EMPLOYMENT TRIBUNALS

Claimant: Mr Ayodele Martin

Respondents: 1) The London Borough of Southwark & 2) The Governing Body of Evelina Hospital School

Heard at: London South Croydon

On: 20-27 February & 27 February 2023 and in Chambers on 28 February, 2 March, 30 & 31 May and 11 & 12 July 2023

Before: Employment Judge Tsamados
Ms J Forecast
Ms G Mitchell

Representation

Claimant: Mr R Kohanzad, Counsel
Respondent: Mr P Linstead, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is as follows:

1) The Claimant's claim is well-founded to the following extent. He was subjected to the detriments set out at paragraph (c), (e), (f), (h), (j) and (k) of the agreed list of issues in respect of the protected disclosures set out at paragraph 1 (a), (b) and (d) of the agreed list of issues.

2) The other elements of his claim are not well-founded and are dismissed.

3) Remedy will be determined at a one day hearing if the parties require one.

REASONS

Background

1. The Claimant, Mr Ayodele Martin (also known at work as "Dele"), has brought five separate claims against the two Respondents, the local education authority and the school where he is employed. Only three of the claims are relevant to the matter before us.

2. The first claim, based on directed time (unauthorised deduction from wages) was struck out at a preliminary hearing on 12 March 2019.

3. The second claim is of detrimental treatment because of protected disclosures and it contains the detriments which are set out at (a) to (n) in the agreed list of issues. The third claim contains detriments (o) and (p) in the agreed list of issues. The fourth claim sets out detriment (q) in the agreed list of issues.

4. A fifth claim, containing a constructive dismissal complaint and further protected disclosure complaints, was struck out at a preliminary hearing held on 9 February 2021. This claim is currently on appeal to the Employment Appeal Tribunal ("EAT").

5. The three subsisting claims (the second, third and fourth) that we are required to deal with were dismissed following a final hearing at the Employment Tribunal in September 2019. After a successful appeal by the Claimant, the EAT remitted the matter to be heard by a newly constituted Tribunal. This is the task before us in our hearing.

The Issues

6. The claims essentially raise complaints of detrimental treatment because the Claimant made protected disclosures. There are also time limit issues. The agreed list of issues is at pages 220-224 of the agreed bundle. Although this document was said to be slightly different to the list of issues used during the September 2019 Tribunal hearing, the parties agreed that it was the agreed list of issues for use at our hearing. We attach a copy of this to our Judgment for ease of reference.

Documents and Evidence

7. We were provided with the following electronic documents: a trial bundle consisting of 1875 pages (which we will refer to as "B" followed by the appropriate page number where necessary); a witness statement bundle; and an attendance list of witnesses. In addition, the Claimant provided us with the agreed list of issues, the Respondent provided an Opening Note and Chronology and both parties provided us with reading lists. The Respondent also provided us with a document entitled Closing Submissions of Respondent.

8. We would comment that the bundle was difficult to navigate because as one advanced through the contents, the page numbers contained within the index were increasingly at odds with the electronic page numbers within the pdf version. It did not assist that the index was overly detailed in its descriptions of each item and in some cases containing extracts from the documents themselves rather than a succinct description of what the document was.

9. We heard evidence from the Claimant and his witnesses, Ms Jade Yankah, Ms Almaz Anderson and Ms Lene Ryden, by way of written statements and in oral testimony. We heard evidence on behalf of the Respondents from Ms Pui Man, Mrs Kate Fray (at the time of the events in question, Ms Kate Bennett, by which name we will refer to her), Ms Ann Hamilton and Mrs Anne Mullins, by way of written statements (in the case of Mrs Bennett and Mrs Mullins they provided both a main and a supplemental witness statement) and in oral testimony.

10. The Claimant also provided us with witness statements from Gillian Partridge (formerly Gillian Carr), Mysi Villanueva Zambrano, Louise Gannon, Rosalind Martin, Deborah Turner, Daniella Hanson and Bernard Mordan.

11. On the first day of the hearing, Mr Kohanzad, who appeared for the Claimant, indicated that some of his witnesses had limited availability to attend the hearing. In turn, Mr Linstead offered to indicate which of the witnesses he intended to cross examine and which could have their statements taken as read. In an email dated 20 February 2023, the Respondents' solicitors indicated that it only intended to cross examine Ms Ryden, Ms Yankah and Ms Anderson and that the statements of Mysi Villanueva Zambrano, Rosalind Martin and Gillian Partridge were agreed insofar as they dealt with relevant issues and so could be taken as read. Mr Kohanzad was to confirm whether the statements of Bernard Mordan, Deborah Turner and Daniella Hanson were to be relied upon. However, we did not receive this confirmation and in any event these witnesses did not attend. The parties were aware that non-attendance of a witness could go to the weight, if any, we attached to their written testimony.

Conduct of the hearing

12. The hearing was conducted in person, although we sat in chambers on 28 February, 2 March, 30 and 31 May and 11 and 12 July 2023 remotely via Cloud Video Platform ("CVP").

13. On 20 February 2023, we dealt with preliminary matters and spent the day reading the witness statements and referenced documents.

14. On 21 February 2023, we started hearing the Claimant's case and heard from Ms Yankah, Ms Anderson, the Claimant and interposed Ms Ryden around her availability to attend.

15. On 22 February 2023, the Claimant's evidence continued for most of the day and late afternoon we commenced the Respondents' case and took evidence from Ms Man.

16. On 23 February 2023, we continued with Ms Man's evidence and then heard from Ms Bennett, and Ms Hamilton.

17. On 24 February 2023, we continued with Ms Hamilton's evidence, interposing Mrs Mullins during the course of the afternoon around her availability to attend.

18. Ms Hamilton continued to give evidence when we resumed the hearing on Monday 27 February 2023. The evidence concluded at 11.25 am and we then adjourned to read the Respondent's written submissions. The Claimant gave oral submissions. We heard oral submissions from both parties during the afternoon.

19. We reserved our decision and met in Chambers on 28 February and additionally we were able to meet again on 1 March 2023. We were unable to complete our deliberations and were not able to meet again until 30 and 31 May 2023. Unfortunately, we were unable to conclude our deliberations and met again on 11 and 12 July 2023.

20. At the start of the hearing, I canvassed the views of the parties because the names of the Respondents' students (who are children) were contained within the documents before us. I asked whether they required anonymisation or some other restriction on their identification using our powers under rule 50 schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. The names were largely redacted within the documents but not completely. The parties did not revert to us on the matter and in any event the need did not arise.

21. I must apologise to the parties for the length of time it has taken to perfect and send out this Judgment & Reasons which was due to my part-time sitting pattern and pressure of work.

Findings of Fact

22. We decided all the findings referred to below on the balance of probability, having considered all of the evidence given by the witnesses during the hearing, together with documents referred to by them. Any failure to mention any specific part of the evidence should not be taken as an indication that we failed to consider it.

23. We have only made those findings of fact necessary to determine the issues. It has not been necessary to determine every fact in dispute where it is not relevant to the issues between the parties.

Our findings

Introduction

24. The Claimant is employed by the First Respondent, the London Borough of Southwark, to work at the Evelina Hospital School ("the School"). The Second Respondent is the Governing Body ("the Governing Body") of the

School.

25. The general position with state schools is that the employment of a Teacher is shared by the School and the Local Authority. There is nothing here that suggests that the Claimant's employment as a Teacher is not shared by the First and Second Respondents. This tripartite relationship being created by The Education (Modification of Enactments Relating to Employment) (England) Order 2003, The School Staffing (England) Regulations 2003 and The Education Act 2002. This was succinctly put by Judge Ansell in Butt v Bradford Metropolitan District Council UKEAT/0210/10/ZT at paragraph 11 as follows:

"The relationship… created by the statutes and regulations is one of a duality of employer. The contractual employer and paymaster is the local authority, but the majority of employment powers are exercised by the governors who, for the purpose of tribunal proceedings, are treated as the employer, although under reg 6(3) of the Modification Order any award is treated as if made by the local authority."

26. The Claimant was initially employed as a supply teacher from 15 June to 31 August 2015 and then from 1 September 2015 onwards as a Teacher of ICT (Information and Communication Technology) and Maths working full-time. The Claimant has extensive teaching experience and was employed as a senior level teacher (UPS 3). In addition he received a number of allowances. He was the highest paid teacher in the School.

27. The School is designated as a special school and is situated on one floor of Evelina Hospital, which is part of the St Thomas' Hospital ("the Hospital") complex in London. It caters for the year groups Nursery to Year 13 and provides education to children who are admitted to the hospital for short or extended periods, either by their bedside on the ward or in small classrooms set aside in its dedicated part of the Hospital. The numbers of children vary from week to week, but in any one week the School teaches on average 90 students. It has three class type rooms, one for each phase: Early Years, Primary and Secondary. The classrooms can accommodate up to eight pupils in each area.

28. At the material times, the School employed 19 staff, including the Headteacher, the Deputy Headteacher, the School Business Manager, the Office Manager, the Office Administration, 7-8 Teachers and 7 Teaching Assistants. The School also employed a number of contractors, including an IT (Information Technology) Engineer. The School obtained HR advice from the First Respondent.

Contractual position

29. The terms and conditions of the Claimant's employment have already been adjudicated upon by Employment Judge Freer in the context of consideration of the claim for unauthorised deductions from wages (the first claim) at a hearing on 12 March 2019. We have reviewed the same documentation and adopt the same findings and conclusions in as far as they are relevant to the matter before us.

30. The Claimant's contract of employment is at B259-270. This states:

"You will be paid a salary calculated in accordance with the relevant order made by the Secretary of State for Education and Employment under the School Teachers' Pay and Conditions Act 1991 and any successor legislation".

31. Clause 3 sets out hours of work:

"Subject to any relevant orders made by the Secretary of State for Education and Employment under the School Teachers' Pay and Conditions Act 1991 and any successor legislation, a teacher employed full time shall be available for work for 195 days in any school year, of which 190 days shall be days on which he / she may be required to teach pupils in addition to carrying out other duties, and those 195 days shall be specified by his / her employer or, if the employer so directs, by the headteacher.

Such a teacher shall be available to perform such duties at such times and at such places as may be specified by the headteacher, for 1265 hours in any school year, those hours to be allocated reasonably throughout those days in the school year on which he / she is required to be available for work.

Such a teacher shall in addition to the requirements set out above, work such additional hours as may be needed to enable him/her to discharge effectively his/her professional duties, including, in particular, the marking of pupil's work, the writing of reports on pupils and the preparation of lessons, teaching material and teaching programmes. However, the amount of time required for this purpose beyond the 1265 hours and the times outside the 1265 specified hours shall depend upon the work needed to discharge the teacher's duties.

Starting and finishing times are subject to the requirements of the service and are arranged locally. The foregoing is pro rata for teachers on less than a full time contract."

32. The School Teachers Pay and Conditions Document 2017 and Guidance on School Teachers Pay and Conditions dated September 2017 ("STPCD") at B1466-1549 are expressly incorporated into the Claimant's contract of Employment; these being the iterations of those documents in force at the material times of the Claimant's alleged disclosures.

33. Teachers' "working time" is set out at paragraph 51 and paragraph 51.5 of the STPCD (at B1514-1515) which confirms:

"A teacher employed full-time must be available to perform such duties at such times in such places as may be specified by the headteacher (or, where the teacher is not assigned to any one school, by the employer or the headteacher of any school in which the teacher may be required to work) for 1265 hours, those hours to be allocated reasonably throughout those days in the school year on which the teacher is required to be available for work".

34. Paragraph 51.7 of the STPCD (at B1515) provides:

"In addition to the hours a teacher is required to be available for work under paragraph 51.5 or 51.6, a teacher must work such reasonable additional hours as may be necessary to enable the effective discharge of the teacher's professional duties, including in particular planning and preparing courses and lessons; and assessing, monitoring, recording and reporting on the learning needs, progress and achievements of assigned pupils".

35. Paragraph 51.8 (at B151) of the STPCD provides:

"The employer must not determine how many of the additional hours referred to in paragraph 51.7 must be worked or when these hours must be worked".

<u>Teaching hours</u>

36. The School's teaching day is shorter than mainstream schools because of the students' medical conditions. It comprised a morning session from 10

am to 12 pm and an afternoon session from 1.30 to 3.00 pm, equating to contact teaching time of 3.5 hours per day. Teachers were entitled to an hour lunch break between the teaching sessions.

37. During the Summer term of 2015, the School discussed proposed changes to Teachers' working hours. We were referred to a document headed "Working Hours" which is dated 30 April 2015 at B239 and written by Ms Gillian Partridge, who at that time was the Deputy Head Teacher. Her evidence was that this was implemented from the start of the next academic year, on 1 September 2015. The document records that the changes were made as a result of concerns by the School as to Teachers over-working and as to their well-being. The School limited the opening hours as follows:

"The school will be opened at 8am and closed at 5pm by a manager and there will be no guaranteed access to the school outside of this. It would be expected that teachers would work an average day of 8.15 – 4.30, though we appreciate that colleagues will sometimes arrive earlier or leave later as their work or personal life demands."

38. However, Ms Partridge, Ms Lene Ryden, who was employed as a Teacher at the School at that time, and the Claimant, all gave evidence that at the start of the 2015-16 academic year, the Teachers were told by Ms Anne Hamilton, the Headteacher, that they had to be in the School ready to work from 8.30 am and they could leave at 4.30 pm. This is of course slightly different to the Working Hours document.

39. Whilst that document suggests a degree of flexibility, the evidence from the Claimant and Ms Partridge is that this was not the case.

40. There was no change in this policy between 2015 and 2017, during which time the Claimant was elected as the Staff Governor to the Governing Body, attended his first meeting on 28 November 2016 and was also voted the National Union of Teachers' ("NUT") representative on 30 June 2017. We would note that the NUT merged with another union in September 2017 and is now known as the National Education Union.

<u>Directed time</u>

41. In June 2017, the Claimant was approached by what he describes as "several unhappy teachers" regarding their concerns about an excess of directed hours. In the week beginning 26 June 2017, he individually asked the Teachers about their understanding of starting, finishing and lunch timings for the academic year 2016-17. He documented their responses (at B409). This was consistent with what he had been told by senior management on many occasions.

