Case No: 2305702/2021
2301425/2022

EMPLOYMENT TRIBUNALS

Claimant: Mr P Mundy-Castle

Respondent: Woodcote High School

Heard at: London South
On: 18, 19, 20, 21, 24, 25, 26, 27 June 2024. In chambers 28 June 2024 and 12 August 2024

Before:
Employment Judge Heath
Ms J Cook
Mr M Taj

Representation
Claimant: Mr K Ross (Counsel)
Respondent: Ms R Miller (Counsel)

RESERVED JUDGMENT

The claimant's claims of direct race discrimination, race-related harassment, victimisation, whistleblowing detriment, automatically unfair dismissal (section 103A Employment Rights Act 1996), unfair dismissal and wrongful dismissal are not well-founded and are dismissed.

CORRECTED REASONS

Introduction

1. In the sections below we will set out our detailed factual findings, the legal principles at play in this case and the conclusions we have drawn applying the law to those facts. We were presented with a substantial amount of evidence in this case, and there is, as is often the case, considerable factual and legal complexity. However, the essence of the dispute between the parties can be set out fairly simply:

a. The claimant, a black man, says that he was unreasonably taken through a flawed disciplinary process which led to his dismissal from his post as head teacher of the respondent school. He says his harsh treatment was in stark contrast to the lenient treatment meted out to various white colleagues who had committed misconduct. He says the disciplinary process and dismissal (and certain other acts) were acts of racial discrimination or race-related harassment, victimisation for having raised certain equality related issues; that his suspension was a detriment for having made protected disclosures, and that his dismissal was automatically unfair following his whistleblowing. He makes an "ordinary" unfair dismissal claim also, asserting that he has two years continuous service.

b. The respondent says that the claimant committed acts of gross misconduct, largely relating to financial irregularities. It accepts that the claimant raised certain equalities issues, but does not accept that he was a whistleblower. It says that the comparisons with other staff the claimant seeks to make are not genuinely comparable. It says that it disciplined the claimant and dismissed him solely because of misconduct following a fair procedure, and that equalities complaints, disclosures of information and the claimant's race were in no sense factors in its decision-making. It says it dismissed the claimant before he acquired two years' service, but that in any event the dismissal was a fair one.

2. We do stress that this is only a thumbnail sketch of the nature of the dispute in what is a complicated case.

The Issues

3. A Case Management Preliminary Hearing ("CMPH") took place before EJ Pritchard where both parties were represented by their solicitors. The parties were ordered to cooperate with each other and agree a list of issues by 31 January 2023. An agreed list of issues was prepared, and appeared in the bundle.

4. On the first day of the hearing the tribunal made certain observations about the content of the List of Issues and it was envisaged that some "tweaks" would be made to it. The tribunal read into the case on the afternoon of the first day and the whole of day 2.

5. As set out below, much of day 3 was taken up with further preliminary issues. However, in the afternoon a further discussion took place about the List of Issues. The judge observed that the section on the issues relating to protected disclosures was deficient in certain regards. At the end of day 3 the judge sent the parties a template for setting out the issues in respect of protected disclosures, which the parties were to agree, fill out, incorporate into the final List of Issues and email to the tribunal. The parties provided an agreed final List of Issues at the start of day 8.

6. During its deliberations the tribunal noted that the final List of Issues did not include 2 issues which had been in an earlier draft. The claimant had not withdrawn these issues during the course of the hearing, and we assumed that their non-inclusion was by oversight of the parties. We have accordingly also determined these issues.
7. The final list of issues is annexed below. With the addition of the following as acts of direct race discrimination, harassment and victimisation:
    a. *The malicious demand for a repayment of £2,200 on 15 January 2022 [claim 2]*
    b. *The allegation of harassment and threat to call the police of 9 March 2022 [claim 2].*

Procedure

8. Unfortunately one of the members assigned to this case was admitted to hospital on the night before the hearing. Efforts were made to find a replacement member. No replacement member within the region was identified, so efforts were made to find a replacement member nationally. Mr Taj, who sits in the Yorkshire region, offered to step in at the last moment. Due to geography, he could only sit remotely.
9. On the morning of the first day of the hearing, the parties were informed of the difficulties the tribunal had experienced. The parties were given time to reflect on whether they agreed to a hearing which would involve one of the members sitting remotely, and both parties agreed to this.
10. There were discussions about a timetable for the hearing, and it was agreed that the tribunal should take the afternoon of day 1 and the whole of day 2 as reading days. As set out below, there were numerous witness statements and over 3500 pages of documents.
11. The claimant had also indicated an application to amend his claim to add two further matters, and an application for specific disclosure. The claimant also sought to put in what was termed a Rebuttal Statement, which had not been ordered at the previous CMPH. It was agreed that the determination of these preliminary issues would be put off until after the tribunal had read into the case.
12. During the tribunal's reading time, it became apparent that there were a number of issues relating to privacy which had not been flagged up by the parties. The extent of these issues were not apparent until fairly late into the tribunal's reading.
13. On the morning of day 3, the tribunal raised the privacy issues with the parties. At this stage, the parties themselves had been in discussion about them. The parties were given time to reflect on the issues the tribunal raised, and it was agreed that the tribunal would conduct a case management preliminary hearing in private to determine the privacy matters and other preliminary issues identified above.

Privacy

14. The tribunal made various orders under Rule 50 Employment Tribunal's Rules of Procedure 2013 ("ET Rules"), which are dealt with in separate documents. We gave our reasons for making the orders orally.

Amendment

15. While the tribunal had some concerns about the timing and manner of the application, and the fact that the allegations, being fairly vague on dates, made it difficult to assess any time limits, we concluded that the balance of prejudice favoured granting the amendment. It related to 2 discrete allegations made against Mr Savla, and had been flagged up by the claimant prior to exchange of witness statements, which gave Mr Savla the opportunity to address both allegations in his witness statement. We gave our reasons orally. The amendment is the addition of paragraphs 7k and 7l in the List of Issues.

Specific Disclosure

16. The application for specific disclosure was made by email from the claimant's solicitors dated 11 June 2024. The documents requested were set out under seven numbered paragraphs. Mr Menham, the respondent's solicitor, who had been responsible for case preparation for the respondent, addressed us on each of the requests.

17. We gave our reasons orally for refusing the application in respect of all documents. In short, we accepted Mr Menham's representations that he and the respondent had made diligent and reasonable efforts to locate all documents, notwithstanding the respondent's concerns about the relevance of many of them.

    a. We accepted that the respondents did not have possession or control of the documents requested under paragraphs 1 and 3.

    b. We accepted that documents under paragraph 2 had been provided by the respondent.

    c. We accepted that all documents that existed under paragraphs 4.1, 4.2, 4.3 and 4.4 had been provided.

    d. We accepted that the respondent did not have custody or control of documents under 4.5. We further observed that the document was not necessary for the determination of the issues.

    e. We accepted that no documents under paragraph 5 could be located. We reminded the parties of the ongoing duty of disclosure, and observed that any documents found during the course of proceedings which are disclosable should be disclosed.

    f. We accepted that documents under paragraphs 6 and 7 have been provided (but observed, given the nature of the case, but they did not seem relevant to the issues in any event).

Rebuttal statement

18. We had read this statement in our reading into the case. There had been no provision for it in the case management orders, and we observe that such statements are not the norm. We agreed with the respondent that the content of this statement was more in the nature of submissions rather than evidence. We further observed that the nature of the evidence was, essentially, a commentary seeking to undermine the evidence of the respondent witnesses. It is obviously perfectly proper for a party to seek to undermine the other party's case, but this is catered for in litigation by cross examination and closing submissions. We agreed with the respondent that admitting this statement, which was 38 pages long, would either mean the respondent's cross-examination would have to be extended (eating into the timetable of the hearing) or that we would have to guillotine it. Having regard to the overriding objective we did not allow this statement to be put in. We made clear to the claimant that there was nothing stopping him from attacking and undermining the respondent's evidence through cross-examination and submissions.

Adjustments

19. The claimant made reference to his poor mental health in his witness statement, and there were references to it in the evidence. At the start of the hearing the tribunal made clear to the claimant that it would be taking a mid-morning break and an afternoon break. The claimant was encouraged to reflect on whether he might be in any difficulty during the hearing, and if he was, to let the tribunal know so that adjustments could be considered.

20. The tribunal agreed to start late on day 5 to allow the claimant to attend a medical appointment. At the start of the afternoon hearing on day five the claimant, who was in the middle of giving evidence, appeared to be in some difficulty. We took another break, and allowed the claimant to discuss any difficulties he may be having with Mr Ross (despite him being in the middle of evidence) so that any further adjustments could be considered. Mr Ross told us after a short break that he had been unable to talk with the claimant, but that it was clear that he was still in difficulty. He applied to adjourn the hearing to the following morning. The tribunal agreed to this application, which was not opposed by the respondent. The claimant attended the following morning and was well enough to continue with the case.

Other matters

21. The original bundle was of 3055 pages. By agreement, two supplementary bundles were provided, which followed the pagination of the original bundle and took things up to page 3187. The claimant also provided a claimant's bundle of 540 pages. When we refer to pages in the bundles we will do so in the following format – [1254] is page 1254 of the main bundle; [C350] is page 350 of the claimant's bundle.

22. The claimant provided a witness statement and gave evidence on his own behalf. Ms Gray, a former teacher at the school also provided a witness statement and gave evidence on behalf of the claimant remotely by CVP. The following provided witness statements which were tendered, but were not called to give evidence, as Ms Mellor stated that she did not seek to cross-examine them as she did not consider their evidence relevant to the issue in the case:
    a. Mr E Comrie;
    b. Ms I Njie;
    c. K Lakshminarayanan;
    d. Mrs L Keefe;
    e. Mrs S Brown;
    f. Ms Y Dixon;
    g. B Sall;
    h. Ms C Hyatt-Cort;
    i. Mr C Jones;
    j. Ms D Afriyie;
    k. Ms E Ratti.
23. The following, all governors (or in Mr Savla's case, a former governor) of the school provided witness statements and gave evidence on behalf of the respondent:
    a. Mr H Savla;
    b. Mr C Taylor;
    c. Mr M Wallace
24. We began hearing oral evidence on day 4 of the hearing. The evidence concluded at the end of the morning of day 8 of the hearing. The parties provided oral submissions in the afternoon which concluded late in the afternoon. We indicated that the tribunal would deliberate on day 9 (the final day of the scheduled hearing) but that we were certain that we would not be in a position to give an oral decision that day, that the parties' attendance was not required, and that we would reserve our decision. We required further time for deliberation.

