeed, after the appeal, the Claimant emailed Ms Marten to thank her for giving "genuine consideration" to the points in her statement of case.

261. As a result, the reference in the June text to Mr Dale could only make sense in the context of negotiations where the Claimant was seeking to preserve a staff discount as part of settlement negotiations (which she effectively confirmed in cross examination) by giving the impression that she would stay on in employment, rather than the reality if those negotiations failed.

262. On 22 June 2021, Mr McIntyre asked the Claimant about her new job and received an obtuse reply from Dr Kemp later that day, saying that he had offered the Claimant a post but that they had not confirmed a start date because they had not signed contracts. Before us, he acknowledged that they had no contract for the Claimant to sign, so that was irrelevant to any agreement on the start date.

263. His reply ignored that fact that the Claimant had signed an agreement to allow her access to the College's systems, confirming a start date, which we imagine was required for IT security, privacy, safeguarding and data protection reasons and couldn't simply be offered to anyone. Moreover, the absence of a contract was said to be because the school's documents were being reviewed but, as there still was no such contract almost 2 years later, that seemed, at best, surprising.

264. On 2 July 2021 Mr Dale, despite all the evidence to the contrary, stated to Mr McIntyre that it was the Claimant's intention to return to Rugby [2079]

265. The Claimant signed a lease on a new property away from the Respondent on 23 June 2021 to commence on 3 July 2021 despite being aware that if she stayed, she would retain the right to accommodation. She had been in a new relationship with a teacher at Rugby for some time by this stage. The new accommodation was about 20 minutes from Rugby.

266. The Claimant's appeal was heard on 16 July 2021 and the Claimant expressly stated, when asked about her new job starting in September, that "I don't know where you got September, because we haven't agreed a start date" before focussing on not having signed a contract, which was meaningless given NatMatSci didn't have one for her, even at the date of the hearing before us.

267. Moreover, the Claimant's initial response did not deny that she would be starting new employment, merely disputing the date, notwithstanding having signed the confidentiality agreement with a known start date.

268. In a meeting with Ian McIntyre on 27 July 2022, the Claimant accepted, contrary to her position before us, that she had applied for and accepted a job

offer with NatMatSci. She then claimed, however, that she had no intention of working for them [1448] once she was not dismissed. That was despite what she had said to the College, signed and publicly broadcast after she knew she was not being dismissed.

269. Her own case before us was different again, saying she wanted and intended to leave, albeit had not made a final decision pending the appeal. It is interesting to note that, collating the meeting notes and text messages, at the times that the Claimant claimed she had no intention of joining NatMatSci, she appeared to receive a thumbs up emoji from Mr Dale. In any event, both must have known this to be inaccurate.

270. In his follow up to that meeting in writing, on 29 July 2022, Mr McIntyre asked the Claimant to confirm that she had withdrawn her acceptance of the new role and to rectify the public announcements by NatMatSci to avoid any questions about her position with the Respondent. She did neither.

271. On 4 August 2021, the Claimant entered Early Conciliation, before the outcome of her appeal.

272. The Claimant's appeal was upheld in part but rejected in terms of the overall disciplinary sanctions on 9 August 2021.

273. The Claimant resigned giving a term's notice on 17 August 2021.

274. In a text message from Dr Kemp [3419] in August 2021, he had asked "how are things with Rugby, and anything I need to be concerned about with you being able to start in a few weeks". This again indicates that it was the clear intention of the Claimant and Dr Kemp that she would start at NatMatSci in September 2021. The Claimant responded to say she would speak to her solicitor about when she could "legally start".

275. Dr Kemp responded "nearly there" which, again, only makes sense if it was always the intention of both parties for the Claimant to start that September.

276. Dr Kemp's evidence was that the Claimant informed him that she would be able to start on 1 September 2021. It was only then, on 25 August 2021, that he requested a reference from the Respondent. He said the Claimant started on 7 September 2021, whilst still technically employed by the Respondent, and the day GPJ signed her reference (although it was unclear when that was received).

277. At no stage, in any communication with Dr Kemp, was there any suggestion that the Claimant joining the College was anything less than certain

or contingent (beyond the need for satisfactory references and DBS checks). The claims to the contrary before us, therefore, lacked credibility.

278. That is even before consideration of the late and missing disclosure, the misleading responses to the Respondent, the public announcements of NatMatSci and the clear picture of a strategy to endeavour to force a severance deal, seemingly to include discounted school fees for the Claimant's boys, based on giving the impression of wanting to return.

279. On balance, therefore, we do not accept that the Claimant had any intention of returning to the Respondent once she had received, and accepted, the job offer from NatMatSci and that was reaffirmed once it was clear she was not going to be dismissed.

280. Preserving the discounted fees for her children was, inevitably, an important consideration, but her contention that, if not dismissed, this was the reason she did not intend to leave made no sense given that is what she did. She had not been dismissed and would have retained this benefit.