42. The Claimant was unclear what to do and so he wrote to Ms Ela Cleary, the Governor Training Co-ordinator, on 29 June 2017 (at B413-414). Her response, on 6 July 2017, advised the Claimant not to deal with the individuals' employment issues, that they should raise them directly or via their Trade Union representative (at B413). Ms Cleary also referred the Claimant to generic information about directed time within the STPCD.

43. The Claimant calculated the excess directed time hours worked for each School day in the academic year 2016-2017 (at B402-408). He spoke to the, then, School Business Manager, during the week commencing 26 June 2017 who confirmed that his calculations, with a few modifications, were correct. After the, then, School Business Manager had left the School's employment, she told the Claimant that she had informed Ms Hamilton of their conversation soon after.

The Management Information System

44. The student registration process is recorded in the School's Management Information System ("MIS"). This includes an area for Teachers to record the lesson progress. This information is referred to as "logs". It is usually completed after the morning session and then again, after the afternoon session. It is where daily lesson progress, staff liaison with home school/parents and student data is recorded. This information needs to be ready for the next Teacher who is scheduled to teach that student.

45. Each morning, the School receives handover paperwork from the Hospital nursing staff, with the list of that day's patients who are able to attend the School or to have sessions on ward. The Teachers should refer to the logs so that they are aware of the student's progress and outcomes from the previous day. This is particularly relevant for long-term and medium-term students. A fundamental part of the School's role is liaison with other agencies that are involved in the care of the patient. The School provides information from MIS towards a number of reports, such as discharge, education healthcare plans, progress reports and attendance.

The teaching appraisal process

46. At the end of each academic year, Ms Hamilton completed the teacher appraisal process. This is a compulsory element of employment which forms part of the Teacher's pay progression record. By the end of October of each year, the Teachers have initial target setting meetings with Ms Hamilton, appraisal paperwork is drawn up and signed. This sets the academic year's tone and direction work for the staff, addressing areas of personal development, and is linked to the School development plan. The target progress is written up by the Teacher before the next scheduled meeting. An overall review is written by both the Teacher and the Head Teacher twice a year, in February-April and then in July, giving opportunities for discussion and updating.

The Claimant's work pattern/performance

47. In evidence, Ms Hamilton said the following. By May 2016 it was clear to senior leadership that the Claimant required systems in place to manage his time and in managing deadlines. He was arriving at the School around 7.40 am and leaving around 6 pm. This was ample time within which to complete his tasks but unfortunately he failed to do so regularly. It was decided that he needed some intensive support and coaching. Initially she and Ms Bennett met with the Claimant on a weekly basis to go through the items

requiring attention. Lists were produced from one to one meetings in order that the Claimant could progress those tasks he was required to do under both general teaching subject leader responsibilities and those of his Teaching and Learning Responsibility ("TLR"). But the Claimant then put all of his menial tasks onto the monitoring sheet and, when challenged, he stated that he wanted to show all his jobs. This all resulted in additional management time and it was not something that could carry on indefinitely. However, with this additional support there was an improvement in the Claimant's organisational skills over a number of months.

48. Mrs Bennett said the following in evidence. Through working with the Claimant she noticed delays in him meeting deadlines and completing his work. There was ongoing discussion within the Senior Leadership Team as to whether to consider moving to a more formal capabilities performance management approach to managing the Claimant. However, she suggested he first might be able to improve with initial dedicated support to ensure it was clear to him what was required. Ms Hamilton suggested that the two of them put such support in place and in May and June 2016, they met regularly with the Claimant in order to help him draw up weekly lists of tasks and to structure his work. The Claimant would turn up to meetings without any plan at all as to what he was going to address in the meeting. To help him out, she devised a table in which he could itemise areas of his work and emailed him help to scaffold the way he approached his work (we were referred to B303-318). It appeared to her that the Claimant struggled to take their meetings seriously, to be dismissive of any suggestions or attempts to think things through with him and even on one occasion attended a meeting called by another Teacher instead of the scheduled meeting with the Head Teacher.

49. We were referred to the Claimant's annual appraisal for the year 2015/16 at B325-329. The comments completed at B328 by Ms Hamilton whilst containing some negative points also contains a number of positives.

50. In particular, we note that the Claimant is praised for his work on the School website and MIS although the point is made that this was not achieved without additional support. She also notes that he was successful in meeting his target of maintaining and enhancing the ICT infrastructure. She further notes that he led the teaching of STEM, that he is "charismatic" and his practices show that the students' needs are always paramount. She states that his "teaching observations have shown (his) teaching to be outstanding". However, she does indicate that two targets have not been met and that whilst this is unsatisfactory, she believes he has the capacity to meet them "but (his) lack of prioritisation and inability to meet deadlines made even the smallest task seem mountainous".

51. Ms Hamilton's comments continue as follows:

"This year you have been supported through extended deadlines, : encouragement, coaching, a reduced teaching timetable, a non teaching timetable, 1:1 meetings with HT, 1:1 planning meetings with DHT, weekly ICT meetings and an early leadership course. Going forward this level of support is unsustainable, and you will be expected to fully embed the skills you have gained in the coming year.

Well done for making a brave start you showed your resilience and ended the year in a position of strength. Congratulations."

52. The Office for Standards in Education, Children's Services and Skills ("OFSTED") undertook a short inspection of the School on 1 March 2017 and their outcome letter dated 20 April 2017 is at B373-376. We note from this that the School continued to have an assessment of "outstanding" as it did as a result of the last OFSTED inspection in January 2013. So the School had a rating of outstanding throughout the Claimant's employment.

53. We were referred to the Claimant's annual appraisal for 2016/17 (at B438-447). This was signed off on 18 July 2017. We refer in particular to the comments at B443 and 444, which are very positive. We note that this is post the OFSTED inspection. Whilst there are some criticisms as to the meeting of targets and as to paperwork and subjects at B444, these are quite mild when contrasted with the concerns raised about the Claimant by Ms Hamilton and Ms Bennett in their evidence. Indeed, the appraisal contains balanced comments and whilst there are some criticisms there is nothing that suggests any major concerns and anything that the OFSTED inspection identified as negative.

54. We were struck by what we saw as a disconnect between the OFSTED inspection report, containing nothing about maths or leadership, the Claimant's two appraisal reviews and the suggestion that the Claimant's performance was such that the Senior Leadership Team was considering formalised capability proceedings.

55. We asked ourselves why the concerns raised by Ms Hamilton and Ms Bennett were not set out within the Claimant's appraisals? In particular, Ms Bennett's concerns that it appeared to her that the Claimant struggled to take their meetings seriously, to be dismissive of any suggestions or attempts to think things through with him. Indeed, there is nothing within these appraisals that suggests that the Claimant is not meeting the satisfactory standards expected of a Teacher at his grade and pay as Ms Hamilton's and Ms Bennett's evidence also suggested.

56. We also note a disparity in the chronology and interpretation of events presented by Ms Bennett in evidence. At paragraphs 21 and 29 of her main witness statement, she states that Ms Hamilton re-allocated the Claimant's responsibility for ICT teaching to another Teacher, in early 2017, as a result of the concerns about the Claimant's performance. However, the Claimant's email to Mrs Bennett dated 4 October 2017, at B541, and Ms Hamilton's email to the Claimant dated 10 October 2017, at B555, indicate this work had already been given to the other Teacher at that time and for what appear to be innocuous reasons.

<u>The Claimant's absence from work</u>

57. The Claimant was absent from work on a number of occasions during the period of the events in question. He was initially absence from 16 March 2018 until 6 July 2018 with stress at work (the medical certificates covering this period are at B837, 839, 854, 884, 892).

58. A certificate covering the period 11 to 18 July 2018 indicates that whilst the Claimant still suffering stress at work, his doctor suggests that he may be fit for work on a phased basis (at B931).

59. The Claimant was then absent from work with medical certificates covering the periods 3 September 2018 until 12 December 2018, 13 December 2018 to 13 March 2019 and 13 March to 13 April 2019 and 14 April to 14 May 2019 again with stress at work 13 May to 13 August 2019, 14 August to 14 October 2019, 14 October to 16 December 2019 for stress at work (at B986,1110, 1211, 1239, 1252, 1337 and 1343)

The Claimant's grievances

60. On 23 April 2018, the Claimant sent a letter to Ms Hamilton headed "health letter" but actually containing his grievances against her (at B941-942). In essence, he stated that he felt bullied and detrimentally treated by her since raising the issue of Teachers' Direct Time on 9 June 2017 and in her actions against him since then.

61. Whilst we were not asked to consider the grievance process head on, a number of the matters he raises form part of the agreed list of issues.

62. The essence of the Claimant's concerns in his grievance are as follows.

    a. He indicated that he was off work with work-related stress and was feeling depressed, anxious stressed and had low self-esteem. He said that he felt bullied by Ms Hamilton both since raising the issue of Directed Time on 9 June 2017 and thereafter;

    b. The letter then set out a number of examples of this:

        i. On 19 June 2017, by the removal of his key to the School and the changing of the School's opening and closing times and the impact on his ability to fulfil his duties;

        ii. On 3 November 2017, when Ms Hamilton sent him an email headed "Notice of Concern" which alleged that he was not meeting Teachers' Standards and her failure to specify which standards on 4 separate occasions;

        iii. On 1 December 2017, when Ms Hamilton told him that she had received a complaint from unnamed colleagues about him. On 29 February 2018, he asked for the matter to be resolved swiftly but it was not, and he is still unaware of the details of the complaints and has not been given an opportunity to hear them or to offer his own account;

        iv. On 12 March 2018, when at a Governors' meeting, Ms Hamilton stated she was in the process of taking an unnamed member of staff through capability procedures. As she and Mrs Bennett had both repeatedly stated that he was not meeting the Teachers Standards, he felt anxious and concerned that they were alluding to him;

v. On 21 February 2018, when Ms Hamilton asked him to undertake an audit of IT equipment across the whole school with an impractical deadline, which increased his workload significantly during the narrow opening closing times of the School, given that he was not allowed to conduct the audit on a Saturday;

c. His letter also referred to incidents in which Ms Bennett had, firstly, erroneously accused him of not following instructions to all staff regarding testing and had spoken to him in an offensive manner, and, secondly, accused him of not attending a half-hour meeting which he had in fact forgotten about. He was particularly concerned because their desks were very close together and he was at a loss to understand why she felt unable to come over and remind him of the meeting.

63. We were not really asked to deal with the grievance process or indeed taken in any detail to what ensued. However, we can see from the documents that a Stage 1 grievance hearing was eventually held on 4 December 2018 and the outcome was sent to the Claimant in a letter from the School dated 22 January 2019 (at B1123-1132). A Stage 2 grievance hearing then took place on 1 April 2019 , the outcome of which was sent to the Claimant in a letter dated 8 May 2019 (at B1247-1251). The grievances were not upheld at both Stages.

<u>The disclosures</u>

Disclosure to Ms Hamilton on 9 July 2017

64. On 9 July 2017, the Claimant sent an email to Ms Hamilton with the subject heading “Statutory Directed Time” and marked “Importance: High” (at B416-417). In evidence he stated that this matter had been discussed at an NUT meeting on 7 July 2017 and it was agreed that the email be sent.

65. The email states that the Claimant has been looking at “our working hours for teachers and seem(s) unable to reconcile them to statutory guidance”. His calculations are included and record an excess of Directed Time worked of 97.5 hours in the academic year 2016-17. The email ends “clearly I may be missing something. Please may we discuss this?”

66. On 12 July 2017, Ms Hamilton responded to the Claimant’s email as follows (at B418):

“Dear Dele

I think there might have been a bit of confusion around directed hours. I am encouraging staff to leave by 4.30 to promote good work life balance. You are quite right directed time should average out at 6.5 hours a day over the year. Work under the general direction of the Head can be completed offsite but teachers have generally in this school decided to complete their work onsite and stay to 4.30 and beyond.

Thanks for drawing this to my attention. I hope this clarifies matters.”

67. We were surprised by this email as it did not appear to address the legitimate issues raised by the Claimant. We interpreted it as an attempt to draw a line

under the matter and showed no indication of any willingness to engage or discuss.

Disclosure to Mrs Mullins on 17 & 19 July 2017

68. The Claimant sent an email to Mrs Ann Mullins, the, then, Chair of the Board of Governors, on 17 July 2017, at B425-427. The email raises the matter of "Statutory Directed Time" that the Claimant had previously written to Ms Hamilton about as NUT representative but here he raises it in his capacity as School Staff Governor.

69. It was asserted by Mr Kohanzad that the Claimant was forced to write to Mrs Mullins having not received a satisfactory response from Ms Hamilton. We do not accept that the Claimant was forced to do so. We have taken into account the tone and content of this email. Moreover, writing to the Chair of Governors is a very clear escalation of the matter when there were plainly less confrontational options open to him at this first stage. The Claimant could have responded to Ms Hamilton asking for clarification of whether she intended to take the matter further. He could have gone back to the staff members and discussed what further action he could take in his capacity as union representative.

70. The email repeats his concerns to Ms Hamilton but goes further:

> *"According to the 'Governance handbook for academies, multi-academy trusts and maintained schools' - January 2017 P69, we, the governing body, are responsible for "making sure that headteachers benefit from any statutory entitlements and comply with the duties imposed on them which are contained within the STPCD" (School Teachers' Pay and Conditions Document). I am concerned we may be in breach of the second part of this.*
>
> *I have emailed the Head about my concerns and the email trail is below.*
>
> *Excess Hours*
> *It is likely that, over the past two years teaching staff have worked in excess of 212 hours over the statutory directed time. This is likely to be more if you look further back. Going forward, the academic year 2017 - 2018 we can expect to be over by a similar amount as the previous years.*
>
> *During the last two academic years, teachers have been told that the working hours are 8:30 to 16:30 with one hour for lunch. This is evidenced in minutes from meetings and oral confirmation.*
>
> *Please find attached the document "3. May 2016 Staff Meeting Minutes.doc" item 1.5 'Time Keeping' for corroboration.*
>
> *2016-17*
> *Conservative calculations suggest each teacher has worked more than 97 hours over the statutory 1265 hours of directed time. There are several factors that make the estimate low. For example, team meetings, directed to take place at lunchtimes, are not included for individual teachers.*
>
> *2015-16*
> *Calculations for the academic year 2015-2016 indicate that each teacher has worked more than 115 hours over the statutory 1265 hours of directed time. Again, the estimate is likely to be low.*
>
> *This suggests that the issue may be structural, historic and in need of being brought to a full governing board meeting as liability lies with the board.*
>
> *Issues to be discussed include:*
> *· Whether or not we are in breach of the statutory guidance and if so, by how much and for how long for each teacher.*
> *· Clarity for all staff on their directed time including the timeframe for a typical working day.*
> *· Ensuring the time allocation for the school "Calendar of Events" plus meetings falls within the*

statutory guidance 1265 hours over 195 days.
· If we prove to be in breach, the issue of recompense will need to be discussed.