The facts

General

25. We were presented with almost 4000 pages of documents and 150 pages of witness statements in this case. We made clear to the parties that we would be reading the documents they referred to in their witness statements and those which the parties specifically referred to during the course of oral evidence. But if we do not refer to a document or to passages of evidence, this is not to be taken to mean that we have not

read and considered that evidence. We will only make findings of fact necessary for the determination of the issues the parties have agreed are the issues in the case.

The school and relevant policies and procedures

26. The respondent school (which we will refer variously to as "the respondent" or "the school") was, at the material time, a Single Academy Trust ("SAT") school within the London Borough of Croydon.

27. There are numerous conditions of service, guidance documents and policy documents applicable to the running of and employment within schools in general, and the school in particular.

28. National conditions included **Conditions of service for school teachers in England and Wales**, also known as the Burgundy Book, which provided:

> *2.1 All teachers resigning their appointments will be paid salary:*
>
> - *at the end of the Summer term to August 31 or, in the case of teachers resigning to take up an appointment with another employer, to the day preceding the day on which the school under the new employer opens for the autumn term if this be earlier than September 1*

29. The Education & Skills Funding Agency ("ESFA") published an **Academies Handbook 2019** (the "Handbook") which set out that "*Academy trusts **must** comply with this handbook as a condition of their funding agreement.*"

30. This Handbook set out that the board of trustees must appoint a senior executive leader as an accounting officer. The Handbook sets out that in SATs "*this should be the principal*" (i.e. head teacher). Under the section What does the accounting officer do? the following was included:

> *1.27 The accounting officer role includes specific responsibilities for financial matters. It includes a personal responsibility to Parliament, and to ESFA's accounting officer, for the trust's financial resources.*
>
> *1.28 Accounting officers must be able to assure Parliament, and the public, of high standards of probity in the management of public funds, particularly regularity, propriety and value for money.*
>
> *1.29 Accounting officers must adhere to The 7 principles of public life.*
>
> *1.30 The accounting officer must have oversight of financial transactions, by:*
>
> *• ensuring the academy trust's property and assets are under the trustees' control, and measures exist to prevent losses or misuse*
>
> *• ensuring bank accounts, financial systems and financial records are operated by more than one person*

• keeping full and accurate accounting records to support their annual accounts

31. The Handbook also placed obligations on each trust to monitor the budget and to share management accounts with the chair of trustees every month, and with the other trustees six times a year. The board must consider these issues when it meets. There were obligations to produce management accounts in a format which included an income and expenditure account, variation to budget report, cash flow and balance sheet.

32. The Handbook contains a section on leasing, which set out two types of lease: a finance lease which was a form of borrowing, and an operating lease which was not borrowing. The Handbook made clear that trusts must obtain ESFA's prior approval for taking up finance leases on any asset for any duration from another party.

33. The ESFA also produced financial management good practice guides, including **Leasing guidance for Academy trusts**. There was a section of this guidance an operating lease and a finance lease. This included the following:

> *Operating lease agreements typically have a shorter duration than the working life of the equipment. Under an operating lease, the leasing company ("lessor") retains the risks and rewards of ownership, and it will also retain an investment in the equipment being leased, known as the Residual Value. You will not own the equipment at the end of the agreement.*
>
> *Finance lease agreements usually run for all, or a substantial proportion, of the equipment's estimated working life. Under a finance lease, the leasing company ("lessor") transfers all of the risks and rewards of ownership of the equipment to the customer ("lessee"). You will not own the equipment at the end of the agreement. Leases that do not meet the operating lease criteria will be finance leases.*

34. This was followed by a table setting out a series of questions designed to help determine what type of lease was under consideration.

35. The school itself had a **Financial Policy and Procedures** document. This made clear that the school had designated the head teacher as it accounting officer ("AO"). The document made clear:

> *The AO must take personal responsibility (which must not be delegated) for assuring the board that there is compliance with the AFH, the FA and all relevant aspects of company and charitable law. The Headteacher, appointed as AO under the guidance of the*

board, must ensure that there is appropriate oversight of financial transactions.

36. There were further obligations on the accounting officer, which included to:

keep full and accurate accounting records; and prepare accruals accounts, giving a true and fair view of the trust's incoming resources and application of resources during the year, and the state of affairs at the year-end, in accordance with existing accounting standards.

37. The **Financial Policy and Procedures** document also set out limits for the authorisation of expenditure by the Full Governing Board ("FGB"). It set out that "*Individual commitments for goods or services are authorised up to the following limits… Head Teacher… Up to and including £25,000*".

38. The **Articles of Association of Woodcote High School** contained a section on conflicts of interest which provided:

Any Governor who has or can have any direct or indirect duty or personal interest (including but not limited to any Personal Financial Interest) which conflicts or may conflict with his duties as a Governor shall disclose that fact to the Governors as soon as he becomes aware of it. A Governor must absent himself from any discussions of the Governors in which it is possible that a conflict will arise between his duty to act solely in the interests of the Academy Trust and any duty or personal interest (including but not limited to any Personal Financial Interest).

39. The school had its own staff disciplinary policy. This set out the procedure to be followed in the investigation of disciplinary matters. The policy sets out that in some circumstances it will be appropriate to suspend "*for example, where there is suspected gross misconduct*". The policy sets out that disciplinary investigations will be carried out by a suitably trained independent investigator. It further sets out that disciplinary hearings involving allegations of gross misconduct will be heard by a Governors' disciplinary committee. Appeals will be heard by a Governors' appeal committee by way of a review rather than a rehearing. It also gave a non-exhaustive list of matters which could be viewed as gross misconduct. This list included:

x. Gross negligence, incapability or incompetence, including serious professional misjudgement, which destroys the confidence in the employee e.g. failing to supervise a contract which leads to serious financial loss to the school

xiv. Repeated acts or a pattern of behaviour that destroys the confidence in the employment relationship.

xvi. Wilful failure to disclose any of the information required by the employer or any other information that may have a bearing on the

performance of duties or giving false information as to qualifications or
entitlement to work (including immigration status) in order to gain employment or other benefits.

The claimant's engagement by the respondent

40. We will use the term "engagement" at this stage, as there is a dispute between the parties as to the start date of the claimant's employment with the respondent.

41. The claimant is a black man of African heritage. He has had a long career in education, and has worked his way up to becoming head teacher. We accept his evidence that fewer than 1% of head teachers in Britain are black. It was clear to us, from the claimant's career history and his presentation at the hearing before us that he is an intelligent, accomplished and charismatic man.

42. In 2016 he was appointed head teacher at Richmond Park Academy, having previously worked as a head teacher for the Academies Enterprise Trust ("AET") of which Richmond Park Academy is part. The claimant left the employment of AET 2019 under the terms of a settlement agreement dated 16 May 2019, which recorded the termination of his employment as being 31 July 2019.

43. Prior to the termination of the claimant's employment with AET, the First-tier Tribunal Special Educational Needs and Disability ("SEND") determined that Richmond Park Academy had discriminated against a pupil, S. The claimant had provided evidence on behalf of the school. A subsequent parental complaint hearing, to which the claimant had not provided evidence, which referenced the SEND decision, found itself unable to reach a conclusion about whether the claimant had been "*deliberately* dishonest" (emphasis in original) as regards his evidence to the SEND tribunal. The panel, however, reached the view that the claimant "*did not provide accurate information in a consistent way… And as such we conclude that the LCSB and Dr Newman were misinformed*". The panel made further findings of "*inconsistent accounts*" having been provided by the claimant about one of the issues.

44. The tribunal was not in a position, nor was it its function, to determine issues relating to the claimant's previous employment. This evidence largely went to the issue of credibility. In very broadbrush terms, the claimant presents himself as a "superstar Head Teacher" with an "impeccable record" before his employment with the respondent. We would observe that, together with reliability issues which we identify below, the picture is probably more complex.

45. Prior to the claimant's employment at the Respondent school, his predecessor had been employed for 18 years and was retiring on 31 August 2019. The school was looking for fresh ideas and looking to make significant changes. The school advertised the position of Head Teacher, and the claimant was one of six shortlisted candidates interviewed on the

first day of an assessment process. The claimant and two others were asked to return for a second day of assessment. The claimant impressed the interview panel and was offered the role of Head Teacher in the spring of 2019 in a unanimous decision of the interview panel. The then Chair of Governors, Mr Cooper, expressed some reservations that the claimant would not do what was asked of him by the governors, but this reservation obviously did not affect the decision-making.

46. The claimant was provided with a written statement of employment particulars dated 22 May 2019 (which, for ease, we will refer to as the contract). The contract set out that the employment took effect "*from 1st September 2019*". The contract provided, amongst other things, the following:

    a. The Chair of Governors have the power to suspend the head teacher if it appears "*that there may be grounds for believing that they have been guilty of gross misconduct/negligence or flagrant breach of this Agreement or further substantial reason. Any such suspension is precautionary and does not imply guilt*";

    b. The non-contractual Discipline Policy for all Staff was applicable to the claimant;

    c. Schedule 2 of the contract set out the responsibilities and duties of the head teacher. Under the first heading "Core Purpose" the contract set out three matters, including that the head teacher "*Is the Accounting Officer for the Woodcote High School Academy Trust (as defined by the DFE in the Academies Financial Handbook)*".