**Accommodation / removal costs / socialising with colleagues**

281. The final areas of the issues for us to consider start with those around the Claimant's accommodation and, specifically, what was said to be the requirement for the Claimant to leave, or not return to, living in the private side of Southfield.

282. It was clarified during the hearing that this allegation only related to the period from 17 May 2021. Prior to that, the Claimant had left at her own request for various periods during her suspension, as she found it difficult when the school was open and students were around.

283. The Respondent covered her expenses for alternative temporary accommodation.

284. This allegation was put as disability related harassment and the requirement as a PCP for a reasonable adjustments claim.

285. There was nothing to suggest that this decision was in any way related to the Claimant's disability save, perhaps, that she said her accommodation situation adversely affected her mental health.

286. We are prepared to accept that this was a practice that the Respondent applied in the specific circumstances of this case and that it must have been difficult for the Claimant.

287. She also alerted the Respondent to the alleged disadvantage (increased stress) this caused her.

288. We are, however, satisfied that the Respondents' decision was reasonable for the reasons already given including the fact that the Claimant was no longer the HM. In addition, they were right to want an OH report before attempting a return to work and the reintegration of the Claimant, including appropriate communications to all concerned.

289. Furthermore, the Claimant's actions on 17 May 2021, when she returned to Southfield, including the school side, contrary to express instructions and without seeking any clarity in the unlikely event that she was unclear, left the Respondents with little choice.

290. Given what we now know and the advice the Claimant had received that morning from both her representative and Mr Govorusa, it is difficult to see her actions as anything other than provocative, perhaps intentionally so. That may call into question whether she genuinely wanted to return to her home, but we do not need to determine that point.

291. Whilst the precise details were disputed, it was evident that a couple of students were upset, and the Claimant had not obtained or followed the clear instructions on what she could and couldn't say to staff.

292. In those circumstances, her presence in the house had the potential to be disruptive and undermine the acting HM. It was also likely to significantly and adversely affect the need for a carefully managed return which would be to her disadvantage.

293. In addition, given the necessity for an OH report before agreeing a reintegration strategy, as agreed with Mr Dale, the Claimant would have still been in a position where she was at home but would be limited in what she could say to students and staff, which she had previously said caused her stress.

294. We accept, therefore, that it was reasonable for the Respondent to prevent the Claimant from returning to live in Southfield. Other than some possible confusion for a week, there was no restriction on her returning for ad hoc matters.

295. They took all reasonable steps to mitigate any alleged disadvantage by expensing alternative accommodation, seeking an OH report promptly, wanting an agreed communications strategy, providing counselling etc.

296. Ultimately, the problem was largely of the Claimant's own making. Had she not acted as she did on 17 May 2021, the position may have been different.

In any event she was both offered, and separately sourced, suitable alternative accommodation in July 2021.

297. Her claims in this regard fail. The Respondent's actions were objectively justified and reasonable.

298. We have already found that we do not accept that the Claimant was segregated from staff and have seen numerous examples of her interactions with others, not least the relationship she started with a colleague. Indeed, she often stayed at his on-site accommodation.

299. Her claims in this regard, therefore, fail at the first hurdle.

300. It was reasonable to prevent her discussing her suspension and to limit her discussion of the outcome until appropriate communications were agreed, following an OH report.

301. For those reasons, and given her actions on 17 May 2021, it was also reasonable to prevent her attending a staff social event prior to receipt of the OH report.

302. We accept that the reason was her own conduct, and it cannot be said that the restriction was related to her disability, nor was it harassment or victimisation. The Respondent's actions were reasonable and justified in any event.

303. Finally, the Claimant alleged that the Respondent failed to pay her full removal costs when she moved to private accommodation, with her work colleague partner, off site in July 2021.

304. The Respondent's policy was to cover reasonable removal costs and the Claimant submitted invoices for £8000 which we would acknowledge did appear excessive to move the contents of a modestly sized property less than 20 miles.

305. We do not know how such a large sum was incurred but it was reasonable for the Respondent to impose a reasonable amount in accordance with their policy. We accept their figure of £3500.

306. We do not accept, therefore, that this was a breach of contract or detriment, nor was there any evidence that her protected acts or disclosures played any part in the Respondent's decision.

307. Of course, the fact that the Respondent paid at all was because the Claimant had said she had no intention of leaving, which was not the case.

308. Her claims in this regard also fail.

**Summary**

309. Accordingly, therefore, other than the detriment claims upheld in relation to aspects of the tone and approach of the first instance disciplinary and grievance outcome (but not the overall sanction), which were brought in time, all the Claimant's other claims, including those against the second Respondent, fail and are dismissed.

310. The detriments that we have found may result in an award for injury to feelings and the parties are encouraged to attempt to resolve remedy but, if unable to do so, they should write to the tribunal, within 28 days, with agreed directions and availability for a remedy hearing in due course.

Employment Judge Robin Broughton

29 August 2023