Remuneration for the teachers in terms of time or money or a combination of both should be considered. There may be child minding costs to include.

At the end of this letter I list and outline some of the statutory, legal and financial references which I think are relevant to this issue.

I would be grateful if you could confirm receipt of this email and advise me how we intend to proceed."

71. We appreciate that by this time it was the final week of the academic year and would have presented practical difficulties for the School and the Chair of Governors in dealing with the matter before the start of the next academic year in September 2017.

72. On 19 July 2017, the Claimant sent a further email to Mrs Mullins asking for confirmation that she had received his email and attachments as he was conscious that it was almost the end of term (at B457).

73. Later that afternoon, on 19 July 2017, Mrs Mullins replied to the Claimant's email stating that she needs to take advice and given it was so near to the end of term, she expects this to be next term (at B458).

74. On 11 September 2017, there were two communications about Directed Time. One from Ms Hamilton to all Teachers (at B510) and one from Mrs Mullins to the Claimant (at B511). This is clearly a co-ordinated response to the Claimant's concerns. However, we find nothing untoward in this. It allows the Head Teacher to deal with the matter in the way it more appropriately should have been as part of the management of the School. And for Mrs Mullins to indicate that the issue would be brought forward to the next Finance, Personnel and Premises Committee ("FPPC") meeting. In the context of a School that does not operate over the Summer, this is a timely and appropriate response.

75. Whilst Ms Hamilton's email does not address the pay element of the Claimant's concerns to Mrs Mullins it does deal with his concerns about directed time and provides an explanation of this and reasonable additional hours. It further states that she will be presenting the matter to the Governors in October 2017, provide any information that arises from that meeting and talk to staff individually regarding working practices as part of the appraisal process.

76. Given that the Claimant had already spoken to the previous School Business Manager, emailed the Governor Training Co-ordinator and Mrs Mullins in his capacity as Staff Governor, about these matters, as well as spoken with Teachers in his capacity as NUT representative, we do not find anything untoward in the opening paragraph of Ms Hamilton's email identifying the Claimant as having raised the issue. It was unlikely to be a surprise to the Teachers, given that he had discussed this issue with them and shared the wording of his proposed email to Ms Hamilton.

77. On 4 October 2017, Ms Hamilton sent a further email to the Teachers

correcting the calculation in her email of 11 September 2017 (at B539):

> *"Afternoon Staff*
> *The time you are directed to be in school is 8.30am – 3.45pm not 4.00pm as stated in a previous email. I will provide more detailed information before you leave for the half term break."*

Disclosure to Dawn Hill, Ann Mullins, Oliver Coddington, Anne Hamilton and Marian Ridley on 16 October 2017

78. On 16 October 2017, the Claimant sent an email to the members of the FPPC, which included Ms Hamilton and Mrs Mullins and Ms Dawn Hill, the Vice-Chair of the FPPC. The email is at B566-567. This was timed at 3.33 pm which was whilst the meeting was already underway.

79. In his email, the Claimant stated that he wanted to ensure that the FPPC was clear about the Governors' responsibility regarding Directed Time which is an item on their agenda. The email then goes on to set out the issue raised with Ms Hamilton and Mrs Mullins.

80. The Claimant said in evidence that he did this because he had a previous meeting with Mrs Mullins about another matter and did not believe it would be dealt with properly. The Claimant accepted in evidence that it does not raise anything new. But it is sent to different people.

81. We were unclear of the Claimant's motivation in doing this (but note his reference to the earlier meeting with Mrs Mullins) given that he knew the issue was on the agenda and he had already written to both Ms Hamilton and Mrs Mullins setting out his concerns in some detail. It does appear to us to be an attempt to further escalate the issue and to usurp the role of the Head Teacher, the Chair of the Governors and the FPPC.

82. We were referred to the minutes of the FPPC at B562-567 which at B563-564 records a discussion of the issue of directed time. This ends with the sentence:

> *"This will be shared with staff in the staff meeting for comments and be put to the FGP (which we assume stands for Finance and General Purposes Committee) for consideration."*

83. Ms Hill, the Vice Chair of the FPPC, emailed the Claimant that evening stating that she had only just seen his email and would be in contact having reviewed his claims with the Head Teacher (at B566).

84. On 17 October 2017, Mrs Mullins sent an email to the members of the FPPC copied to Ms Hamilton and Ms Cooper, the Governor Development Advisor at the London Borough of Southwark (the First Respondent), regarding the Claimant's email of 16 October (at B569). This said as follows:

> *"Regarding the email you have received from Mr Martin, he sent me a lengthy email at the end of last term. I replied that I would have to take advice and would reply in September. I spoke to the clerk and the Head received a response from John Finch (Head of Governor Services, LB Southwark).*
>
> *I am copying you the email that I then sent him, and the matter of 1265 hours was duly discussed at the meeting last evening."*

85. On 17 October 2017, Ms Hamilton sent an email to Ms Hill (at B571). It is apparent that Ms Hamilton had spoken to the School's HR advisers (we assume at the London Borough of Southwark) and received advice on how to proceed. HR asked Ms Hamilton to find out whether the matter is a formal grievance against her and, if not, then it is to be resolved by her; otherwise the Claimant needs to make a formal grievance.

86. We were unclear why HR had given this advice. We do wonder if something more than this issue had been discussed with them. They appear to have drawn the inference that the Claimant's concerns are actually about Ms Hamilton. However, we heard no evidence on this.

87. On 31 October 2017, Ms Hamilton sent an email to the Claimant (at B589-590):

> *"The matter of 1265 hours was duly discussed at the Finance and Premises Committee meeting 16th October 2017. Dawn Hill who was the Chair of that committee has spoken with me regarding your email and after further discussion referred the matter back to me to close. It has been agreed by that committee that the school day is 8.15 - 4.30 and that the directed time hours satisfy what is laid out in the School Teachers Pay and Conditions Document (STPCD).*
>
> *I have also spoken with HR and they feel that the school has a generous working day offer and the staff are not overworked, when compared to their colleagues working in mainstream schools.*
> *I attach the directed time budget, this leads me to conclude that this matter is now closed."*

88. Ms Hamilton wrote to the School's Teachers in similar terms that same day (at B591). But in addition she wrote:

> *"As you can see, there has been a concession as regards to the closing time, however it is part of your professional responsibility to be punctual in adhering to this time. On occasion you may request to stay beyond 4.30 but I would appreciate if requests are made in advance and in the understanding that it is at my discretion to decide who is on the premises at any time."*

89. On 27 November 2017, directed time was discussed at the full Governing Body meeting. The minutes are at B646-654 and the issue is recorded briefly at B653 as having been raised under the Headteacher's Report and discussed at the Resources Committee.

Disclosure to Deborah Cole of DfE on 21 January 2018

90. The Claimant appears to have made an online submission to the Department for Education ("DfE") raising concerns about directed time. On 21 January 2018, the DfE respond in what appears to be an automated email sent from a generic email address (at B690-691). We were not provided with a copy of the Claimant's original submission but it is reproduced in this email:

> *"I am writing to you as a teacher in Local Authority School, concerning the allocation of directed time for teaching staff in my school.*
>
> *Over the previous two academic years and the first half-term of this academic year, the headteacher has structured the working hours of teaching staff such that directed time exceeds the statutory 1265 hours. The accumulation of excess directed time over and above the statutory 1265 hours a year for the periods mentioned is greater than 220 hours for all fulltime teaching staff.*
>
> *When I first realised this was happening which was at the end of the last academic year, I emailed the Headteacher with a view to discuss the issue. She denied that it was happening. I have since emailed the chair of governors and the Governors Finance and Personnel governors committee. The*

headteacher has been included in all emails. The Chair of Governors and the Governors Finance and Personnel committee have referred me back to the headteacher and not asked for any evidence or to speak to me. The headteacher response has been to: deny any wrong doing; plead staff confusion and argue that the borough Human Resources department are in agreement with what has taken place.

I am a good teacher and work considerably more than the statuary directed time 1265 hours each academic year to completely discharge my duties as teacher. The headteacher has added an extra burden on all teachers by exceeding the statutory directed time.

Please could you advise me on the best way of securing the outcomes below?
• Wages to be paid to me for time the headteacher has directed me to work in excess of the statutory 1265 hours for each academic year and the first half-term of this academic year.
• Historic Performance/Appraisal documents to include statements to indicate they were written whilst contracted hours were being exceeded and by how many hours and to be reviewed in that light.
• To be treated fairly and in line with policies and procedures going forward

Please note that I can evidence the claims made above
• The starting and finishing times for teachers (or directed time) as stated by the Headteacher for the academic years mentioned above, can be evidenced in many forms including emails, minutes from meetings, and asking staff in general or teaching staff in particular.
• I have detailed time accounting for every single day over the time periods mentioned forteaching staff.

I have been in contact with the union who are difficult to speak to and have not been helpful. As you can imagine the headteacher has not been treating me very well since I raised this issue and is trying to get rid of me.

The headteacher has moved forward last half-term changed meeting times and produced directed time budget document which if followed will keep teaching staff within 1265 hours. She has not addressed or mentioned the 220 hours owed.

Please could you offer advice on how best to secure the outcomes mentioned?

Thank you"

91. The Claimant received a response from Deborah Cole at the DfE in an email dated 6 February 2018 at B703-704.

Disclosure to David Quirke Thornton, the Strategic Director of Children and Adult Services and the Board of Governors on 9 February 2018

92. The Claimant sent an email to David Quirke Thornton, the Strategic Director of Children and Adult Services (at the London Borough of Southwark) and the Board of Governors on 9 February 2018. This is at B729-730 and the contents are set out below:

"Notification of engagement of ACAS early conciliation service to resolve a contravention to my contract of employment

My name is Ayodele Martin and I am a teacher and staff governor at Evelina Hospital School

I am writing to advise you that I have engaged ACAS early conciliation service to resolve a contravention to my Contract of Employment for a School Teacher with Southwark Council, which has resulted in me working, unremunerated, in excess of my hours of work during the academic years 2015-16, 2016-17 and the first half of the Autumn Term 2017.

My contract clearly states (page 2) under section '3' titled 'Hours of work' that a teacher can be directed by the Headteacher for 1265 hours over 195 days in any school year. These hours of work are 'subject to any relevant orders made by the Secretary of State for Education and Employment under the School Teachers' Pay and Conditions Act 1991 and any successor legislation'.

ACAS early conciliation service will be contacting you on my behalf shortly. I would like to outline the following for you in advance of that:

1. The grounds for and financial amount of my claim; and

2. An outline of the efforts I have made to resolve this with the Headteacher and members of the board of governors.

I would also like to advise you that I have sought advice from the Department for Education and my union -The National Education Union, as well as legal counsel from my appointed solicitor. I request the release of these and their evidential documents to my solicitors, so that they have the necessary documents if there is a need to proceed to tribunal.

I sincerely hope this matter can be addressed as soon as possible."

93. Mr Quirk-Thornton replied to the Claimant that same day (at B729) confirming receipt and stating that if an ACAS notification is received by the London Borough of Southwark it will be responded to by their Legal Department directly.

The detriments

94. These are set out at paragraph 5 of the agreed list of issues and we deal with them each in turn.

Paragraph 5 (a) Anne Hamilton changing establish classroom procedures for C, such that they were allegedly less favourable to C, because other teachers were not informed of the changes. The procedure is concerned the situation when no students arrive for a classroom lesson, 20 July 2017

95. Whilst the Claimant was waiting in the Secondary Classroom with his Teaching Assistant, Ms Almaz Anderson, to see if any students would arrive by themselves for his lesson, he alleges that Ms Hamilton rushed in and was angry with him.

96. His further allegations are as follows. She demanded to know why there were no children in the classroom and told him he should be on the ward if there were none. She became angrier as he tried to explain the position and she told him he was being rude and to come into her office for a meeting. She conducted the meeting in the same manner, saying that he was rude to her and had been rude in front of Ms Anderson. She prevented him from speaking for about 10 minutes. He left the meeting shaken and fearful because of the way he had been spoken to and that he had been asked to carry out duties in a departure from what he had been told to do in the past. This was that when there was one or no students in his lesson, he was to spend time on the many other School projects that he was involved with. He knew he was being asked to carry out tasks that would impact upon him and that other staff had not been informed of these changes. That afternoon, he sent an email to Ms Hamilton listing the things he had been asked to do and asked her to comment or amend what he had said (at B466).

97. Whilst Ms Anderson's evidence supports the Claimant's allegations as to the manner of Ms Hamilton's behaviour and that he should go onto the ward to teach if there were no students in the classroom, she does not support his assertion of the detriment as it appears in the agreed list of issues.

98. Ms Hamilton's evidence was as follows. She denied being angry and raising her voice. She found the Claimant and Ms Anderson in an empty classroom

and told them that when this happened, they ought to be asking her and Ms Bennett whether they should be visiting students on the ward. The Claimant was rude to her in front of the Teaching Assistant and so she asked to speak to him in her office. She added that it was not a matter of not knowing where to go on the ward, as the Claimant alleged, because each Teacher had a list of designated students for their class and so he would know who to approach on the ward.

99. Ms Meysi Villanerva (who was then a Teacher at the School), the Claimant's own witness, stated that attendance in the classroom was consistently changing and that she was given a number of different instructions by Ms Hamilton over time as to what to do if it was empty (her witness statement at paragraphs 7-10).

100. On balance of probability, we find that this incident did not happen as asserted. The evidence does not support that there was a change of procedures or even one set way of dealing with this situation and the Claimant was not singled out for this alleged treatment in any event.