47. Also on 22 May 2019 the claimant was sent a letter by the Chair of Governors confirming his annual salary of £104,741.83. The letter set out that the "*role will commence on 1 September 2019*". He was asked to indicate his acceptance of the offer of the post of head teacher by signing the letter, which he did on 18 June 2019. The claimant's evidence is that he signed this document in a pub in Croydon where he met Mr Cooper. Nothing turns on this. He also confirmed that he was aware that the school was a Single Academy Trust prior to his interview.

48. In oral evidence the claimant said that he had not been provided a copy with the Handbook at this stage, but he accepted that as head teacher he would be subject to the responsibilities set out within it. He confirmed in oral evidence that he was familiar with the contents of the Handbook. In his oral evidence he denied that he had been an accounting officer in any previous role. However, this is at odds with evidence he was later to give during the course of a disciplinary investigation (about which more below). In a disciplinary investigation interview on 21 January 2021 the claimant was asked a series of questions about his experience of acting as an accounting officer. He confirmed that he had previous experience of the role in a Multi Academy Trust, and he was asked the specific question "*But you have had that accounting officer experience?"* His response was *"Yes, at a previous school prior to Woodcote*" [1638]. On balance we find that it

is more likely than not that the claimant had had previous experience of being an accounting officer, as he told the disciplinary investigator. In any event, we are satisfied that he would have been familiar with the responsibilities which were a core element of the contract he signed.

Working prior to the academic year beginning 1 September 2019

49. The evidence before us, in broad terms, was that it was normal practice for incoming head teachers to begin preparing for a new role by working at schools before their appointments take effect. This is highly likely to involve encountering confidential information prior to being bound by confidentiality provisions within a contract of employment.

50. The claimant sought to carry out some preparatory work at the school prior to 1 September 2019. In the circumstances, he entered into a Confidentiality and Non-Disclosure Agreement [159-160] with the respondent, which he signed on 18 June 2019. This agreement included the following:

    a. Recitals which indicated that "*The Employer and the Employee have entered into an employment agreement which will commence from 1st September 2019*" and that the current agreement was in order to protect the confidentiality of any information shared ahead of that date.

    b. A term that "*The Parties agreed to exchange hereunder information only until 1 September 2019 (the "Termination Date"), whereupon all matters of confidentiality will be subject to the Employees employment contract with the Employer*".

51. The agreement focused more or less entirely on the sharing of information. It did not set out any obligation to provide work, to do work or to pay for any work.

52. From the beginning of July 2019 the claimant began his preparatory work within the school. As set out above, his employment with AET terminated on 31 July 2019.

53. During the summer of 2019 the deputy head, Ms Woodcock, and a teacher, Mr Frith, interviewed a candidate looking to cover the maternity of the reprographics officer at the school. This candidate was the mother of the post-holder. The governors would not have had any involvement in this appointment. The claimant was later to take steps to ensure that the post-holder's mother was not appointed. No potential disciplinary issues involving this attempted recruitment were brought to the governors' attention by the claimant.

54. During the course of his preparatory work the claimant looked into certain staffing issues which led him to contact the outgoing head teacher by email, and they corresponded about these issues [207-8]. While we accept the claimant's evidence that no formal handover or induction was arranged, we note that he was operating at the highest level within the school and felt himself able to contact the outgoing head. The correspondence about the staffing issues suggests the claimant was quite

"hands-on" and was taking active steps to get to grips with the new role. He did not complain about any lack of induction or support at this stage.

55. The claimant also engaged in correspondence in early August 2019 by email with the Clerk to the Governors, Ms Viggiani, about staff structure and roles and responsibilities [210-2]. Part of this correspondence concerned induction of staff, and no observations were made by the claimant about his own lack of induction. Ms Viggiani also provided as an attachment to an email of 7 August 2019 the school's Articles of Association. Ms Viggiani made clear in this email that the claimant was an "ex officio Governor" and "*As such you would be a full director and member of the GB [Governing Board] and, as such, entitled to vote on any issue where the Board agreed that you have no conflict-of-interest*". In this correspondence Ms Viggiani also attached the previous year's scheme of delegation.

56. On 28 August 2019 there was a meeting of the Full Governing Board ("FGB") which the claimant attended as "Head teacher designate". The claimant attended all FGB meetings in his capacity as ex officio governor, unless otherwise stated. The first matter discussed at this meeting was the claimant's request for a review of his remuneration and request to match his previous salary. This request was based on his prior belief that "*the school was a solidly good school*" but this was not what he had found. He said he also had had to negotiate his exit to leave his previous employment early. The claimant had previously provided papers which proposed that he be remunerated for work in August which he would invoice through a consultancy company so that two head teachers were not on the August payroll. The claimant withdrew from the meeting, the governors discussed this request and decided to authorise a payment to the claimant to reflect work he had carried out in August, which would be arranged through payroll. Mr Cooper was left to explore how best to arrange a fair payment. A pay rise was not approved, and any review of pay would follow clear goals and targets.

<u>The academic year starting 1 September 2019</u>

57. 1 September 2019 was the claimant's start date under his contract of employment. On this day he emailed all of the governors saying, among other things, that he had been a senior manager for 14 years and understood the role of governors and their legal responsibilities. He assured them that he was fully aware of his position and would never do anything without getting FGB approval, and that he was not "*a maverick*" in the way that he operated. He said that he had already spent 37 days working at the school and wished to present an alternative view of the school which would address certain difficulties the school had encountered. He said he wished to opt out from being a trustee, and simply discharge the role of Head Teacher. He identified a number of issues which he wished to address, but recorded his understanding that he was answerable to the governing body and looked forward to working with them collaboratively. He said he would take the "*slow and steady*

approach" and looked to build good relationships with students, staff and governors.

58. One of the governors, Ms Ford, a parental governor at that stage, responded indicating her enthusiastic appetite for change, and articulated her open support for him.

59. On 11 September 2019 one of the governors, Ms Dudman, emailed the claimant to confirm the governors' decision not to increase the claimant's salary at that time, stating that through normal performance management processes this could be looked at in due course. She communicated that there was a justification to pay the claimant for his work in August at the rate of 60% of his salary which would be processed through payroll. The claimant responded the following day to say "*I am not going into a lengthy discussion about money as I did that willingly and I have no understanding of how a 60% pro rata was reached but I am okay with it*".

60. On 22 September 2019 Ms Viggiani emailed the claimant attaching a copy of the Finance Policy, referring to the section which indicated that the current level of delegation which the FGB must approve as being £25,000. Mr Cooper indicated in a subsequent email that this was the correct level. The claimant responded that day to say that this level was lower than he was used to, and that £50,000 was normal, and asked "*is this for a one-off spend or spread over the academic year if we were to engage a year-long contractor?*". 10 minutes later the claimant emailed to say that he could not think of any outlay on its own costing more than £25,000 as anything bigger would be a capital investment needing governors approval. He agreed the £25,000 limit should be stuck to. The claimant confirmed in oral evidence that he familiarised himself with the provisions of the Finance Policy.

61. On 23 September 2019, the claimant attended his first FGB meeting in post. The minutes of that meeting set out that the governors completed the declaration of interest forms for 2019-20, and that there were no declarations at that meeting. The governors approved the Scheme of Delegation for 2019-20. At this meeting the claimant proposed a new structure for finance and HR. This would involve amending the job title of a Ms Squires to School Business Manager, and that she would be supported by a new Finance Manager, and HR officer and a Finance Officer, all full-time posts. This was approved by the governors.

62. Also at this meeting Mr Savla, who was a governor and was an accountant working within the education sector in his full-time job, expressed concerns that the governors needed a better understanding of the accounts as cash was depleting quickly and it did not add up. The governors tasked Ms Squires with producing updated accounts for the November FGB meeting.

63. On 30 September 2020 the claimant signed a declaration of business interests form [662] setting out an interest in a real estate company. This form contained explanatory notes setting out that governors were forbidden from being involved in decision-making relating to purchases by

the school of goods and services from themselves, their relatives or organisations in which they or those close to them had a significant interest (i.e. more than 10%). It was made clear that completion of this form did not remove the requirement on governors to disclose orally any interests at any specific meeting.

64. The claimant claims that in October or November 2019 it came to light that a teaching assistant who had previously been employed by the school had been arrested for sex offences and placed on the child offenders register. The claimant says he reported this to the governors and says this was a protected disclosure. There is no evidence of this beyond the claimant's assertion in his witness statement, and there is no reliable evidence that this information was disclosed.

65. On 4 October 2019 the claimant signed a lease with a company Technology Rentals Ltd trading as Funding 4 Education in respect of three canopies. The terms of the agreement provided for a "minimum period" of three years, with a first rental payment of £15,975.90, excluding VAT, followed by "at least" two rental payments of the same sum. The terms of the agreement were clear that when the agreement expired, the lessee must return the equipment in good working order.

66. We find that the claimant, in signing this agreement, had committed the school to paying at least £47,927.70. This was almost double the amount authorised under the schools Financial Policy and Procedures for individual commitments by the head teacher. The claimant had not sought authorisation from the governors. We find that this was in breach of the Financial Policy and Procedures.

67. In early November 2019 there was an issue raised relating to safeguarding concerning a member of staff, FT, and their interaction with a child HA, who was the child of CR. The claimant set out his version of the issue in some detail in his witness statement (paragraph 91 to 104). Individuals involved in this are subject to privacy orders and there is some complexity which necessitates setting out our findings of fact with care to avoid jigsaw identification.

68. The claimant's case is that there was a concern that FT was "potentially grooming" HA. The claimant says he referred the matter to the Local Authority Designated Officer ("LADO" who had a lead role in child safeguarding within the local authority) who supported a full investigation. The claimant says that CR refused to support the investigation as they did not want to damage their relationship with their child. The claimant says the LADO informed him that they had concerns about whether, in the circumstances, CR was an appropriate person to carry out certain responsibilities they had. The claimant says that CR relinquished certain responsibilities but retained others, something the claimant felt was highly inappropriate. The claimant says that he took his concerns to Mr Cooper, the then Chair of Governors, but nothing was done to address them. The claimant says that FT abruptly voluntarily left their role. His case is that Mr Cooper "*without my knowledge or the knowledge of the HR manager agreed for [them] to [end their employment voluntarily] so effectively*

ending the case". He said that the LADO had said this should not have been done and that the case could not be investigated. His "reporting of this matter to the Board was a protected disclosure".