Paragraph 5 (b) Anne Hamilton changing the opening and closing times of the school from the first day back at the start of the academic year on 4 September 2017.

101. On the first day of the new academic year, Ms Hamilton announced to staff during the afternoon staff meeting that the School premises would be open from 8.15 am to 4.15 pm with lunchtime at 12 to 1 pm.

102. We note that in the Claimant's evidence he makes the following allegations. That Ms Hamilton was setting him up to fail by denying him access to the school and its resources in which to complete his work because he had raised the issue of Directed Time. He further alleges that she treated him badly in front of other colleagues to instil fear in them and to isolate him. He further asserts that on 22 September 2017, he emailed Ms Hamilton to schedule time in his school day to provide a range of IT support but she declined (at B524). He further states that his Autumn term timetable for 2017-2018 (at B487) that he received on 7 September 2017 included no time for the range of IT support he was giving. As a result he said that this meant he no longer had the time to carry out a whole range of ICT tasks.

103. However, focusing on the detriment pleaded. There appears to be an apparent contradiction given that the Claimant was effectively complaining about excess Directed Time hours. So limiting his working day by reducing the School opening and closing hours does not amount to a detriment. It is actually going some way to addressing the issue that the Claimant had raised, although perhaps the changes were an unexpected consequence of his raising the issue of Directed Time.

Paragraph 5 (c) Anne Hamilton told teachers that the opening and closing times of the school was the consequence of C's email of July 2017

104. The Claimant alleges that several Teachers told him that in meetings the

each had with Ms Hamilton she advised that the change to the opening and closing hours was as a result of the email he had sent to the Chair of the Governors Board, and that if he dropped his complaint, the hours would be changed back to what they were before. He did not provide the names of these Teachers in his witness statement, he said in oral evidence that this was to protect them and he did then give their names.

105. One of his witnesses, Ms Lene Ryden, who was a Teacher at the School at that time, said in evidence that she went to see Ms Hamilton because the change of hours also presented her with difficulties doing her work. She said that Ms Hamilton asked her if she was "in on" the Claimant's "case", as she put it. Ms Ryden answered yes and Ms Hamilton replied "well that's what happens". Ms Ryden said in her written evidence that she aware of three other Teachers who had been called in by Ms Hamilton and subjected to the same questioning.

106. Ms Ryden's evidence does not go as far as the Claimant's. Ms Hamilton denied these allegations.

107. We weighed up the evidence that we had before us. On balance of probability, we accepted the evidence of Ms Ryden. We found her a credible witness. She was unequivocal in her answers in cross examination. She was refreshingly open when it was suggested she had a grudge. She answered, yes she did have a grudge against the School and Ms Hamilton, in the sense that she did not like the way staff were being treated. Whilst this was forthright, it was not about the way she was treated and her witness statement did not read like the evidence coloured by the way she was treated.

Paragraph 5 (e) Anne Hamilton sent an email to entitled 'Notice of Concern' on 3 November 2017. And then failed to respond to C's four emails asking her to specify what Teachers' Standards she believed C was not meeting

The notice of concern

108. We have set out a definition of the School's MIS above. In essence, Teachers were required to keep daily records of their individual teaching sessions on a student by student basis. These were referred to as pupil logs. The School carried out a log scrutiny of the Claimant's logs on 16 October 2017, prior to meeting with him at a scheduled performance meeting on 20 October 2017.

109. We refer to paragraph 24 of Ms Hamilton's main witness statement. Her evidence was that the School routinely monitored pupil logs. She said there were performance issues with two Teachers at the time, arising from their appraisals, namely, the Claimant and Ms Ryden. The School dealt with Ms Ryden first and then the Claimant. She said that colleagues examined his pupil logs. This showed that he was routinely taking two weeks to complete them and one occasion on which he had completed an inaccurate log.

110. We refer to paragraphs 138 and 139 of the Claimant's witness statement. His position is that he always completed his logs at home, not having time to do so at the School, and that out of 130 logs, Ms Hamilton only found one to be inaccurate and actually it was not. The Claimant further stated that it was not

perceived as an issue at the time and was not included in his appraisal. So he is saying she is making more of it than it was because of his whistle-blowing.

111. We find that the timing of the log scrutiny and the Claimant's email to the Governors about directed time at B566 looks highly suspicious. The email was cc'ed to Ms Hamilton and timed at 15:33 on 16 October 2017. The initial log scrutiny is evidenced in a handwritten note at B568. The records at B575-582 post-date 16 October 2017 and appear to have been looked at afterwards. This appears to be a deliberate attempt to find fault with the Claimant's log. We are not saying that the Claimant was without fault but it does appear that this has been perhaps exaggerated.

Teaching Standards

112. Ms Hamilton alleged at the meeting that the Claimant was in breach of Teaching Standards. The Claimant requested that she specify which Teaching Standards he was not meeting and alleges that she failed to respond. He sets out the events chronologically at paragraph 153 of his witness statement. Ms Hamilton refers to the Teaching Standards in her email using a hotlink. In oral evidence she stated that she pointed to them on a poster on the wall during the meeting and she identified the Standards she was referring to as "part 1 section 2" (on a reading of the Standards we note that this is actually not that specific a reference). She did not state this in her witness statement. She simply said that she pointed to the Teaching Standards' summary which was on the wall (reproduced at B362).

113. We were concerned as to why she did not respond to the Claimant's written requests with specifics. Particularly if she had given specifics in the meeting as she alleged. We find on balance of probability that in reality she did not say what the Teaching Standards were at all and that this was either because she did not know or simply did not want to commit.

114. We were of the view that whilst Ms Hamilton found things in the log, she should have been able to justify the action she had taken but appears not to have wanted to commit to what it was that the Claimant had done wrong to the degree that warranted a Notice of Concern.

Paragraph 5 (f) Following Anne Hamilton telling C she had received a complaint from colleagues about him on 1 December 2017 she subjected him to a detriment by the time she took to address the complaint and tell him in July 2018 that it was not being pursued

115. In cross-examination, Ms Hamilton stated that she was aware at an early stage that the complainant wanted their concerns to remain private and did not want their name revealed. However, she was evasive and equivocal about the point at which she was aware of this. Initially she seemed to say that it was very early on, then subsequently she said it was in January 2018 when she was absent from work due to ill-health, and then when pressed she said she could not remember. We were left with the impression that she had raised matters with the Claimant when she knew the complainant did not want

to be revealed or the complaints to be raised, and that she knew this at a very early stage, or at the outset, but did not tell the Claimant this. Indeed, she did not tell him the matter was not being pursued until July 2018.

116. There was evidence from Ms Ryden that left us with the distinct impression that Ms Hamilton had form in raising unspecified complaints by unnamed staff. We did feel that calling staff in for meetings and without notice telling them with limited or no information of complaints made against them by unnamed colleagues was indicative of bullying behaviour.

117. Indeed, it goes further in the Claimant's case in that he is left hanging without anything further than it may result in action and will be investigated. And the wider context is that he is raising concerns and making a nuisance of himself.

118. We did not find Ms Hamilton's evidence credible. We find on balance of probability she knew that the unnamed complainant did not want the matter taken further before she went off sick. Indeed, she gave no real indication at any stage that she knew that the member of staff wanted the matter to be taken any further.

Paragraph 5 (h) Kate Bennett sending a humiliating email to C on 20 February 2018, that was lacking in any corroborative evidence, accusing C of not following the instructions to all staff regarding testing of students, as well as falsely listing Teaching Standards she claimed C had broken in the process

119. The email is at B756. Ms Bennett explained in evidence that there had been multiple discussions with the Claimant about his inability to do his work, mainly to do with missing deadlines. She sets this out in some detail at paragraphs 3 to 12 of her supplemental witness statement.

120. We formed the view that we did not think the email was humiliating as the Claimant viewed it. It is certainly sarcastic and as Ms Bennett admits, strongly worded. But we asked ourselves the question, would she have written to him in this way if all the other matters had not blown up?

121. In essence, from her perspective these were as follows. There was the difficulty with Ben Neasom going on anyway (as referred to in her email) and the Claimant had insisted on everything being put in writing. Ms Bennett generally had difficulty getting the Claimant to follow instruction and to take things seriously and had known he was persistent in getting matters dealt with and so did not want to make the same mistake as others. These were issues that had been going on before the Directed Time issue arose. Ms Bennett was in charge of the testing. But as she put it in cross examination, the way she felt was that the Claimant was very disrespectful of her and Ms Hamilton, obfuscating, not doing what he was asked to do and now he was doing the same to Mr Neasom.

122. We decided that this matter was borderline in itself but taken with the detriment at paragraph 5. (j) of the list of issues then it was perhaps not? We determined to reconsider it are we had considered (j).

Paragraph 5 (i) Anne Hamilton asking C to carry out an audit of IT equipment across the whole school on 21 February 2018 with an impractical deadline, during the narrow opening and closing times of the school building, increasing C's workload as a fulltime teacher significantly

123. Ms Hamilton asked the Claimant to undertake an audit of IT equipment in October 2017 at the performance management meeting held before the October half term. In an email to the Claimant dated 10 October 2017, Ms Hamilton had asked the Claimant for his existing audit of School ICT resources (at B555). She subsequently chased him for his audit. In an email dated 19 January 2018, Ms Hamilton identified the audit as one of the things that the Claimant was specifically doing during that term (at B689). The email referred to the need to have a resource list and to be able to identify where they are kept as "vitally important".

124. The Claimant started by exporting the earlier June 2017 inventory from MIS onto a spreadsheet and on 19 February 2018 in an email asked Ms Hamilton what categories she wanted IT to be grouped into (at B747). Following further instructions, he sent the IT inventory as a spreadsheet on 21 February 2018. This indicates that he was aware he had taken a long time over this task because he apologises for the delay (at B758).

125. In response, Ms Hamilton told the Claimant to check the items were in the School and to do so by 26 February 2018 (at B772). The Claimant responded on 23 February 2018 stating that he was "keen to ensure I meet your deadline" and asked for access to the School on the Saturday which Ms Hamilton refused. The Claimant returned the audit to Ms Hamilton on 27 February confirming which items had been located (at B788).

126. In evidence we heard that at most it would have taken a day to carry out the audit because the Claimant simply needed to go round the School and check where the equipment was, the School was not very big and he could have delegated the task.

Para 5 (j) Kate Bennett not prompting C to attend a scheduled half hour one to one meeting on 9 March 2018, even though C was eight steps away in the same room at his desk, but instead producing documents to put him in a negative light, and circulating them to the Governing Body and the Pastoral and Curriculum Committee

127. We have referred to the factual matrix that relates to this as part of our summary of the Claimant's grievance. The Claimant was supposed to attend a one to one meeting with Ms Bennett on 9 March 2018 but he forgot about their meeting. Ms Bennett sits relatively close to the Claimant (eight steps away in the same room) but rather than walking over to remind him, she waited until after the meeting had come and gone before raising the matter.

128. We were not convinced by her explanation for not simply reminding him of the meeting and formed the view that not prompting him about the meeting was certainly childish.

129. Ms Bennett then went ahead and finalised the End of Term Report and sent it to the Claimant for his comment. However, the Claimant was by then off sick with stress on 16 March and did not return to work until after the PCC meeting, which was held on 30 April 2018. Ms Bennett went ahead and circulated the unfinished report to the PCC.

130. We were at a loss to understand why Ms Bennett simply did not tell the PCC that it was not possible to produce a final report because the Claimant was off sick. The Claimant sent an email explaining the position to the meeting on 30 April 2018 (at B867).

131. Whilst the PPC did not consider the matter is not the point. The point is that the report was circulated in an unfinished format and the reputational damage caused to the Claimant. Whilst Ms Bennett made less than positive comments about other Teachers on their reports (to which we were referred), the difference is that the Claimant did not have the opportunity to comment on those comments in his own report. Further, we found that the tone of her comments not as gentle as it is with the other Teacher.

132. Ms Bennett could simply have waited until the Claimant's return to finalise and then submit the report. There was a window between the PCC and the full Governing Body meeting. Indeed, the PCC did not consider the report and so it indicates that there was no need to present it then.

Paragraph 5 (k) Anne Hamilton at a Governing Body Meeting on 12 March 2018 in which C was in attendance, stated that she was taking a member of staff through capability procedures without saying who it was

133. The Claimant's evidence is that at the Governing Body meeting, Ms Hamilton said that she was in the process of taking a member of staff through capability procedures. The Claimant's further evidence is that he knew that Ms Hamilton was talking about him. In his grievance letter of 23 April (at B942), he states that this is because both Ms Hamilton and Ms Bennett repeatedly said at that time that he was not meeting Teaching Standards.

134. Ms Hamilton's evidence is that she said one member of staff may be going through capability procedures next term.

135. There were 19 members of staff and Ms Hamilton did not identify if it was a Teacher. The Claimant was a Staff Governor and he would hear about staffing issues via the Governing Body. He accepted that Ms Hamilton did not name the staff member and that others could not have known who was being referred to. He suggested that the Chair of Governors would have known but in cross examination was unable to say why he thought this was the case. He accepted that it was Ms Hamilton's responsibility to give a staffing report to the Governing Body. He also accepted that no capability procedures were taken against him.

136. In a letter to the Claimant at B894, Ms Hamilton states that she was in the process of taking a member of staff through capability.

137. Ms Mullins stated in her evidence that her recollection was that Ms Hamilton said a member of staff was, or had been, supported in the early stages of capability.

138. The balance of probability supports what the Claimant and Ms Mullins state that Ms Hamilton said. Even if what Ms Hamilton asserts she said in her witness statement is correct, then there was no reason for her to raise the matter given that no capability procedures were in process. So why announce it at the meeting? But if we find that what she said was as the Claimant and Ms Mullins said in evidence, then even if no one was named and the Claimant was not as a matter of fact being taken through capability procedures at the time, it was reasonable for him to believe it was about him and it does appear to be a pointed reference to him.

139. We also refer to Ms Hamilton's letter to the Claimant at B894 in response to the Claimant's letter to her at B942 in which the Claimant stated that she was alluding to him at the meeting and Ms Hamilton does not deny this. She simply states that the School would be supporting the member of staff to improve performance. If anything, this would reinforce the Claimant's belief that it was a reference to him.

Paragraph 5 (l) At C's return to work meeting 24 April 2018 Anne Hamilton refusing to open the letter explaining C's grievance outlining current instances of bullying that had led to his absence

140. On 20 April 2018, the Claimant sent an email to Ms Hamilton stating that he was expecting to return to work on the following Tuesday (at B844). A return to work meeting with Ms Hamilton was arranged for 24 April 2018. The Claimant took a sealed letter to that meeting containing various grievances (at B846-847).

141. We were referred to the Claimant's minutes of the meeting at B848-849 and the Respondents' minutes of the meeting at B850-852.

142. In his second claim form the Claimant stated that he gave Ms Hamilton the letter at the meeting and she refused to open it. In his witness statement the Claimant stated that she refused to take it. In cross examination the Claimant accepted that Ms Hamilton had taken the letter. In the meeting he stated that the letter explained how the stress he suffered from was built up and made him emotional (his minutes of the meeting at B848 and the Respondent's minutes at B850). He invited Ms Hamilton to open the letter in the meeting but she declined to do so. Ms Hamilton subsequently opened the letter after the meeting.

143. The Respondents' minutes in particular indicate that this was a very hostile meeting from Ms Hamilton's side. We find that this was most inappropriate given that the Claimant had returned to work having been signed off work with stress at work.

Paragraph 5 (m) Anne Hamilton treating C with scant regard to the principle of duty of care leading up to and during the return to work meeting on 24 April 2018 by

standing up throughout the meeting and raising her voice to C

144. This relates to the above referenced return to work meeting. Ms Hamilton denies behaving in this manner. Pui Man, the, then, Office Administration Manager, who was also at the meeting, denied that Ms Hamilton was standing (at B890 and B1116) and in her witness evidence.

145. The Claimant does not allege that Ms Hamilton raised voice in his second claim form but mentioned it for the first time at the preliminary hearing (at B127). Ms Man was not asked about the raising of Ms Hamilton's voice. From the minutes it comes across that Ms Hamilton is terse. We would observe that even if she raised her voice as alleged we were not convinced that one would realise it from what we observed of her tone of voice when she gave evidence.

146. In addition, on balance of probability we think it unlikely that Ms Hamilton would have stood for the entire half hour meeting.

Paragraph 5 (n) In the Health Review Meeting on 23 May 2018, Anne Hamilton failing to satisfactorily address bullying events described by C in his letter of 24 April 2018 and refusing to distribute the last Return to Work Sickness Interview record

147. Dealing first with the alleged failure to satisfactorily address the bullying events. There was a Sickness Absence Review meeting on 23 May 2018 with the Claimant, his NEU representative and Ms Hamilton. Also present was Kate Hilton, the School's HR Business Partner, at the London Borough of Southwark. The Claimant's notes of the meeting state that Ms Hilton worked through the issues he raised in his letter of 24 April 2018 (at B889-890). Ms Hamilton's letter of 6 June 2018 to the Claimant responds to his letter of 23 April 2023 (at B893-895). We find that the events were addressed.

148. Turning to the alleged refusal to distribute the last return to work record. The Claimant's note of the meeting of 23 May 2018 records that he asked for a copy of Ms Man's notes of the previous meeting but Ms Hamilton declined as they were for internal purposes. The Claimant was not asking for a formal record of the meeting. In addition, the Claimant did not state why this subjected him to a detriment. He made his own notes of that meeting and to link this to his protected disclosures made some eight months earlier is somewhat stretching matters.

Paragraph 5 (o) Anne Hamilton on 9 July 2018 asking C to take part in the appraisal process against medical advice on his return to work after 13 weeks sick leave due to work related stress and giving C significantly less time to complete the task as than all other teachers

149. The School had an appraisal cycle at mid academic year and then year end in June/July. The Claimant would have been well aware of this having taken part in it in previous years. When he returned to work from sick leave on 9 July 2018, having been absent since 16 March 2018, he would have been

aware that he was coming back to the School's end of year appraisal period and had missed the mid-year review. The reviews needed to be signed off by the close of the academic year. It is therefor not correct for the Claimant to assert that other Teachers had notice of the deadline and he did not.

150. On 6 July 2018, the Claimant wrote to Ms Hamilton stating that he would be returning to work on 9 July and acknowledged that the Respondents' Occupational Health ("OH") doctor was not going to see him until 17 July 2018. He attached a statement of fitness for work indicating that he was fit for work on a phased return basis working "mornings only 0830-1200 (teaching only) for the first week. Review with HR after this period" (at B904-905).

151. On 9 July 2018, the Claimant attended the return to work meeting with Ms Hamilton. At the meeting, Ms Hamilton suggested a phased return of 09.30 to 11.30 and ongoing for two weeks, with a view to reviewing the next OH report in September. The Claimant was on full pay when he returned notwithstanding his reduced hours of work. At the meeting, Ms Hamilton also stated that they were currently undertaking the staff appraisals and would have to include the Claimant. Whilst the Claimant objected to doing his appraisal, he did not mention that his doctor said he could not do an appraisal. When the Claimant said to Ms Hamilton that he needed to be involved to feel that he could conduct an appraisal, she replied "you are not conducting the appraisal, I am" and that as part of the process she was undertaking the appraisals now and then closing down the School. The Claimant's own notes of the meeting indicate that Ms Hamilton showed flexibility in the meeting offering to conduct his appraisal in his second week back (at B908-912).

152. The Claimant then presented a further fitness for work certificate that stated that he "feels he is unable to cope with deadlines and appraisals at the moment" (at B933-934 at 932). This was discussed at a further meeting with Ms Hamilton on 12 July 2018 where she stated that an appraisal was a legal requirement and that any absence from work would be taken into account (at B933). Ms Hamilton initially stated that the Claimant could bring the necessary paperwork the following day and the appraisal could take place the following week but then said he could bring the paperwork on Monday if he felt this was too short a deadline. Ms Hamilton was following HR advice in this regard (at B932).

153. The expectation was that Teachers would have accumulated the necessary evidence over the year (the paperwork referred to) and the Claimant accepted in cross examination that he had some of the necessary evidence.

154. The Claimant went off sick from work a few days before his appraisal was due to take place. He had not undertaken any teaching duties and therefore he would not have had any evidence to collect for the rest of the academic year.

155. On 16 July 2018, the Claimant sent an email to Ms Hamilton in which he complained about the request to undertake an appraisal that week and

suggested awaiting the outcome of the forthcoming OH appointment (at B936-937). Ms Hamilton responded later that day stating that she would have to await an update following the Claimant's OH appointment before taking the matter forward to the next term (at B938).

(p) Pui Man and 11 and 18 July 2018 allegations

156. This paragraph extends over two pages of the agreed list of issues at B222-223) and we do not propose to reproduce it in full here. Reference can be made to the full wording in the attachment to this Judgment. Paragraph (p) contains a series of overly detailed and complex allegations (for a list of issues) against both Ms Hamilton and Ms Man. We have broken this down as the following headings indicate.

<u>The first part of paragraph 5 (p) – Ms Man asked the Claimant in a coercive manner to sign two inaccurate documents at the meeting held on 11 July 2018</u>

157. Following his return to work meeting on 9 July 2018, the Claimant was invited to a meeting on 11 July 2018 with Ms Man, the, then, School Business Manager, to sign off various documents relating to his return to work. The first document was a summary record of the meeting held on 9 July 2018 (which is at B919). The second was a risk assessment for stress (at B955).

158. The Claimant's evidence is as follows. Ms Man asked him to sign the record of the meeting in a coercive manner. He did not sign the document because it was not accurate and omitted vital information under the heading "Any other specific mediation information" that his doctor's advice he was fit for work for "teaching only" or indeed anywhere else on the document. In addition, the document did not give any explanation as to why he was unhappy with taking part in the appraisal process straightaway. Ms Man also asked him to sign/agree with the stress risk assessment document which she showed him on her computer screen. He did not sign it because it was not true. He refused to sign the documents in a polite way. Ms Man appeared to "look teary" and he suggested that they stop the meeting as he was unsure why she might be getting upset. He felt that she had been instructed to get him to sign and his refusal might get her into trouble.

159. Ms Man's evidence is as follows. She was only part of the way into the risk assessment document and the Claimant picked at every word that was used. She offered to let the Claimant take the document away if he wanted to. She also offered to sit with him and him and re-word it together (on her computer screen), However, he queried almost everything and she found his behaviour intimidating and he upset her unnecessarily (causing her to cry and indeed continue crying for some time afterwards). Ms Hamilton and Ms Bennett could hear what was happening and could see that she was upset and came over. The Claimant did not acknowledge that his behaviour had caused her to cry.

160. Ms Bennett wrote an account of the incident (her handwritten notes are at B917 and a typed version is at B928). The salient paragraphs are set out below:

"I was in a meeting with Anne at her desk, planning for next academic year. Pui was at her desk a few feet away and Dele came to sit next to her.

After a few minutes I could hear Pui saying 'I need you to sign the form' and Dele arguing. Pui agreed to change something and asked him if he is happy with it now. He said something and Pui said tomorrow would be OK.

After several more minutes, I heard Pui say 'Why are you arguing about this? It's to help you'. Dele offered to type something and said 'Why are you typing it? Can I type it?' and Pui said he couldn't because it is standard procedure.

Eventually, I heard Pui saying 'I am getting very stressed because you are not letting me do my job. No-one's getting at you, this is to help manage your stress'. It became clear that she was upset, and Anne went over to end the meeting and Dele left at that time. Pui cried for about 40 minutes, typing away on her PC at the same time."

161. Ms Hamilton witnessed what was happening. The Claimant accepted in cross examination that she had been looking over. Ms Hamilton was not involved in the incident and had not necessarily been able to hear what was said but came over at the end of the incident. We deal with what happened thereafter in the second part of paragraph 5 (p), below.

162. Ms Man's evidence is consistent with the account that she wrote the following day (at B922) and with the account she gave at a meeting Ms Hamilton subsequently held on 18 July 2018 to discuss the incident (at B947). It is also consistent with Ms Bennett's account.

163. Whilst the Claimant referred to other staff who he said had witnessed the incident and who confirmed that he had not behaved in an aggressive or untoward manner, no named witnesses came forward.

164. On balance of probability we favour the Respondent's evidence as to what happened at the meeting. The Claimant clearly refused to sign the documents and it does appear this manner of challenging the contents of the documents in the very least frustrated Ms Man and she found it upsetting.

165. As to knowledge. The Respondents submit that in cross examination, the Claimant was asked if he contended that Ms Man's behaviour was motivated by the Directed Time issue and his response was "I'll say no". On this basis the Respondents' aver that this allegation cannot proceed any further.

166. We do not agree that this is quite what the Claimant said when he was asked that question. Having checked our notes, the Claimant was asked if Ms Man had treated him badly because he raised Directed Time. He replied she was under a lot of pressure to fall in line with the Head (Ms Hamilton). He was then asked: are you saying she was motivated by it? He replied, indirectly, yes and when pressed as to whether Ms Man knew about the Directed Time issue he replied "I can't say she knew. I would say she was under pressure to fall in line with the Head's story."

167. However, Ms Man said in evidence that she did not receive any of the emails relating to the protected disclosures. She also stated that this was not something she was involved with. However, her evidence was that she was uncertain or equivocal as to whether she knew about the Directed Time issue

by the time of the meeting on 11 July 2018.

168. Nevertheless on balance of probability we find that there was no clear evidence that she knew or conspired with Ms Hamilton as the Claimant asserts.

169. We therefore find that the detriment is not made out.

<u>The second part of paragraph 5 (p) – the allegations against Ms Hamilton relating to meetings held on 11 and 18 July 2018</u>

170. First we take an overview of the incident.

171. Ms Hamilton was dealing with a situation where Ms Man had been brought to tears. The Claimant did not deny this. She had witnessed this from a far but was not directly involved and could not hear what had happened. But she saw Ms Man in tears and Ms Man continued to be upset for a least half an hour afterwards.

172. Ms Hamilton spoke to the First Respondent's HR partner who advised her to speak to the Claimant and tell him that his conduct was not acceptable.

173. We were referred to Ms Bennett's note of the incident at B928-929. This sets out her record of Ms Hamilton's conversation with the Claimant:

> *"Anne:. I am concerned that Pui is in tears next door. Can you explain why that has happened?*
>
> *Dele: Yes I can. She asked me to fill in a document that purported to be about my return to work.*
>
> *Dele said he asked to consult his notes and the absence management policy and that Pui offered him tomorrow.*
>
> *Dele said he was not happy to sign the return to work form because the number of days are 63 and one for a migraine, not 64 as stated. Regarding the document on the screen (stress risk assessment) he said 'She said it was to do with a risk assessment and is standard.'*
>
> *Dele then became very focused on the fact that I was taking notes, and asked 'Would I be able to have a copy of the notes Kate is taking?'*
>
> *Anne: This is a serious matter. Can you continue so I can get both sides of the picture? A member of staff is in tears after a meeting with you. You are obfuscating the matter.'*
>
> *Dele continued to focus on the fact that I was taking notes and said 'You've only heard one side.' He then began to ask me directly if he could have a copy of the notes.*
>
> *Anne: Can you continue explaining?*
>
> *Dele: you said the notes were for both of us. Can I have them?*
>
> *Anne: You have a choice whether to continue with this meeting or not.*
>
> *Dele said he was feeling bullied and harassed. Anne asked him to reflect on how Pui might have felt.*
>
> *He repeated that he was feeling bullied and harassed. Anne and I both stood up.*
>
> *and said in that case the meeting is ended."*

174. Ms Hamilton conducted a fact finding meeting with the Claimant and Ms Man on 18 July 2018, The School's notes of the meeting are at B947-950 and

the Claimant's notes are at B951-952.