69. In setting out his case in his witness statement the claimant made reference to only one document, the minutes of the FGB meeting of 9 December 2019. The claimant also made clear in his witness statement (paragraphs 329 and 346(4)) that he relied on FT as a comparator in respect of the apparent lenient treatment of them.

70. In cross-examination of the claimant, Ms Mellor took him to contemporaneous emails on this issue between the claimant and the Chair of Governors, Mr Cooper [2828-31]. These emails make clear that the claimant clearly stated that the LADO was content for the school to deal with the issue as it saw fit; that the claimant was content that if PILON was forfeited by FT "*we will draw a line under the issue and allow him to leave… without any further action as LADO has allowed school to proceed as we see fit*"; that Mr Cooper was taking steps to ascertain what views the claimant had about disciplinary action against FT, and was happy to inform LADO that the school would pursue disciplinary process subject to the claimant's views; that the claimant indicated that FT be allowed to leave voluntarily. In short, the claimant was informed of and involved in the actions he characterises as comparatively lenient. We find that the narrative presented by the claimant in these proceedings is substantially at odds with the contemporaneous documentation, and we do not accept it as accurate.

71. On 9 December 2019 there was a further FGB meeting at which Mr Cooper stepped down as the Chair of Governors, and Ms Dudman was elected as interim chair. A person from the school's auditors, Baxters, attended.

72. On 18 December 2019 Ms Dudman emailed the school's Business Manager to say that the governors had approved an uplift to the claimant's salary to be backdated to his "*start date 1/9/19*".

73. In January 2020 a Ms Read took up the post of Finance Manager.

74. On 24 January 2020 a company associated with Funding 4 Education provided a quote for canopies for the school canteen. The quote contained two different options, one costing £6000 and the other £125,000.

75. Also on 24 January 2020 the claimant signed a rental agreement with Funding 4 Education for leasing Wi-Fi equipment. The claimant committed the school to a minimum period of three years with a first annual rental of £12,681.92 excluding VAT, followed by further rentals of the same amount each year. The agreement contained the same terms as the canopies lease agreement described above. Again, no prior authorisation was sought by the claimant from the governors before entering into this agreement, and the commitment to a minimum sum of £38,045.76 was far in excess of the claimant's delegated authority as head teacher, and was in breach of the Financial Policy and Procedures.

76. On 6 February 2019 Mr Savla emailed Ms Dudman to say the school canteen proposal would not involve a "*finance lease but can be deemed as a loan arrangement*" and that it does not require approval from the Secretary of State. He indicated that more than one quotation would be needed to comply with procurement guidelines. We accept Mr Savla's oral evidence that he put this forward on the basis of what the claimant was telling him at the time.

77. On 10 February 2020 there was a further FGB meeting.

    a. Ms Dudman, who had been acting as interim chair, was elected as chair of governors, with Ms Ford as vice chair.

    b. In the minutes, under the heading "Finance" Mr Savla raised a number of concerns about the school's finances. He was concerned about whether the school had sufficient funds, and highlighted the need for a cash flow forecast to the end of the year. At this meeting the claimant was asked to provide a cash flow forecast and an estate development/capital expenditure plan for the next 12 months.

    c. The claimant introduced the quotation for the canteen canopies and the two options (for £6000 and £125,000) were discussed. It was proposed that the claimant should bring the proposal for the canteen back once "*the Biomass is signed off and the cash flow is available*". The governors approved the expenditure on the canteen "*subject to the cash flow forecast*". The minutes noted an action for the claimant and Ms Squires to work on the cash flow forecast for approval by Mr Savla to allow the building of the new canteen area to proceed.

    d. The Finance Policy, which had been updated "with input from" the claimant was discussed. The level of expenditure which three quotes were required was raised from £1000 to £5000, although the claimant had requested that it should be £10,000.

    e. Under Any Other Business, the claimant told the governors that, in respect of Wi-Fi, "*This would be an expenditure of £25,000 over 3 years*". This expenditure was approved subject to Mr Savla being content with the cash flow situation.

78. In respect of the last item, Wi-Fi, the claimant was telling the governors of expenditure of £25,000 over three years. Little over two weeks previously he had signed the lease, without prior approval from the governors, committing the school to a minimum financial commitment of over £38,000. We find that the claimant was presenting information to the governors that he must have known was incorrect.

79. On 27 February 2020 an email was sent to the governors from an anonymous email account. The sender explained that they were doing this because they did not trust whistleblower anonymity at school. The email set out a number of concerns about the claimant, these included an allegation that "*The financial policies not been followed and money is*

being spent like it is going out of fashion. Links with companies that he has previously dealt with have come straight to Woodcote High School… the governors are not being shown the correct budget for what is being spent, everything is going through a third-party company for financing and then being paid like a loan. Should this not be going through the governors?"

80. On 28 February 2020 the claimant sent a lengthy email to the governors. This email attached a proposal which, in summary, proposed moving current governors to a trustee board and "*creating a small and precise management board which would carry out the oversight/forensic responsibility on behalf of the trustees*". The email attached management accounts for January and a budget summary which he hoped would give governors confidence in his ability to manage the budget as he said that projections were significantly better than the budget presented to the ESFA. He commented that he was "*financially astute enough to manage the budget of 1 school considering in my previous role as Executive head at AET I managed the budget effectively for 4 secondary schools*". He said that as the cash flow and budget were clearly showing the positive savings that he had made he hoped there were no further objections to moving ahead with the new canteen proposals.

81. This email prompted responses which divided into two email chains, [332 – 341] and [327 – 331].

82. In one chain involving the claimant, the governors and Ms Squires:

    a. Mr Savla replied to the claimant's email of 28 February 2020 with a number of queries about the management report, he concluded his email "*I am still to receive the 12 month cash flow forecast to give my opinion on moving ahead with the canteen. Please let me have sight of this, however, if the rest of the governors are happy with your review and would like to approve, then I will not object against it*".

    b. The claimant responded that day asking Ms Squires to look into some of the queries. He provided some responses of his own, and said that he had thought Mr Savla had received the cash flow from Ms Squires, but would ask Ms Reid to provide it.

    c. The claimant provided further responses to queries on 3 March 2020. On 4 March 2020 Mr Savla responded that the claimant's responses highlighted that his management report was inaccurate, that certain responses did not answer his question, and raised his concern that the school was paying for a consultant who did not understand how to prepare management accounts or cash flows.

    d. Ms Squires, who was included in this email chain, responded to provide some responses and to indicate the pressure she had been working under with insufficient resources.

    e. Mr Savla responded to assure Ms Squires that she and her team were doing an amazing job, but he had concerns in other directions

including whether the professional external consultant was providing a proper service.

f. The claimant sent a lengthy response on 8 March 2020 saying that he did not trust the accounts, not because of the consultant but because of previous issues. He turned his criticism on the governors for not asking the right questions and on the previous senior leadership for providing the wrong information. He set out a number of concerns about staffing and set out his own achievements in working towards better financial management since his appointment. He set out that, although appointed by governors, he saw himself as serving the students, that he was bound by the Nolan principles and would do the best for the students "*even if governors do not see the big picture in regards to trusting that the decisions we have made in regards to finance will lead to an improved financial status*". He said that this would be his last communication on the matter as "*I really need to leave you all to make personal decisions about staying on as governors/Trustees and focus on my day job".* He said that far too much of his time was being invested in governance and turbulence within the governance and said *"if you look at my track record I am not shy in moving on from schools where my vision and energy and not aligned to the organisation*".

83. In the other email chain:

a. Ms Ford responded to the claimant's email of 28 February 2020 with a lengthy email dated 2 March 2020 in which she addressed both the governors and the claimant. Her response comes across as thoughtful, thorough, detailed, open-minded, mindful of differing experiences and perspectives, welcoming challenge to her own position and geared towards finding solutions that would be in the best interests of the school. She referred to a three-hour meeting she had had with the claimant the previous week. She encouraged the governors to give serious consideration to the claimant's proposals regarding governance. On the question of money, she referred to a discussion she and the claimant had when they had met. She referred to the claimant as being "*a self-confessed details guy"* who saw *"all invoices come past his desk for approval*" with an excellent working knowledge of where the school is saving and spending money. She referred to the canteen, and questioned whether the school could be sure that they had money in this year's forecast. She questioned whether the type of lease they would need would require Secretary of State approval.

b. The claimant responded to Ms Ford's email later that day saying that Department for Education approval was not required for the canteen build. He referred to issues of governance, saying that he had no real preference as to the model as long as he could do his "*job without constant reference to governors a £25k limit in this day and age with the whole budget of over £7.5 million is ineffective and*

obstructive". He said the governors should have confidence that no bills were paid at the school without him signing off and "*no purchases are made without going through me*". He said that in three years' time the school would have a surplus of at least £1 million if he controlled the teaching budget, and that money would start to show in the bottom line from that summer. He said that the governors had appointed an experienced head teacher and he should be allowed to deliver on his promise.

84. On 23 March 2020 the UK went into national lockdown. As is well known, this had a hugely significant impact on schools.