175. Ms Hamilton subsequently sent an informal outcome letter to both the Claimant and Ms Man on 3 September 2018 (at B987). This sets out the following conclusions:

> *"I found that although you have slightly different accounts of what did occur it was clear that the discomfort you were feeling Pui, which led you to cry, came from your interactions with Dele.*
>
> *Pui, it is also clear to me that there was a lack of respect for you and the job you were trying to carryout on behalf of the school. There was a general disregard for you as a person, and the tension and manner in which you were treated was not acceptable.*
>
> *Here at Evelina, we are a supportive community and we aim to provide an environment where people can thrive; one that is warm, supportive and friendly. For teachers, expected behaviour is specifically outlined in the code of conduct, as it is for Evelina staff members. Everyone who works or visits here is entitled to feel safe when carrying out his or her roles.*
>
> *Finally I am saddened to add that although in the meeting, I gave Dele many opportunities to apologise for the behaviour and disregard he showed to you, he has not chosen to do so, which is lamentable and conduct unbecoming of a teacher at this school. Instead, he became defensive and implied that it was all a matter of interpretation and that there was an untruthful slant being put on the incident. I would have preferred him to take responsibility for his actions, but as he has indicated that he will not do so, it is my responsibility to look after the welfare of my team. Incidents like this have no place in Evelina Hospital School where we deal with very vulnerable children on a daily basis and I cannot allow it to go un-recorded."*

176. Turning then to what Ms Hamilton said to the Claimant at the meetings on 11 and 18 July 2018.

177. The Respondents submit that the language that Ms Hamilton used towards the Claimant at both 11 and 18 July meetings was influenced by the fact that she and Ms Bennett had been shocked at the turn of events and the intensity of the situation (at B928) and also by her experiences of the Claimant's behaviour over the last three years. Ms Bennett said in evidence that she had never seen Ms Man cry at any other time.

178. The Claimant's case is in essence that Ms Hamilton was biased at the two meetings. The Respondents accepted that Ms Hamilton made her comments to the Claimant based on her experience of him, particularly in the meeting of 18 July, but submitted that this had to be balanced against the fact that it was an informal process involving both sides simultaneously, not a court of law or a formal investigation.

179. The Respondents' averred that it is clear that what occurred between Ms Hamilton and the Claimant at these meetings and the language she used were a reaction to the situation in front of her rather than the email that the Claimant had sent her about Directed Time some 12 months previously.

180. We accept that Ms Hamilton was reacting to a difficult situation which had caused Ms Man distress. She clearly saw this as a continuation of the manner in which the Claimant conducted himself and the language she used towards him reflects that.

<u>Sub-paragraph (i)</u>

181. Turning then to sub-paragraph (i). This makes two allegations.

182. The first is that Ms Hamilton, without first investigating the aforementioned event, accused the Claimant of making Ms Man cry. The contemporaneous notes taken by Ms Bennett do not support this allegation (the handwritten and typed are at B917 and B928 respectively). It is clear that Ms Hamilton was attempting to find out from the Claimant what had happened.

183. Sub-paragraph (i) makes a further allegation, that Ms Hamilton refused to say who had instructed her to tell the Claimant to go and visit his doctor. We refer to Ms Hamilton's letter to the Claimant dated 11 July 2018 (at B920) which indicates that there was no refusal. Ms Hamilton told him these were suggestions (which included to visit his GP) based on advice given to her by Southwark HR (not an instruction as the Claimant asserts). We were also at a loss to see how this could amount to a detriment in any event.

Sub-paragraph (ii)

184. Turning then to sub-paragraph (ii), that in the meeting on 18 July (the fact finding meeting). The Respondents' notes of this meeting are at B947 and the Claimant's are at B951.

185. The first bullet point alleges that Ms Hamilton repeatedly made overly harsh and unjust criticisms of the Claimant in a number of regards:

    a. (the first sub-bullet point): She said when the Claimant "did not agree it was his strategy to argue more. This behaviour was not helpful. He needed to accept when she said no" (at the fourth paragraph of B950 of the Respondents notes).

    b. (the second sub-bullet point): That Ms Hamilton pointed out alleged inconsistencies in the Claimant's accounts of what happened and none of the inconsistencies in Ms Man's account such as: Claimant "was not rude and not physical but he created 'a feeling'"; and Claimant "was not loud, not shouting but the issue was the feeling he created by his mannerisms".

186. Having considered the evidence, we could not conclude that these statements were either harsh or unjust even if the Claimant does not agree with them. Sub-paragraph a. reflects Ms Hamilton's view of the Claimant based on her experience of him and was a view shared by Ms Bennett. As to sub-paragraph b. we would go as far as to say there is nothing in this and we are not even convinced that there were inconsistences in Ms Man's account as alleged.

187. The next bullet point alleges that Ms Hamilton repeatedly attacked the Claimant in terms of his professional and personal standing by saying things attributed to her in six sub-bullet points.

188. Having considered the evidence before us, we find that the first two sub-bullet points set out comments that Ms Hamilton made to the Claimant. The

Respondent's accepted this in any event. However, we do not find that the last four sub-bullet points contain statements that were made by Ms Hamilton. They do not appear in either the School's notes of the meeting or in the Claimant's notes. With regard to the last sub-bullet point, Ms Hamilton's evidence was that Ms Man had said on several occasions that the Claimant was loud, had raised his voice and was aggressive (at B947) and also passive-aggressive (at B950). She could not recall whether she also referred to him as being passive-aggressive and this is not recorded in the notes which were taken by a minute taker.

189. In cross examination, the Claimant was told that there was no reference to the last four sub-bullet points in his notes and his response was that they were there because he had "copied it from someone's account". He insisted that these statements were in his notes but we were not taken to them and could not find them. It was also pointed out to him that the comment "passive aggressive attitude" was in fact made by Ms Man and his response was that this was only recorded in the School's notes and not his. Whilst the Claimant was taken to several references to Ms Man stating that his voice was raised, that he was loud and aggressive and that this then led to stating he was passive-aggressive, he was adamant that Ms Hamilton had used this phrase.

190. The Claimant was taken to his own notes of the meeting at B952 which he accepted that he had written after the meeting being unable to write notes during the meeting. As Mr Linstead submitted, the Claimant was setting out his impression of a highly charged emotional meeting and they are not accurate. The Claimant replied that his notes were more accurate because they were truthful.

191. In his notes the Claimant states that Ms Hamilton accused him of being passive-aggressive, that she and Ms Bennett had experienced this in the past and then Ms Man started using the words passive-aggressive. His notes continue that for about 10 minutes both Ms Hamilton and Ms Man discussed how he was passive-aggressive and how he should stop being passive-aggressive.

192. On balance of probably we prefer the Respondents' evidence and find it implausible that the last four sub-bullet point statements were made by Ms Hamilton.

193. In any event, taking into account the context, whilst it is clear that the Claimant was being roundly criticised by Ms Hamilton for his behaviour there is nothing to suggest this is because of the protected disclosures.

194. Moving onto the next bullet point, the allegation that Ms Hamilton was putting words into the mouth of Ms Man. Ms Hamilton denies this. We find that if Ms Hamilton used a term, that the Claimant had a passive-aggressive attitude, which Ms Mann accepted and adopted, it was because she believed it appropriately reflected the behaviour that the Claimant was exhibiting. The Claimant's behaviour was inappropriate towards Ms Man, she was caused to cry and Ms Hamilton's response was to that and not as a result of the protected disclosures.

Paragraph 5 (q) C's work email account is suspended at the beginning of November 2018 two weeks after he raises a formal grievance, preventing C from accessing email evidence for the grievance. C contends it was not standard practice for R to suspend an email account when an employee is off work through sickness and that he asked for confirmation of the document upon which that contention was based, but it was not produced.

195. This is said to be paragraph (r) in the Claimant's witness statement and he then set out a new paragraph (q). However, the Claimant stated during our hearing that this was not being pursued.

196. So it is the paragraph 5 (q) within the agreed list of issues that we have to consider.

197. The Claimant's fourth claim (at B107) clearly states that the suspension of his email account was a response to Stage 1 of the grievance process arising from the grievance he submitted on 15 October 2018. The grievance is not a pleaded protected disclosure and it is not sufficient for the Claimant to rely on the grievance making reference to some of the same issues, ie Directed Time, which were referred to in his protected disclosures.

198. Ms Hamilton's evidence was that there was a genuine need to safeguard the health and well-being of staff in what was a hospital setting and it was true to say that unmonitored Teacher email accounts had not been a concern in the past. However, the School had not previously had to deal with a situation where a Teacher had been absent long-term with no return date. She took advice from the National Association of Head Teachers ("NAHT") and took the action to suspend the Claimant's work email account. Ms Hamilton also said in evidence that the School was learning best practice in such matters and now had a policy in place for dealing with any future occurrences (at B1076-1083 at 1079).

199. We were referred to an email from Guy Dudley, the Director, Advice & Legal Services at the NAHT dated 31 October 2018 (at B1034) in which he said as follows:

> *"Yes, the school is perfectly entitled to disable an employee's IT account and therefor disable access to all IT services – this is often seen as a duty of care – the employee is off sick and should not be accessing their IT account in any event."*

200. We were also referred to Ms Hamilton's letter to the Claimant dated 31 October 2018 ((at B1035) in which she said:

> *"I am writing to inform you that your school email account has been temporarily suspended. This is in accordance with Union guidance on supporting the wellbeing of employees who are on long term leave due to ill-health. We understand this to be standard practice. You account will be re-instated on your return to work."*

201. In an email dated 12 November 2018, the Claimant made a complaint about this action to the School Governors, stating that he was going to add it to his Employment Tribunal claims (at B1045). He also states that he had said several times that his preferred method of communication was by email.

202. However, we note that he took 12 days to complain about the action taken and also he was able to and did use his personal email instead.

203. Ms Hamilton replied to the Claimant's email on 16 November 2018 at B1050. She reminded the Claimant that his email account was for academic and professional use only but they would be happy to discuss the matter further by including it on the agenda for his return to work planning meeting on 30 November 2018. The Claimant did not respond to the offer and the meeting did not take place.

204. The reason for the action taken in suspending the Claimant's email account was reiterated in a letter to him from Ms Bennett dated 18 December 2018 (at B1119). The letter assured him that all necessary information would be sent to him by letter, in line with his previous request.

205. The Claimant said in evidence that the suspension of his work email account was deliberate action taken in order to prevent his access to emails for the purposes of preparing his grievance. However, in cross examination he confirmed that he had access to all his historic emails through the Cloud and we note that he was able to submit detailed written evidence for his grievances including all his old emails. We were referred by the Respondents to B1141-1197 in this regard.

206. The Claimant also said in evidence that his access to his historic email through the Cloud only took him up to the last point when he accessed the system. He also asserted in evidence that the last time he accessed the system was many months before. However, this cannot be correct because he used his work email account to email the School with his Stage 1 grievance on 15 October 2018 which was only two weeks before that email account was suspended (reference B1022). By that date the Cloud would have included all emails he had exchanged with the School relating to his grievances.

207. The Respondents submit that the suspension of his email account was to the Claimant's advantage for a number of reasons: it stopped him being troubled by work related emails (not least those relating to his capacity as a Staff Governor)and he had been off work with long-term ill-health due to work related stress.

208. In the first instance, we find that the Claimant by his own admission pleaded that the detriment of suspending his email account was taken as a result of his grievance and not because of a protected disclosure.

209. If we are wrong, we are satisfied that from the evidence it is apparent that he suffered no detriment from the suspension of his email account because he was able to access all of the information that he said this denied him access to from the Cloud and was able to use his own personal email account. In any event, he should not really have been using his work email for personal matters although Ms Hamilton accepts that there was no clear procedure in place governing the use of work email accounts at that time.

210. Moreover, there is nothing to suggest that his protected disclosures played any part in the action taken to suspend his work email account. It was taken on advice for health and welfare reasons.

Submissions

211. We had full written submissions from Mr Linstead running to 43 pages which he also spoke to. Mr Kohanzad gave oral submissions. We would comment that given the complexity of the case, the number of witnesses, the number of allegations and the size of the bundle, it would have been of greater assistance to us if Mr Kohanzad had also provided written submissions.

212. We do not propose to set the submissions out within our Judgment but refer to them where it is appropriate to do so.

Essential law

213. Employment Rights Act 1996:

"43A Meaning of "protected disclosure"

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

43B Disclosures qualifying for protection

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following—
(a) that a criminal offence has been committed, is being committed or is likely to be committed,
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
(d) that the health or safety of any individual has been, is being or is likely to be endangered,
(e) that the environment has been, is being or is likely to be damaged, or
(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

43C Disclosure to employer or other responsible person

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure . . . —
(a) to his employer, or
(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—
(i) the conduct of a person other than his employer, or
(ii) any other matter for which a person other than his employer has legal responsibility,
to that other person.

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

43F Disclosure to prescribed person

(1) A qualifying disclosure is made in accordance with this section if the worker—
(a) makes the disclosure . . . to a person prescribed by an order made by the Secretary of State for the purposes of this section, and
(b) reasonably believes—
(i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and
(ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed…

47B Protected disclosures
(1) 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.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—
(a) by another worker of W's employer in the course of that other worker's employment, or
(b) by an agent of W's employer with the employer's authority,
on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.
(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—
(a) from doing that thing, or
(b) from doing anything of that description.

(2) . . . this section does not apply where—
(a) the worker is an employee, and
(b) the detriment in question amounts to dismissal (within the meaning of [Part X])."

48 Complaints to employment tribunals

…(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B…

(2) On [a complaint under subsection (1), [(1XA),] (1ZA), (1A) or (1B)] it is for the employer to show the ground on which any act, or deliberate failure to act, was done…

(3) An [employment tribunal] shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and
(b) a deliberate failure to act shall be treated as done when it was decided on;
and, in the absence of evidence establishing the contrary, an employer[, a temporary work agency or a hirer] shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected do the failed act if it was to be done.

(4A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a)..."

Conclusions

Scope of the remission

214. The Order of the EAT dated 10 June 2021 allowed the Claimant's appeal and states that the matter be remitted to a differently constituted Employment Tribunal (at B201). The Judgment of HHJ Tayler at paragraph 34 states that

having regard to the principles in Sinclair Roche & Temperley v Heard [2004] IRLR 763, the matter should be remitted to a differently constituted Employment Tribunal given the likely practical problems in bringing the same panel back together again without further delay and that the errors of law were fundamental and it is better that the Claimant has the benefit of a new Tribunal considering these matters afresh (at B215).