85. Also on 23 March 2020 the Board of Governors had an Extraordinary General Board meeting. The claimant attended, but withdrew when the governors discussed governance structure. This discussion included:

    a. Reference to having reports on time in order to have good discussions. There was a need to create trust between committees and the FGB, and the governors needed to build a rapport with the claimant, especially around finance. It was stressed that the governors were "*on his side but there are limits and a committee may enable smaller, more intimate discussions with*" the claimant

    b. Concern was raised about the claimant springing things on the board with little notice demanding quick decisions. It was pointed out that the governors wanted to work with the claimant but needed the right reports. There was either too much detail or not enough.

    c. Mr Savla said "*At the moment – money is going out with no clear guidance or authorisation structure; it seems whimsical – supportive of the vision but we need to see the picture of how it is happening otherwise it is hard to be supportive. There is great frustration – we are requesting information but nothing is coming through other than "trust me". Committees will not help if the "trust me" approach continues. To carry the Board with him the Head must give information, otherwise it makes life difficult*". He also said that the governors had agreed with the claimant's strategy, but there were issues about how to achieve it and in what timescales. He said "*If cash flow were not an issue I would be happy with what he is doing but I am concerned when I look at the numbers – it really scares me. We have the potential to run out of cash; this has not been the case in the past as we have been managing it but we are currently being asked to sign off on things with the risk of running out of cash; a strategy document would give the cash flow*". He further commented that the school was committing to a large spend and that things were not all in place. The coronavirus could result in unexpected needs and if there was no cash the school would be in trouble.

    d. Another governor commented on lack of information, saying "*we still have not got the 12 month cash flow. We have discussed it for six months. [The claimant] needs to achieve a quid pro quo to take*

us on the journey. He keeps changing his mind e.g. with regards to the restructure – essential for an immediate decision and then it's not going ahead. What we get by way of information, how and when is key".

e. Another governor raised concerns that the claimant was saying the governors should just trust him.

f. Another governor agreed, and commented that the claimant needed to clarify the cash in order to bring the governors on the journey with him.

g. Ms Ford recognised the benefits of change but said the governors would not give approval to big projects without visibility. She referred to the anonymous email, saying that the concerns raised in it could not be corroborated but further investigation would be needed. Mr Savla explained that certain checks can be made to verify the financial aspect of the claims.

h. Another governor commented that ignoring the claimant's proposals for governance would lead to a breakdown in relationship, and if he left it would be a disaster.

i. A governor commented that "*He has threatened to leave twice – if we do not agree to what he wants, he threatens to leave*".

j. A governor expressed concerns that it was not about what the claimant was doing but more about his ways of working.

86. One of the actions of the meeting was for Ms Ford, Mr Savla and another governor to liaise with the claimant with regards to the visibility of finances and risks. Further action was to liaise with the auditors to follow up on points raised. The governors also established a Covid-19 committee, including Ms Ford Mr Savla and two other governors that could meet with the head remotely to support him. There was a further FGB on 30 March 2020 which the claimant attended. Mr Savla again raised the issue of cashflow. It was noted that the claimant had better visibility of cashflow than the governors. The claimant said the cash flow would not be accurate and asked the governors to trust him. Mr Savla said it was not possible to tell whether the school would run out of cash without sight of cashflow and reporting of capital projects.

87. On 1 April 2020 the claimant emailed the governors raising a number of issues arising from the 23 March 2020 meeting. He referred to his recruitment and said that although the process allowed governors to recruit someone who lined up with their vision, there appeared to be a mismatch with his own. He set out a number of things he had achieved in his first six months at the school. He said that the canteen was not a luxury but a necessity and he could not understand the governors reservations, concluding that "*the governing body needs reassurance that is not legislated anywhere but based around some notion of proper accounting*". He said that if he managed staffing costs there would be no way the school would get into financial distress, and that by 2023/24 the

school would be looking at a £1.4 million surplus. He said that the government did not require the school to maintain a reserve, and they could run a zero reserve policy with no penalty. He asked that the ESFA/Companies House be contacted to replace him as "operating officer" (we understood him to mean accounting officer) as he could not carry out this role if he could not implement the changes he saw as necessary to drive the school forward. He said that he had shared his plans and "*I will work diligently until a suitable exit strategy is agreed as I have higher aspirations than leading a coasting school which WHS is and I do not want to be in conflict with the longer term strategy which currently governors have not shared with me but I am more than happy to adopt and implement*". He asked that the governors changed their "restrictive" schemes of delegation from £25,000 to between £50,000- £75,000. He concluded his email by expressing that he felt he was "*too far a jump for governors to make from the previous head*".

88. On 8 April 2020 Ms Ford responded to the claimant's email and all its recipients. Again, this was a lengthy detailed and thorough response dealing with matters raised by the claimant. Amongst other things, she observed that the board were united in believing that plans for the canteen would be a hugely valuable investment, but the governors' only concern was whether the school could afford it. She said "*While we need the 12 month cash flow in any event, we discussed on Monday 30th a number of different ways in which the governing body could gain comfort that the project is affordable… These included getting some key figures from the accounts team (a "high level" cash flow) or perhaps using our auditors to allow us to have the financial insight we need*". She pointed out that hopefully some information provided by Ms Squires or information from auditors would allow the board to have the financial insight needed to make an informed choice. Ms Ford responded to a point the claimant had raised about auditing four times a year, but observed that the board would be unlikely to cede that level of external scrutiny until they were receiving regularly updated cash flows. Ms Ford, who is a solicitor, addressed the request the claimant had made about relinquishing his role as accounting officer. She referred to his contract of employment and the Handbook and observed that it was not within the governors' gift to relinquish this appointment. Ms Ford concluded her email saying that governors welcomed change, were not concerned with the pace of change, but had a need to ensure that the pace of change could be accommodated by staff and was "*within the bounds of our finances*".

89. On 16 April 2020 the claimant emailed the governors. He said that he was finding himself in conflict with the governors about how he could deliver his vision for the school. He said he did not care about why poor decisions about maintaining the school site and overstaffing the school had been made in the past. He said that when he realised that the school finances were in a mess he asked the governors to approve a finance manager. He said "*I have been especially perturbed by an insistence on a cash flow which has not been previously the norm and excuse me if I feel like being held to a higher accountability than my predecessor*". He said that in order

for him to commit to the school long-term that he would "*need the trust and support of the governors to improve the school*". He felt as a leader of education with expertise and a track record he did not need to be micromanaged. He explained that he had been approached by another Trust to come for an interview on Wednesday with a view to taking on the leadership of three secondary schools with a significant uplift in salary. He said it could have been his intention to commit to the school but felt that the current constraints on his current role meant that the role might be for someone else. He set out that in order to stay at school and not go to the interview they would have to respond to a number of requests which included rewriting the restricted schemes of delegation, including head teacher's, allowing him to deliver on his vision for the school, changing the governance model of the school and other matters. He pointed out that leaving the school after one year meant he "*was a disaster or committed some high crime or misdemeanour and as you all know this is not the case. I will protect my reputation if I move on so I will not allow rumours to fill the void and I am happy to agree an exit strategy with the governors if the general consensus is that I should move on*".

90. At this stage, although the claimant was requesting that the schemes of delegation relating to the head teacher spend be increased, he did not tell the board that he had already exceeded his delegated authority on two occasions in respect of the Wi-Fi lease and the canopy lease.

91. Ms Ford responded to the claimant's email on 19 April 2020, including all of its recipients, and dealing with the points the claimant had made. Her email included her observation that, while she had not been a governor during the tenure of the previous head, she believed that accurate and up-to-date forecasting was crucial to any financial planning of a company including an academy. She observed that the claimant had not been involved in the setting of the previous year's budget and necessarily his plans would be unbudgeted. In the circumstances accurate re-forecasting, of which cash flow forecast formed part, will always be especially important. She apologised if the claimant was perturbed by the insistence on cash flows, stating that if there had been failings in this regard in the past that would not be an excuse for the board failing in the future. Furthermore, regardless of any failures in the past, the pace and range of changes proposed by the claimant would require more thorough forecasting than the previously comparatively more static and predictable spend in the past. She attempted to reassure the claimant that the board was not seeking conflict and he continued to enjoy their support. Any challenges were not an indication of a lack of trust, but merely because the governors had to ascertain matters for themselves in order to meet their own duties. She said that the board would be happy to review head teacher spend as part of the overall review of governance structures, but could not give any guarantees about the outcome of that process. She said it would be premature to discuss an exit plan with the claimant, and any career choices remained his, but the board was happy to work with the claimant and would respect whatever choice he made. She reiterated that the board could not guarantee that any review of the governance

structures would result in the outcomes that the claimant desired. She said that it was certain that the board would have to continue to ask questions and would have to continue to ask for accurate and up-to-date cash flow forecasts. This approach was done with the best of intentions and with the interests of the school in mind in order to fulfil the governors' duties.

92. The claimant responded to this email on 23 April 2020 indicating that he was happy to carry on as head teacher and awaited the review of governance and any review of spending limits. He asked for Mr Savla or another governor to be named as accounting officer, observing that, while this was traditionally the role of Head Teacher, it was not compulsory.

93. On 29 April 2020 Ms Ford wrote to the claimant and Ms Squires copying in the governors. She offered her thanks for efforts made by them to understand the finances, and thanked Mr Savla and another governor who had contributed to the process. She confirmed that the proposal for the canteen was approved.

94. On 18 May 2020 there was a FGB meeting which noted the approval of the delegated decision to proceed with the works to the canteen.

95. On 1 July 2020 the claimant emailed Mr Savla and another governor saying that he had come across documents in which those two had raised concerns about the May management accounts. He said that concerns should have been addressed with him directly and that this was not a collaborative way of working.

96. Mr Savla responded the same day to say that he was providing the governors an understanding of those accounts where he felt there were huge gaps or errors. He said that he and other governors would be happy to discuss issues before governors' meetings with the claimant as each month the reports were creating many questions. These discussions could address how problems could be resolved to ensure the governors were receiving the right information. He observed that while the budget the claimant had taken on was not what he would have planned, "*we are still waiting to see what the forecast to year end should be and it is difficult to see this from the latest set of accounts as the forecast for the year end has moved every month for the last three months*". He pointed out that a reliable set of data gives confidence in supporting the claimant's vision.

97. Ms Squires responded expressing concerns that she was not being included in a meeting to discuss these issues. She felt that she was being set up for humiliation at FGB meetings. There was further correspondence in which Mr Savla and Ms Ford acknowledged that there were issues of understaffing within the finance team over a long period.

98. On 6 July 2020 there was a further FGB meeting at 5:30 PM. The minutes record that once again the claimant and Ms Squires, who he managed, were asked to provide updated cash flow report before 16 July 2020. They were further asked to provide a revised budget by the same date. Under Any Other Business Ms Ford, the Chair, noted frustrations about financial reporting that year. The claimant reported that there had been significant

capital spend, but was now happy with the fabric of the school. There was further discussion about a bid document which needed to be signed off.

99. That same day the claimant signed another lease in respect of tables or desks with Funding 4 Education in exactly the same terms as the canopies lease and the Wi-Fi lease. This agreement committed the school to a minimum term of three years with a rental payment of £17,641.18 excluding VAT in the first year followed by at least two further annual payments of the same amount. Again, the claimant had entered into an agreement on behalf of the school for an individual commitment of at least £52,923.54. He had not sought prior approval from the governors, and this was over double the delegated authority. The claimant did not mention this during the FGB meeting that evening.

100. On 16 July 2020 there was a further FGB meeting. There was a finance update, and the claimant had circulated a budget and cash flow report prior to the meeting.

a. The discussion about finances covered a number of matters, including the desk lease. The claimant confirmed that this was a three-year lease. Mr Savla observed that the total contract value was over the £25,000 limit and that it had not been presented to the governors for approval at the point of commitment. The chair requested that the claimant provide a copy of the contract for the lease of the tables and any other contracts or leases that were over £20,000 at the point of commitment even if they represented an annual payment below this limit. Such would require retrospective approval by the board. It was anticipated that this would include the contract for the canopies, Wi-Fi and desks and any other contracts over £25,000 which the governors have not yet approved.

b. Mr Savla commented that the bottom line did not add up in the cash flow report provided by the claimant. He was concerned about the school's ability to meet its commitments during July and August if Croydon Council was late in providing funding. The claimant said that he did not expect there would be a cash flow problem, and if there was a delay in payment the school could "*push back creditors*".

101. On 11 August 2020 there was a further FGB meeting. This included a finance update provided by the claimant. During the course of this Mr Savla observed that lease documents circulated by the claimant prior to the meeting appeared to be "operating leases" and that the governance needed to be aware of them and approve them. We will return to the terminology used by Mr Savla in the paragraph below. The claimant confirmed that the leases in respect of the canteen, which had not been signed yet, were with the same company as the other leases. The claimant was reminded that any expenditure of £25,000 or above must have governor approval prior to any commitment having been made, regardless of the period over which the expenditure is planned. Any documents needed to be circulated for approval prior to signature so that the governors could seek legal advice if required. Any such contracts must

be signed by a governor. The governors retrospectively approved the leases for the Wi-Fi, the tables and the canopy.

102. Pausing here, it may be worth reflecting that at this stage:

a. The claimant had been involved in correspondence with the clerk of the governors on 22 September 2019 in which it was made clear to him that his delegated spending authority was £25,000, something he had sought to increase.

b. It had been clarified to the claimant at the FGB meeting on 23 September that the governors needed an understanding and oversight about spending.

c. The claimant had signed three leases above his delegated limit without prior governor approval. The governors became aware of this on or around 16 July 2020.

d. The claimant had been asked for cash flow forecast on 10 February 2020, 28 February 2020, 8 April 2020, and 1 July 2020. He had been told by Ms Ford the importance of this on 19 April 2020 having indicated his resistance to providing it, asserting that he was being held to some higher standard than before.

e. The governors received an anonymous email on 27 February 2020 raising significant concerns about finances, among other things.

103. The governors (not including the claimant as ex officio governor) decided to hold an informal meeting after the conclusion of the FGB meeting. The minutes of the meeting include the following:

a. Mr Savla wished to call the meeting to highlight a number of concerns about financial matters.

b. Mr Savla made reference to leases signed in the past year which had been circulated prior to the meeting. The finances indicated that while the school could afford to pay the leases they appeared to be “operating leases” and the school did not own the property at the end of three years, and would have to continue paying the rental payments or send the property back. He identified the table lease, the Wi-Fi lease and the canopies lease, setting out the sums involved, and highlighting that no prior approval had been gained and contracts had been presented to the governors. He set out that, with respect to Wi-Fi, the governors had approved expenditure of £25,000, when in fact the contract was for £38,000 over three years. (We would observe that this approval was given <u>after</u> the claimant had signed the contract). He was concerned that the contracts were onerous and not value for money. He was very concerned about the school not owning the property at the end of a three-year term. Mr Savla said there was no evidence of the school having got three quotes.

c. The governors felt they needed to have sight of the leases.

d. A governor noted that one of the three main responsibilities of governors is financial probity. Mr Savla agreed, and raised the possibility of reprimanding the claimant to prevent it happening again. It was questioned whether the claimant understood what he had done, and Mr Savla believed he did not.

e. After further discussion, one governor explained that they had told the claimant in the past that his limit was £25,000, but he replied with "nasty emails". The governor wondered whether the claimant was incompetent, and said that governors could support him.

f. Mr Savla said that he did not "*want this to blow up*" as the claimant was beginning to work with governors, and he wanted to steer the claimant to work with the governors. He said that they would need to look at finance regulations, procurement policies to ensure that the claimant and the governors were protected.

g. Another governor suggested this should be raised in performance management of the claimant, and commented that the governors needed an external adviser.

h. It was agreed that Mr Savla would email the claimant.

104. We find that the recent discovery by the governors that the claimant had apparently committed the school to contracts well in excess of his delegated limit without prior approval was a cause of significant alarm for the governors.

105. In terms of Mr Savla's characterisation of the lease as an operating lease, it does not appear that he was articulating what the characteristics of such a lease were.

106. On 18 August 2020 there was another FGB meeting which the claimant attended. Nothing was said about the informal meeting held the previous week. The minutes record that Mr Savla updated governors of a conversation he had had with the claimant in which the claimant had confirmed that the equipment purchased through operating leases of the Wi-Fi, tables and canopies would become the property of the school at the end of the contract term. Mr Savla had been advised that letters had been provided to that effect, but that Mr Savla was waiting to see copies of these letters.

107. On 28 August 2020 the school's auditors sent an Internal Checking Report by email to the governors. This report covered a number of areas including governance and compliance. The auditors flagged up that Ms Squires had confirmed that the trust had no borrowings, but the auditors questioned whether the contract with Funding 4 Education in respect of the canopies was a finance lease. They strongly recommended that this arrangement was reviewed by the governors as ESFA approval will need to be obtained this issue was given a high priority. The management response was that it did not believe that this arrangement was borrowing.

108. Mr Savla responded to the auditors and there was further correspondence in which the auditors stated that they were not in a position to ascertain the exact nature of the lease arrangement.

109. On 1 September 2020 the claimant emailed Mr Savla and Ms Viggiani, cc the governors, forwarding email confirmation from Funding 4 Education confirming that at the end of the three-year terms the equipment would belong to the school.

110. What the claimant forwarded was an email dated 12 June 2020 from a Ms Wade from what appeared to be a personal Hotmail account. This set out a discussion Ms Wade had had with the claimant and setting out how the agreements worked. In relation to the canopies agreement, it was said that the company had their "*end of agreements title included in the rental agreement*". It was said that no further payments would be required following the termination of the agreement at the end of the primary period. In relation to the other agreements, Ms Wade said that she offered, in respect of the other agreements, the opportunity for indefinite use for various one-off payments.

111. On 2 September 2020 the claimant emailed Mr Savla, cc the governors, forwarding an email from 26 March 2020 in which he had sent copies of three quotes for the canteen.

112. On 3 September 2020 Mr Savla replied to the claimant's email of 1 September 2020, thanking him for his email saying that he requested the company to send the information in writing on company headed paper to avoid any queries in the future. He added that he had enjoyed the INSET day that day and enjoyed hearing about the new member of staff joining.

113. The claimant responded to Mr Savla's email on 5 September 2020 at some length. He said that he felt Mr Savla had completely undermined his authority and made it difficult for him to lead the school. He said that he asked for confirmation of the end of the lease agreement, which he had sent over. He said that if Mr Savla required headed paper why had he not originally asked for this. He said "*I feel that trust is clearly broken and I will not allow my integrity to be questioned by anyone as I have delivered on everything I have been asked to as head teacher here*". He said the governors clearly wanted operational control of the school and he was taking advice from his union as he felt that he was not trusted and that the governors had lost confidence in his leadership. He said he was losing sleep and had been caused a lot of stress for which he would be seeking medical support. He said that his union had asked him to request communication for the time being to come through a single governor to allow him to manage his communications in a better way. He did not wish that governor to be Mr Savla.

114. Mr Savla responded later that day to explain that phoning Funding 4 Education was not meant to undermine the claimant to but to protect the school and the claimant from a rental agreement which had clear terms highlighted within the contract. He pointed out that the end term agreement (which, we observe, is at complete odds with the face of the

actual agreement itself) was sent on a Hotmail account rather than a company email. He pointed out that the contract clearly stated that any representation other than from the company is null and void, hence his request to get them to send the letter in writing on headed paper. In terms of email contact, he pointed out that these were unprecedented times with demands on some governors greater than others. He said he would respect the claimant's wishes not to have direct contact from himself. He said that he had no issues with the changes the claimant had made which he applauded, but his concerns have always been with finances, which the failure of the reporting to provide adequate reassurance on financial reports had not helped.

115. The claimant responded later that day to ask Mr Savla to respect his wishes and not contact him. He reiterated that Mr Savla did not trust the leadership team. He said the least Mr Savla could have done would have been to apologise for his poor judgement, but he assumed Mr Savla felt he had done nothing wrong.

116. On 6 September 2020 the claimant emailed the governors. It should be pointed out at this stage that there had been numerous resignations from the governing board. He said that he intended writing to the Secretary of State for Education by Friday, 11 September 2020 to update them of the fact that the school did not have the minimum number of governors required by its articles of association. He asked that governors who had tendered their resignation to hold fire as he would like to organise an extraordinary meeting that week. He said that he would table a proposal to remove all remaining governors to become trustees and get permission to create a management board to discharge the support and challenge element of governance. Failing this, the claimant said he intended to tender his resignation as he did not want to jeopardise his own future prospects by staying in a dysfunctional organisation where 12 governors had resigned in the last year. He said he had been invited to interview at another school with a January 2021 start date. He said he intended to pursue that option as he felt no security or support at the school. He said he would not write to the Secretary of State until he was clear on what the governors chose to do.