215. The parties agreed that when the EAT has remitted a case to a differently constituted Tribunal, the Employment Tribunal will be entitled to reconsider the entire case afresh and will not be bound by any findings of fact or evidence made by or presented to the original Tribunal.

216. HHJ Tayler's Judgment also provided us with helpful guidance as to the legal matters which we have to determine, for which we are of course very grateful and have fully taken into account. This is set out at paragraphs 5 to 11 of the EAT's Judgment.

Time limits

217. A complaint that a worker has been subjected to a detriment for making a protected disclosure must be presented to an Employment Tribunal before the end of the period of three months, beginning with the date of the act or failure to act to which the complaint relates, or, where the act or failure to act is part of a series of similar acts, the last such act or failure to act (section 48(3)(a) of the Employment Rights Act 1996 ("ERA")). This is extended to take account of the Early Conciliation process.

218. Thus, the Tribunal will need to consider the point in time at which the alleged detriment is said to have occurred, not the point in time at which the disclosure or disclosures relied upon were made (Canavan v Governing Body of St Edmund Campion Catholic School UKEAT 0187/13).

219. The consideration of a series of similar acts or failure to act, is analogous to what is referred to as continuing discrimination under section 123 of the Equality Act 2010.

220. In Hendricks v Commissioner of Police of the Metropolis [2003] IRLR 96, a case dealing with continuing discrimination, the Court of Appeal held that a worker need not be restricted to proving a discriminatory policy, rule, regime or practice, if s/he could show that a sequence of individual incidents were evidence of a "continuing discriminatory state of affairs".

221. As with unfair dismissal, a Tribunal has the power to extend the time limit for a reasonable period if it is satisfied that it was not reasonably practicable for the complaint to have been presented in time (section 48(3)(b)).

222. The Claimant's second claim was presented to the Employment Tribunal on 19 June 2018 following a period of Early Conciliation starting and ending on 8 June 2018. This means that only acts/omissions occurring or continuing on 9 March 2018 will be in time.

223. The focus is therefore on the detriments set out at paragraph 5 (a) to (i) of the agreed list of issues as raised in the second claim as they pre-date 9 March 2018.

224. The detriments at paragraph 5 (o) to (q) of the agreed list of issues as raised in the third and fourth claims were presented in time.

225. Mr Linstead cites Hendricks and submits that detriments (a) to (i) are out of time and are not a series of similar acts or failures (at paragraph 24 of his written submissions). He further submits that the Claimant does not address these issues in his witness statement.

226. Mr Kohanzad submitted that these determents did extend over a period of time because there were two actors involved, Ms Hamilton and Ms Bennett who carried out the alleged acts. Mr Linstead responded to this as follows. To simply assert that two actors were involved does not make this an act extending over a period of time. Further, it is necessary to determine what acts are in time and which are not and as he points out, the Claimant has not presented any evidence of collusion aside one email which alleges was forged. More generally there is no evidence of Ms Hamilton being responsible for a continuing regime against him. In the alternative, he submitted that Claimant has not put forward any evidence that it was not reasonably practicable to have presented the claim in time (as at paragraphs 26-29 of his written submissions).

227. Mr Kohanzad made the following oral submissions. If you consider the detriments are established then they are part of a continuing act. The Claimant made a series of protected disclosures that resulted in a continuing deterioration in the relationship and we say it is easy to see as a continuing course of events manifesting discontent with the Claimant.

228. Having considered the position we agree with Mr Kohanzad and have applied this to the detriments that we did find.

229. Detriment (c) was in September 2017, although relatively low key. Detriment (e) was in November 2017 and closely linked to detriment (f) which was between December 2017 and July 2018 and are part of an escalation of the situation with the Claimant. Detriment (h) was on 21 February 2018 and is where Ms Bennett's view of Claimant escalates in her approach and is emboldened by Ms Hamilton's behaviour towards the Claimant. We find that this is a series of similar acts or omissions continuing beyond 9 March 2018. A continuing state of affairs to which Hendrick refers.

230. So we find that the detriments at (c) to (h) form part of a series of continuing acts or omissions continued beyond 9 March 2018.

The substantive case

Detriment

231. The meaning of detrimental treatment in discrimination law has been given a

relatively wide interpretation by the courts, as, indeed, have the analogous words "disadvantage" and "less favourable treatment" (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11 and Williams v Trustees of Swansea University Pension & Assurance Scheme and another [2018] UKSC 65

232. In Warburton v The Chief Constable of Northamptonshire Police, The Chief Constable of Northamptonshire Police v Warburton EA-2020-000376-AT; EA-2020-001077-AT, the EAT dealt with this in the context of victimisation and found as follows. The correct question for a Tribunal to ask itself is whether the treatment is of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment (following Shamoon). Detriment is to be interpreted widely in this context. It is not necessary to establish any physical or economic consequence. Although the test is framed by reference to a reasonable worker, it is not a wholly objective test. It is enough that a reasonable worker might take such a view. This means that the answer to the question cannot be found only in the view taken by the Tribunal itself. The Tribunal might be of one view, and be perfectly reasonable in that view, but if a reasonable worker (although not all reasonable workers) might take the view that, in all the circumstances, it was to her detriment, the test is satisfied. It should not, therefore, be particularly difficult to establish a detriment for these purposes.

The legal protection

233. This is a case involving what is commonly known as whistle-blowing. In essence this means that a worker is protected by law if s/he discloses certain categories of information and makes the disclosure to the correct person and in the correct way.

234. Under section 47B ERA, 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.

235. Under section 43B ERA, a disclosure must be of information that the worker reasonably believes to be in the public interest and tends to show one or more of the following has, is, or is likely to have taken place: a criminal offence; breach of a legal obligation; a miscarriage of justice; the health and safety of an individual has, is or is likely to be endangered; or information tending to show any of these has, is or is likely to be concealed.

236. Sections 43C–H ERA set out to whom qualifying disclosures may be made and in what circumstances.

237. For there to be a "protected disclosure" under section 43 ERA:

    a. The Claimant must have "disclosed" "information";

    b. The disclosure can be orally or in writing. It need not follow any special whistleblowing procedure, even if the employer has such a procedure. The factual disputes before the tribunal may be:

i. If it was an oral disclosure, what exactly was said, to whom and when? The respondent may deny it was said at all or allege that something different was said;

ii. If it was a written disclosure – where was it written and who received it/read it.

c. What "information" was disclosed? The claimant needs to identify exactly what he said or wrote amounted to the relevant "information". Often Claimants say the disclosure was in a long email. But what is the relevant "information" which the email contained?

d. Does it amount to "information" under the law? Complaints, allegations and comments may or may not contain "information".

e. It does not matter that the Claimant was telling his employer something which the employer already knew. It is still a "disclosure of information".

238. The information must, in the claimant's reasonable belief, tend to show one of the following:

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

b. that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

c. that a miscarriage of justice has occurred, is occurring or is likely to occur,

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

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

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.

239. The Tribunal should pinpoint what issue the Claimant had in mind. For example, if the belief concerns a criminal offence, what criminal offence? If it concerns breach of a legal obligation, what legal obligation?

240. It is not our function to decide whether in fact there is a danger to health and safety (for example). The Tribunal must decide:

a. Did the Claimant believe the information tended to show a danger to health and safety?

b. Was that belief 'reasonable' for the claimant to hold?

241. The Tribunal does not usually have to decide whether the Claimant's

concerns were correct.

242. The Tribunal must also consider whether the disclosure was, in the Claimant's reasonable belief, made in the public interest. Again, the question is not whether the disclosure was in fact in the public interest. The Tribunal must decide:

    a. Did the claimant believe disclosure was in the public interest?
    b. Was it reasonable to believe that?

243. It does not matter if disclosure was also made in the Claimant's own interest.

244. The "public" can simply be other people employed by the same employer.

245. What is in the "public interest" is common sense looking at all the circumstances including:

    a. How serious was the matter?

    b. How many people might be affected?

    c. The identity of the wrong-doer.

246. Once the protected disclosure is identified, the Tribunal has to decide whether the reason or part reason for the detriments was one or more of the disclosures (under section 47B ERA).

247. The burden of proof is closer to that in discrimination claims, ie once less favourable treatment amounting to a detriment following a protected disclosure has been shown, the Respondent must prove under section 48(2) ERA on what ground it acted and that the protected disclosure was no more than a trivial influence, if any, on its treatment of the Claimant (Fecitt & Ors v NHS Manchester [2012] IRLR 64, CA).

The disclosures that the Claimant relies upon

248. We would make the observation that whilst the School had a Whistle-Blowing Policy, the Claimant never followed it. He took the School to task for not following it but did not reference it during the events in question.

249. We turn now to set out our conclusions as to whether those matters relied upon by the Claimant amount to protected disclosures. We refer to these by reference to their dates. The disclosures are summarised at paragraph 1 of the agreed list of issues (at B220).

9 July 2017

250. Is there a disclosure of information? We conclude that yes there is. The Claimant lays out the definition of Directed Time, what he believes to be the actual Directed Time and what he believes to be the excess worked over and above Directed Time. He provides detailed calculations. He does not talk of

his own position. He does not talk about pay either. He raises the matter as a general proposition on behalf of the Teachers in respect of the current position by reference to the academic year 2016-17, which is just about to finish.

251. The worker must believe that the disclosure is made in the public interest. It does not matter if that includes the Claimant's own interests. The public can include other people employed by the same employer, although here we do not find that the Claimant is raising his own interests. The employer does not have to be a large employer or body of staff, as the Respondents submit. The employer is a School and the Claimant's concern is that there is a requirement to work more hours than the staff are supposed to, rather than it being discretionary. The public here can include the Teachers, the children and the families of the children being taught and the Council Tax payers of the London Borough of Southwark. We therefore conclude that this disclosure is in the public interest.

252. If the worker does hold such a belief, it must be reasonably held. Whilst the Claimant's evidence and submissions as to the public interest is perhaps over broad and appears to overstate the level of public interest, there is a wider public interest in terms of the hours Teachers are required to work in excess of what they are obliged by statute to work. We accept that the Claimant's belief was reasonably held. Indeed, there was nothing to indicate that the Claimant was not at all times acting with a reasonable belief.

253. The Claimant must believe that the disclosure tends to show one or more of the matters listed in section 43(1) ERA. The Claimant is relying on sub-section (b), breach of a legal obligation. Namely, the failure to adhere to the maximum Directed Time requirements. This is set out clearly in his email. He says it appears that the School is in breach. He is being polite, but he is clear in his analysis that the School is in breach and he is seeking an explanation in case he is wrong.

254. We were not able to conclude that this was a case involving a trivial and/or an inadvertent breach of the Directed Time requirements, as Mr Linstead submitted by reference to the test in Chesterton Global v Nurmohamed [2017] ICR 920 CA, at paragraphs 12 and 44 of his written submissions.

255. If the worker does hold such a belief, it must be reasonably held. We find that it was reasonably held. Indeed, there was nothing to indicate that the Claimant was not at all times acting with a reasonable belief.

256. The disclosure was made to the Claimant's employer.

257. We therefore conclude that this is a protected disclosure.

17 & 19 July 2017

17 July 2017

258. Is there a disclosure of information? This contains more information than the

Claimant's email to Ms Hamilton contained. It contains his concerns about the last two academic years. He is seeking clarification on behalf of all staff. He seeks remuneration on behalf of all staff. But there is nothing materially different in this email to the last one.

259. The worker must believe that the disclosure is made in the public interest. The answer to this is yes he did.

260. If the worker does hold such a belief, it must be reasonably held. The answer is yes.

261. The worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). The Claimant again relies on a breach of a legal obligation.

262. If the worker does hold such a belief, it must be reasonably held. The answer is yes.

263. The disclosure is made to the Claimant's employer. He is writing as Staff Governor to the Chair of the Board of Governors. He could not hold that position unless he was an employee and the person he is writing to is the Head of the Board of Governance for his "employer"

264. We therefore conclude that this is a protected disclosure.

19 July 2017

265. Whilst the email of 19 July 2017 does not add anything to the claim, it does not matter that it is telling Mrs Mullins something she already knew. It is still a disclosure of information. It indicates the level of concern that the Claimant has and the sense of urgency to resolve the matter given that the School year was about to end.

266. We come to the same conclusions as above.

267. We therefore conclude that this is a protected disclosure.

16 October 2017

268. The email is sent to the members of the FPP Committee with regard to an agenda item. In it the Claimant explains that he believes that the School is non-compliant with statutory guidance and he sets out why.

269. We come to the same conclusions as above.

270. We therefore conclude that this is a protected disclosure.

21 January 2018

271. This is the disclosure to the DfE at B690 .
272. Is there a disclosure of information? It is a disclosure as to the hours he

states that he is owed given that he records that the Directed Time matter has been resolved.

273. The worker must believe that the disclosure is made in the public interest. We do not find that this is a disclosure of information made it the public interest. What the Claimant raises is a pay issue and ancillary matters (as to his historic performance and appraisal documents) which are a local workplace issues.

274. If the worker does hold such a belief, it must be reasonably held. This is not applicable given our above conclusion.

275. The worker must believe that the disclosure tends to show one or more of the matters listed in section 43B ERA. It relates to a legal obligation.

276. If the worker does hold such a belief, it must be reasonably held. Whilst the Claimant did at the time, this entitlement was subsequently was rejected by the Employment Tribunal.

277. In any event we have already determined that it does not amount to a protected disclosure.

9 February 2018

278. This is the disclosure to the London Borough of Southwark at B729-730. Arguably it is to the Claimant's employer given the duality of roles of both Respondent's or to a prescribed person.

279. Is there a disclosure of information? It is but only about the Claimant's own working hours not other teachers.

280. The worker must believe that the disclosure is made in the public interest. Nothing in this email suggests that the Claimant believes it is a disclosure made in the public interest. We heard no evidence as to his belief that this disclosure was made in the public interest. In cross examination the Claimant said he was advised by ACAS to confine matters to his own claim and case. He accepted that he had gone to ACAS so as to secure a settlement of this claim. It was unclear in his answers whether the Claimant believed that he raised the matter in the public interest. No positive case was put forward that he did. So what we are left with is no evidence of any belief in public interest.