117. In paragraph 157 of the claimant's witness statement the claimant asserts that the email of 6 September 2020 contained an attachment containing protected disclosures concerning (in a very brief summary) numerous safeguarding failures. The List of Issues at paragraph 17 a) makes clear that the claimant seeks to rely on such disclosures as protected disclosures. The claimant clarified in oral evidence that the email of 6 September 2020 in the bundle [547] is not printed straight from his email account but was a Word document that he copied and pasted the text of the email he sent on 6 September 2020. The email header on this page does not indicate that the email had any attachments (contrast, for example [585]). Above the text of the email and the email header is a commentary by the claimant "*My email to governors alerting them to my intention to write to the RSC about the state of governors*". Below that is a

small icon of an envelope with “Fwd-Confidential.msg”. We did not entirely understand the claimant’s evidence on this icon, but he appeared to suggest that he “dragged” it into the Word document.

118. We do not find that the claimant attached any documents to his email of 6 September 2020, contrary to what he says in his witness statement. We note also that the purported disclosure he says he made in the purported attachment, relating to significant safeguarding breaches, is not reflected whatsoever in the text of the 6 September 2020 email.

119. On 9 September 2020 the school’s solicitors emailed Ms Viggiani and Mr Savla about their request for advice on whether the leases were finance or operating leases and would be classified as borrowing or not. They pointed out that any borrowing would need prior ESFA approval. The solicitors set out the differences. The solicitors pointed out that “*many of the characteristics of a finance lease evident from the terms of the hire agreement. For example, risks and rewards relating to the asset being with the Trust as well as running and administrative costs, and transfer/purchase option at the end of the lease period*”. They went on to say that determining whether the leases were finance leases “*is essentially more of an accounting question and will very much depend on how it is been dealt with in the balance sheet*”. They urged the school to take advice from their accountants as to whether this would be classed as borrowing and whether prior ESFA consent was needed before agreeing to the arrangements.

120. On 14 and 15 September 2020 there was correspondence between a company called Doc Hearts and the claimant about filming that company had done the previous week for school promotional purposes. The claimant accepts that his stepbrother part owned this company, and that as such he was a person or relative that would have required his making a declaration of interest under the relevant policy. During the course of evidence the claimant said that the decision to engage the firm was taken by other members of his senior team, and he named six people who were at a meeting in his office at the school. He said in evidence that he had allowed them to make the decision. The claimant said that he had raised this during a subsequent disciplinary investigation with an independent investigator that she had failed to speak to the two people he suggested could give evidence about this.

121. Ms Mellor took the claimant to the minutes of his investigation meeting, which he had seen during the course of the investigation and had been able to add to in a post-investigation meeting note. In contrast to what the claimant said to us in evidence, these minutes make clear that the claimant said during the course of the investigation that he “*made an executive decision and also because at that point we were working remotely and were not in school”* [1249] and further clarified, when directly asked, that the decision to appoint the company was his decision and that the governors were not aware of it [1650]. We find as the fact that the claimant himself took the decision to appoint the company in the knowledge that it was part owned by his stepbrother. We find that he was

aware of the obligation to declare such an interest. We also find, although this is later in the chronology, that the claimant filled out a declaration of interests form in relation to this company and its work at the school on 21 January 2021 after he had a disciplinary investigation meeting with the independent investigator. In short, we find that the evidence the claimant gave to the tribunal, that others took the decision to engage Doc Hearts, was not true.

122. On 18 September 2020 Ms Ford emailed the Regional Schools Commissioner ("RSC"). After some background information, Ms Ford explained that there were now three governors on the board (not including the claimant as ex officio governor) following a number of resignations. She made clear her concern that the board struggled to provide effective governance at this point. She also set out some issues which the governors were significantly challenged by, and which required additional external support to resolve. The chief issue with finance, which she said the finance governor, Mr Savla, was in the process of discussing with the ESFA. She set out that two sets of management accounts had not been approved because of concerns about their accuracy. A number of accounts had not been provided or only partial accounts had been received with missing balance sheet and cash flow forecasts. She was clear that the claimant was working to a budget that he had not set and had made decisions to invest in items which had not been planned investments at the time of the budget. Mr Savla had repeatedly offered to help with the issue but that attempts to resolve the issue had broken down. She raised a separate point about becoming aware that the school had entered into finance leases without governors approval and without Secretary of State approval. She said that the scheme of delegation and ESFA guidance makes clear that this was not acceptable, and the governors needed support and guidance on how to resolve the matter.

123. On 21 September 2020 the claimant emailed the governors at 4:27pm. An FGB meeting was to take place that evening. He attached a number of documents including one entitled "Confidential report from leadership and governance at Woodcote High School". This report was seven pages long and set out numerous issues the claimant observed with the school. These included an allegation of a failure in safeguarding by the then safeguarding lead governor, and the failure of the then chair of governors to follow up on the claimant's concerns; he also made allegations of appalling cases of failure to safeguard children at the school. In short, these are the alleged disclosures set out in paragraph 17 a) i) to v) of the list of issues. The claimant says these were protected disclosures.

124. Although the email to governors does not explicitly refer to this report being sent to the RSC, we find it probably was. The claimant says this was a protected disclosure.

125. In his email of 21 September 2020 the claimant also refers to a breach of safeguarding he says took place the previous Saturday when a non-DBS member of the public was allowed to come into school when

students were on site. We accept the evidence of Mr Savla that the person in question was a person who was interested in becoming a governor, that this individual was accompanied by staff or governors at all times at what was a school social event attended by numerous pupils and their parents (most of whom would not have been DBS checked either).

126. On 21 September 2020, an hour after the claimant's email of that day, the three remaining governors and the claimant attended an FGB meeting. Ms Ford was elected chair of governors, with the claimant abstaining. Mr Savla was elected vice chair, with the claimant abstaining. The person who had attended the school event the previous Saturday was appointed as a governor.

127. On 26 September 2020 the claimant emailed one of the governors [656] saying that they had served one term as governor and the articles of association might suggest that this was enough. He referred to a previous issue which he felt meant this governor should have stepped down as a governor. He concluded his email "*what you decide to do next is your call but on my exit just be mindful that every interaction taken by governors will be highlighted but I wanted to ensure you fully understood my point of view*". This email was to the one governor alone and not copied to the others. The claimant says that he was not trying to put pressure on this governor to step down. We do not accept that. We accept Mr Savla's evidence that it was common for governors to serve more than one term, and the claimant had not sought to persuade other governors to step down on this basis. The text of the email clearly suggests that the claimant was of the view that this governor should have stepped down in the past, and subtly suggests that any decision not to step down in the future would be subject to some sort of scrutiny.

128. On 5 October 2020 the claimant emailed the remaining governors setting out that he was "duty-bound" to report that the police had investigated an enquiry under section 47 of the Children Act 1989 in respect of two children at the school. He set out that the police will be at school that day to interview the two children separately. He said the safeguarding team at the school were aware and social services would be supporting the investigation. The claimant says that this was a protected disclosure. The claimant's counsel, Mr Ross, explicitly confirmed to the tribunal during the course of the hearing that the identity of the children was not relevant in any way to the determination of the issues in this case. The parent of the children is WS and the children are TL and MA.

<u>The grievance</u>

129. On 7 October 2020 the claimant emailed Ms Ford and Mr Savla setting out a formal grievance against those two individuals. In summary, he complained that the governors had sought five references prior to his employment; that the governors had gone to the finance team to pay the invoices without getting signed off from him; that the governors had tried to make him look disruptive in the recent recruitment of a governor; that Mr Savla had undermined the claimant by contacting the finance company in respect of the leases; that the claimant was bypassed by the chair going

behind his back in respect of an ongoing investigation that the chair had refused to update the claimant on working arrangements; that the chair had set an agenda for governors meetings without his input; that his Business Manager, Ms Squires, had made a complaint which the governors had not investigated; that the chair and vice chair had tactically failed to allow him to implement recommendations on a restructure of staff; that his salary was discussed at FGB meetings which made him appear money-hungry; that the chair and clerk had not informed him of governor resignations undermining his authority; lack of support when he mentioned his mental health. The claimant said he was being represented by his union. He wanted his grievance investigated by a neutral third party. He said "*I need to feel that my colour is not the reason why there is so much distrust of me*".

130. The respondent accepts that this grievance was a protected act.

131. On 13 October 2020 Ms Ford wrote to the claimant to say that she would speak to the RSC about the grievance and would take legal advice on the best person to deal with it. On 15 October 2020 the claimant wrote to Mr Savla and Ms Ford stating that he was happy, as an act of good faith, that the grievance could be looked at as a "complaint".

132. It is worth setting out some context around this period. This was during the pandemic. The Board of Governors was down to 3 individuals (although they had appointed another who would take up post subject to DBS checks and references). The governors had informed the RSC setting out that circumstances meant that it could not discharge its governance functions adequately. Mr Savla had a full-time job and Ms Ford either a full-time or part-time job; they were carrying out these jobs in addition to their responsibilities and duties as governors. Additionally, Ms Ford had young children. On top of this, there were circumstances in Ms Ford's domestic life at this point in time, which the claimant knew about, which would have undoubtedly occupied her attention.

133. On 30 October 2020 the auditors produced a Management Letter for the year ended 31 August 2020. This letter set out that in their view finance leases had been entered into without prior ESFA approval. As a high priority retrospective approval should be sought. The letter also set out that in respect of the canopy rental there was no evidence of three quotations having been sought. The letter recorded that the claimant had explained that three quotations had been obtained but not retained by him.

134. On 1 November 2020 EU, who was soon to be leaving the employment of school exchanged text messages with Ms Ford and had a phone call with her in which he set out numerous concerns he had about the claimant. We will set out some of these below, which Ms Ford shared with governors in an email the following day.