281. If the worker does hold such a belief, it must be reasonably held. This is not applicable given our above finding.

282. The worker must believe that the disclosure tends to show one or more of the matters listed in section 43B ERA. Whilst the previous correspondence is attached to the email in question, it relates generically to all teachers. His email does not raise anything more than a breach of his own contract.

283. If the worker does hold such a belief, it must be reasonably held. This again

is rendered non-applicable.

284. We conclude that this is an entirely personal email notifying the London Borough of Southwark of a potential Employment Tribunal claim he has notified to ACAS stating that they will be in contact.

285. We therefore conclude it is not a protected disclosure.

The detriments relied upon

286. We are asked at paragraph 6 of the agreed list of issues to decide whether these incidents happened as asserted by the Claimant and at paragraph 7 whether they amount to acts of detriment pursuant to section 47B ERA. Dealing with each detriment in turn by reference to paragraph 5 of the list of issues (5 (a) and (g) were not pursued).

Paragraph 5 (a) Anne Hamilton changing establish classroom procedures for C, such that they were allegedly less favourable to C, because other teachers were not informed of the changes. The procedures concerned the situation when no students arrive for a classroom lesson, 20 July 2017

287. As we have said above, we find that this incident did not happen as asserted because the evidence does not support that there was a change of procedures or even one set way of dealing with this situation and the Claimant was not singled out for this alleged treatment in any event.

288. The allegations as to Ms Hamilton's conduct and demeanour on that day did not form part of the alleged detriment and there was no evidence that this was as a result of the Claimant raising the protected disclosures. The instruction she gave was clearly in line with the instruction she had given to other teachers in similar circumstances.

289. We therefore conclude that this detriment is not made out.

Paragraph 5 (b) Anne Hamilton changing the opening and closing times of the school from the first day back at the start of the academic year on 4 September 2017.

290. As we have said above, there appears to be an apparent contradiction between this given that the Claimant was effectively complaining about excess directed hours. So limiting his working day by limiting the School opening and closing hours does not amount to detriment. It is actually going some way to addressing the issue that the Claimant has raised although perhaps the changes were an unexpected consequence of his raising the issue of Directed Time.

291. We therefore conclude that this does not amount to a detriment.

Paragraph 5 (c) Anne Hamilton told teachers that the opening and closing times of the school was the consequence of C's email of July 2017

292. We refer to our above findings. We find this to be a detriment because Ms

Hamilton was clearly telling Ms Ryden that the Claimant was to blame for the change in opening and closing times. This change has come about as a result of the Claimant raising the issue of directed time. However, it was not a secret that the Claimant had raised the matter and it had been at the behest and with the knowledge of the majority of the Teachers. As we have said, perhaps the change in opening and closing times was an unexpected consequence of the raising of the issue of Directed Time.

293. But it then follows that there is a clear connection between the protected disclosures and the detriment. Ms Hamilton would not have said this but for the Claimant raising the issue of directed hours.

Paragraph 5 (e) Anne Hamilton sent an email to C entitled 'Notice of Concern' on 3 November 2017. And then failed to respond to C's four subsequent emails asking her to specify what Teachers' Standards she believed C was not meeting

294. In view of our above findings we conclude that the sending of the notice of concern amounts to a detriment and failure to respond to the Claimant's requests also amounts to a detriment.

295. We further conclude that these detriments were because the Claimant had raised a protected disclosure.

Paragraph 5 (f) Following Anne Hamilton telling C she had received a complaint from colleagues about him on 1 December 2017 she subjected him to a detriment by the time she took to address the complaint and tell him in July 2018 that it was not being pursued

296. In view of our above findings, we find that this amounts to a detriment, that her actions were completely inappropriate and given this that the detriment must be because the Claimant had raised a protected disclosure.

Paragraph 5 (h) Kate Bennett sending a humiliating email to C on 20 February 2018, that was lacking in any corroborative evidence, accusing C of not following the instructions to all staff regarding testing of students, as well as falsely listing Teaching Standards she claimed C had broken in the process

297. As we indicated above we decided that this matter was borderline in itself but we decided to consider it once we had dealt with the detriment at paragraph 5. (j) of the list of issues.

298. The test is whether the protected disclosure materially influenced her treatment of the Claimant?

299. Having considered this again after considering paragraph (j), we formed the view that Mrs Benefit would have sent this email in any event given the Claimant's general behaviour. But it was hard to divorce the Claimant's general conduct in these matters from the Claimant raising the Directed Time issue and it does appear that Ms Bennett has taken her lead from the approach that Ms Hamilton has taken in dealing with the Claimant's actions over the Directed Time issue/

300. We therefore concluded that this was a detriment and that it was because of the protected disclosure.

Paragraph 5 (i) Anne Hamilton asking C to carry out an audit of IT equipment across the whole school on 21 February 2018 with an impractical deadline, during the narrow opening and closing times of the school building, increasing C's workload as a fulltime teacher significantly

301. We formed the view that this was a task that needed to be done and was of some importance. The Claimant was able to carry out the task and in fact did so by the deadline set. We did not find this to be an impractical deadline or evidence as to how it increased his workload significantly. It seemed a relatively straightforward task.

302. We therefore did not view it to be a detriment.

Para 5 (j) Kate Bennett not prompting C to attend a scheduled half hour one to one meeting on 9 March 2018, even though C was eight steps away in the same room at his desk, but instead producing documents to put him in a negative light, and circulating them to the Governing Body and the Pastoral and Curriculum Committee

303. This is clearly a detriment and we concluded that it was impossible to divorce the general frustration with the Claimant from the protected disclosures because they (Ms Hamilton and Ms Bennett) viewed him a person who would not take instruction and pedantically raised matters and would not let go of them. We did form the view that the protected disclosures had more than a trivial influence on the action taken.

304. It did appear to us that what Ms Bennett in effect did was to sabotage the Claimant in front of the PCC/Governing Body, in return for the action he had taken in sabotaging her and Ms Hamilton. It was in effect attempting to show what this troublemaker was really like. By this time, the Claimant had already contacted the DfE and ACAS, although we did not find these actions to amount to protected disclosures. But even so we cannot divorce the protected disclosures from having a more than trivial influence.

305. The email and not telling the Claimant about the meeting. Although borne out of a general level of irritation and resentment (by not listening or contributing to matters Ms Bennett has responsibility for) and although in the protected disclosures may have been of influence in the background, they had no more than a trivial influence. This action was more of a human although flawed reaction.

306. The circulating of the report. It was opportunist to do so, the Claimant having not turned up to the meeting or responded and he was off sick and was done in the full knowledge of what he had done before in his Governor role by putting matters before the board. We find this is a detriment and was done because of the protected disclosures.

Paragraph 5 (k) Anne Hamilton at a Governing Body Meeting on 12 March 2018

in which C was in attendance, stated that she was taking a member of staff through capability procedures without saying who it was

307. In view of our above findings, we conclude that this is a detriment and it was done because of the Claimant's protected disclosures.

Paragraph 5 (l) At C's return to work meeting 24 April 2018 Anne Hamilton refusing to open the letter explaining C's grievance outlining current instances of bullying that had led to his absence

308. We refer to our above findings. However, her not dealing with his letter there and then is not inappropriate, notwithstanding the tone of the meeting and being dismissive of his stress in her behaviour (which the Claimant is not complaining about) and we conclude that it does not amount to a detriment. The letter was later dealt with.

Paragraph 5 (m) Anne Hamilton treating C with scant regard to the principle of duty of care leading up to and during the return to work meeting on 24 April 2018 by standing up throughout the meeting and raising her voice to C

309. Given our findings we conclude that this detriment is not made out.

Paragraph 5 (n) In the Health Review Meeting on 23 May 2018, Anne Hamilton failing to satisfactorily address bullying events described by C in his letter of 24 April 2018 and refusing to distribute the last Return to Work Sickness Interview record

310. Failing to satisfactorily address. We conclude that simply because the Claimant finds the outcome unsatisfactory does not in itself make it a detriment. It is clearly not good practice for the person who is the subject of the grievance to write the response. But the Claimant raises his concerns, they have a meeting led by an HR Partner who goes through them and Ms Hamilton writes in response. Furthermore, the Claimant still had full recourse to the grievance process. So we find that this does not amount to a detriment.

311. As we have said above, refusing to distribute the last return to work record, the Claimant has not stated why this amounts to a detriment, he made his own notes of that meeting and to link this to his protected disclosures made some eight months earlier is stretching things.

Paragraph 5 (o) Anne Hamilton on 9 July 2018 asking C to take part in the appraisal process against medical advice on his return to work after 13 weeks sick leave due to work related stress and giving C significantly less time to complete the task than all other teachers

312. We refer to our above findings. We conclude that Ms Hamilton's actions did not subject the Claimant to a detriment for the following reasons: when she initially suggested an appraisal, there was no indication in the first fit note that an appraisal could not happen; when she suggested the appraisal it was accompanied by her offer of a more favourable phased return to work than that suggested by the Claimant's doctor; when the Claimant expressed

concerns, Ms Hamilton moved back the appraisal and then the request for the necessary paperwork to the following week; when the Claimant presented the second fit note and an email asking her to wait until after the further OH appointment, she agreed and stated that the matter could await the following term.

Paragraph 5 (p)

313. This paragraph extends over two pages of the agreed list of issues at B222-223) and we do not propose to reproduce it here. It contains a series of overly detailed and complex allegations against both Ms Hamilton and Ms Man. We have broken this down as the following headings indicate.

<u>The first part of paragraph 5 (p) – Ms Man asked the Claimant in a coercive manner to sign two inaccurate documents at the meeting held on 11 July 2018</u>

314. In view of our above findings, we concluded that this element of the detriment is not made out.

<u>The second part of paragraph 5 (p) – the allegations against Ms Hamilton relating to meetings held on 11 and 18 July 2018</u>

315. In view of our above findings and the Respondents' submissions, we accept that Ms Hamilton was reacting to a difficult situation which had caused Ms Man distress. She clearly saw this as a continuation of the manner in which the Claimant conducted himself and the language she used towards him reflects that. We conclude that this detriment is not made out.

<u>Sub-paragraph (i)</u>

316. This makes two allegations.

317. The first is that Ms Hamilton, without first investigating the aforementioned event, accused the Claimant of making Ms Man cry. In view of our above findings we conclude that this detriment is not made out.

318. The contemporaneous notes taken by Ms Bennett do not support this allegation (the handwritten and typed are at B917 and B928 respectively). It is clear that Ms Hamilton was attempting to find out from the Claimant what had happened.

319. Sub-paragraph (i) make a further allegation, that Ms Hamilton refused to say who had instruct her to tell Claimant to go and visit his doctor. In view of our above findings we conclude that this detriment is not made out and as we said we were at a loss to see how it could amount to a detriment in any event.

<u>Sub-paragraph (ii)</u>

320. Sub-paragraph (ii) makes allegations in relation to the meeting on 18 July (the fact finding meeting). This is divided into a number of bullet points.

321. With regard to the first bullet point that Ms Hamilton repeatedly made overtly harsh and unjust criticisms of the Claimant, this is sub-divided into two sub-bullet points. As we said above, having considered the evidence we could not conclude that these statements were either harsh or unjust. We concluded that the comments in the first sub-bullet point reflected Ms Hamilton's view of the Claimant based on her own experience and as to the second sub-bullet point, we went as far as to say that there was nothing in it and we were not even convinced that there were any inconsistences in Ms Man's account of the incident.

322. The next bullet point alleges that Ms Hamilton repeatedly attacked the Claimant in terms of his professional and personal standing by saying things attributed to her in six sub-bullet points.

323. As we set out above, we only found that two of the comments within the bullet points were actually said on balance of probability preferred the Respondents' evidence and find it implausible that the last four sub-bullet point statements were made by Ms Hamilton.

324. And as we went on to say, in any event, taking into account the context, whilst it is clear that the Claimant was being roundly criticised by Ms Hamilton for his behaviour there is nothing to suggest this is because of the protected disclosures.

325. The next bullet point sets out the allegation that Ms Hamilton was putting words into the mouth of Ms Man. We found that Ms Hamilton was merely repeating what Ms Man said and in any event what took place in the meeting was a reaction to what Ms Hamilton viewed as inappropriate behaviour by the Claimant towards Ms Man which had caused her to cry and not as a result of his protected disclosures.

Paragraph 5 (q) C's work email account is suspended at the beginning of November 2018 two weeks after he raises a formal grievance, preventing C from accessing email evidence for the grievance. C contends it was not standard practice for R to suspend an email account when an employee is off work through sickness and that he asked for confirmation of the document upon which that contention was based, but it was not produced.

326. We have set out our findings above. We conclude as follows.

327. In the first instance, we find that the Claimant by his own admission pleaded that the detriment of suspending his email account was taken as a result of his grievance and not because of a protected disclosure.

328. If we are wrong, we are satisfied that from the evidence it is apparent that he has suffered no detriment from the suspension of his email account because he was able to access all of the information that he said this denied him access to from the Cloud and was able to use his own personal email account. In any event, he should not really have been using his work email for personal matters although Ms Hamilton accepts that there was no clear procedure in place governing the use of work email accounts at that time.

329. Moreover, there is nothing to suggest that his protected disclosures played any part in the action taken to suspend his work email account. It was taken on advice for health and welfare reasons.

Summary of our conclusions

330. To summarise from our conclusions, our Judgment is as follows:

    a. We found that paragraph 1 (a), (b), (d) of the agreed list of issues amounted to protected disclosures. Paragraph 1 (c) and (h) were not pursued. Paragraph (e) and (g) did not amount to protected disclosure.

    b. We found that the Claimant was subjected to the following detriments on the ground that he had made protected disclosures: paragraph 5 (c), (e). (f), (h), (j) and (k) of the agreed list of issues. Paragraph 5 (a), (b), (i), (l), (m), (n), (o), (p), (q) either did not happen as asserted or were not done on the ground that the Claimant had made protected disclosures.

Further disposal

331. We only dealt with liability and heard no evidence on remedy.

332. The matter will be listed for a one day remedy hearing on the first available dates after 15 January 2024. The parties should indicate by that date whether they still require a remedy hearing. If they do, case management orders will be issued in order to prepare the case for that hearing.

Attached: Agreed List of Issues

Employment Judge Tsamados
09 November 2023

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