135. On 2 November 2020 Ms Ford resigned as chair of governors in an email addressed to the clerk, Ms Viggiani, and copied to the claimant amongst others. She planned to remain as a governor. On 5 November 2020 the claimant responded saying that it would be best if Ms Ford left

the governing body entirely. He gave five numbered reasons, including that she failed to address the complaint raised by Ms Squires, and failed to address a complaint he had raised with her. He also said she had never congratulated him or anyone in his team on their achievements. He criticised her for addressing her resignation to the clerk of governors and not himself, which he found totally disrespectful.

136. On 2 November 2020 Ms Ford sent an email from her personal email address to all the other governors on their personal email addresses. She updated them on the communication she had had with EU, saying that this individual had been "*happy to assist and shared a number of documents with me that might prove helpful to our case*". She commented that not all of the allegations raised by EU were "*actionable*" and that some were just observations or opinions. She said that she would make clear where any commentary was her own (which she did). There were 27 numbered points of alleged wrongdoing on a variety of issues. Ms Ford suggested sharing the information with lawyers to take advice on next steps and invited other thoughts. Mr Savla agreed that this should be shared with lawyers.

137. It was put to Mr Savla that the governors communicating by personal email was both hypocritical, in that the claimant himself had been criticised at one point for using personal email, and secondly, that it indicated a "cloak and dagger" approach. We note that point 25 of the concerns set out by Ms Ford in her email of 2 November 2020 was that the claimant had asked EU to "*run a discovery exercise to discover what existing governors had sent to [the new governor's] work email via governor email addresses*".

138. Again, this issue must be seen in context. We have set out what is quite obviously a seriously deteriorating relationship between the claimant and the remaining governors. The claimant had on more than one occasion referred to leaving with an exit package, and the governors had articulated numerous concerns which they have observed or had brought to their attention. We find that the governors were losing trust in the claimant by this stage. When trust goes, a degree of suspicion, or even paranoia, is understandable. We can understand how, faced with information from someone with considerable information technology experience (which EU had), that the claimant was seeking to look at governors' emails, that they may have wished to discuss these very sensitive issues secure in the knowledge that there was no "eavesdropping". We make no finding as to whether the claimant actually had sought to pry into the governors emails, but we find that, in the circumstances of the case, the governors' approach, in communicating by personal email, was entirely understandable.

139. On 10 November 2020 the claimant says he disclosed defamatory and racist posts on a school Facebook group which included governors. His witness statement (paragraph 198) talks about targeted bullying of black staff. He says that his letter and/or reporting of the matters to governors was a protected disclosure.

140. The claimant did not take us to any communication disclosing this information to the governors. What there was in the bundle [698] was a letter the claimant sent on 10 November 2022 the "families". We take it that this was a letter to parents. This referred to online bullying the claimant saw on the Facebook group, including derogatory comments made against members of staff. There is nothing in this letter about the targeting of black staff.

141. On 15 November 2020 there was an emergency Extraordinary Governing Board meeting which the governors held in the claimant's absence. Prior to the meeting the concerns that had been raised earlier that month had been escalated to the school's solicitors. The minutes were at [705-706]:

    a. In summary, it appeared that the concerns revolved around breaching health and safety policy in respect of government guidance on Covid, breaching safeguarding policy in respect of parental consent to using pupil photographs in social media marketing materials, negligence in relation to and serious financial mismanagement relating to approval and authorisation of leases and other things, failing to disclose financial information when repeatedly asked to provide it, failing to disclose personal relationships with external companies and serious and repeated failure to comply with reasonable management instructions.

    b. Following legal advice, consideration was given as to whether to suspend the claimant to facilitate the investigation if it was felt that this would allow a fair investigation and protecting information and staff. The governors considered that there were valid concerns about the claimant remaining on site during any investigation, which included safeguarding concerns, the need to secure information and carry out fair investigation, ensuring staff were able to speak freely which would not be possible if the claimant was on site. Additionally the allegations could amount to gross misconduct. There were no other viable options that would allow the claimant to work remotely or transfer to another role.

    c. The meeting concluded with Mr Savla saying he would take the Board's advice and discuss the matter with Ms Ford to make a decision with regard to next steps. We accept Mr Savla's evidence that the decision was taken at this meeting that the claimant would be suspended. Any reference to next steps was about formalising the practicalities of how this would be affected.

142. The claimant says that on 16 November 2020 police attended school to carry out interviews in relation to the section 47 enquiry. He says the reporting of this matter to the board was a protected disclosure. We have found no evidence that there was any such disclosure on this date or subsequently.

143. On 17 November 2020 the claimant emailed the governors to say that he had reviewed staff files and encountered evidence that two black

members of staff had not had any pay progression for a significant period of time, in one case for 11 years. He contrasted this with the progression of three white teachers. The claimant said that he was considering flagging this up with the Equality and Human Rights Commission, but the school would rectify the situation. He refused to sit over an organisation with institutionally racist practices.

144. The claimant says this was a protected disclosure and a protected act. The respondent accepts that this was a protected act.

145. Mr Savla was cross-examined about this issue. He said that he had checked the allegations made by the claimant. Of the two staff mentioned by the claimant, one had been on the top of his pay grade and would need extra responsibility to progress. There were performance issues in relation to the other. He made the point that the issues the claimant was highlighting were not governor issues. If there was any failure to progress in respect of pay, this was squarely an issue for the senior leadership team. The governors would not be aware of these issues until they were raised by the executive. The claimant was responsible for that. Mr Savla did not accept, when it was put to him, that the school had a reluctance to face up to racism. On the contrary, when the matter was raised with him as a governor he looked into it and agreed to take the matter up at governors' meetings.

146. On 18 November 2020 Mr Savla met the claimant in school and suspended him from his role as Head Teacher. He was accompanied by Ms Viggiani and Ms Squires. The suspension meeting is not one that would attract the right of accompaniment under the ACAS Code of Practice or under the school's disciplinary policy. The claimant was unaccompanied.

147. The claimant was allowed to record the suspension meeting and a transcript and also minutes of the meeting appeared in the bundle [717-724] and [711-716].

148. The claimant in his witness statement refers to being "*visibly frogmarched out of the school like a criminal*" and this is reflected in the list of issues 1h) etc. The claimant was cross-examined about this aspect of his evidence. His evidence changed, and he admitted that Mr Savla merely escorted him from the premises. We note that the minutes and the transcript of the suspension meeting refer to Mr Savla asking the claimant to leave the school at the end of the meeting, and the claimant saying that Mr Savla would need to call the police to escort him off the site [714] and [723]. We also note the concern the governors had about preserving evidence. In the circumstances we do not accept that the claimant was frogmarched from the site, and we find that escorting him from the site was a reasonable and understandable approach from Mr Savla.

149. On 20 November 2020 Mr Savla confirmed the claimant's suspension by letter. The letter set out allegations of breaching health and safety policy in respect of government guidance on Covid, breaching safeguarding policy in respect of parental consent to using pupil

photographs in social media marketing materials, negligence in relation to and serious financial mismanagement relating to approval and authorisation of leases and other things, failing to disclose financial information when repeatedly asked to provide it, failing to disclose personal relationships with external companies and serious and repeated failure to comply with reasonable management instructions. It was asserted that these allegations fell within stated examples of gross misconduct within the disciplinary rules and breached various policies. The rationale for suspension was given. The claimant was informed that the disciplinary investigation would be carried out by Ms Garrett, an HR consultant with the respondent's solicitors. The claimant was informed that he could notify the respondent of any witnesses who may be relevant to the investigation, and that supervised access to the school premises or computer network could be arranged. The claimant was supplied with a copy of the disciplinary procedure and was told how any investigation would progress. A form of wording to be given to any employees or parents making enquiries about the claimant's absence was proposed.

150. On the same day, 20 November 2020, the claimant reinstated his grievance by email to Mr Savla.

151. Ms Garrett also sent a letter to the claimant on this day notifying him of her investigation. She said she would contact him to arrange an investigation meeting, and set out how the investigation might proceed. She enclosed copies of the disciplinary policy and various school policies. She told the claimant to contact her if he had any specific needs.

152. On 21 November 2020 the claimant says he contacted the RSC. He says this was a protected disclosure. An email dated 30 November 2020 from a Ms Burton from the RSC appears in the bundle [745] thanking the claimant for his email, but the claimant's email itself was not in the bundle. The email refers to the claimant sharing his concerns about the school, and his previous raising of concerns. We are unable, in the absence of the claimant's email, to make any findings about precisely what information the claimant says that he disclosed on this date. Ms Burton's response refers to the claimant's reference to severe depression.

153. On 1 December 2020 the claimant provided a fit note from his GP stating that he was unable to attend meetings due to anxiety.

154. On 14 December 2020 the claimant sent the respondent an updated grievance [770]. This was an eight page document and he added various matters to his original grievance. In particular, he set out various allegations of what he asserted was less favourable treatment because of his race. He set out that the disciplinary allegations raised against him had not been raised with him beforehand, but had been kept from him in order to build a case against him. He alleged that his suspension was linked to an ongoing section 47 investigation and his having raised previous safeguarding issues relating to a member of staff being involved in a pornographic website. He highlighted his anxiety and depression and set out how the respondent had failed to support him in a number of ways. The respondent accepts that this was a protected act.

155. On 3 January 2021 the claimant emailed the governors [759] to say that he was now signed fit for work and wished his suspension lifted as his reputation was being damaged. He briefly set out how he was innocent of the allegations against him. He attached various lengthy documents which included one headed “Safeguarding concerns at Woodcote High School November 2020”. In this he referred to the section 47 investigation, his discovery of a staff member being involved in a pornographic website, safeguarding issues relating to FT, safeguarding issues relating to the employment of a teaching assistant who had been previously arrested, issues around the appointment of a reprographics officer, the invitation of the new governor to attend school in October 2020 and other staff related issues. The claimant says this was a protected disclosure.

156. We were taken to pages of the bundle ([790], [791], [798], [803], [811]) where it was suggested that Ms Garrett was acting in a way which showed some impartiality, in that she was advising the school which would be in conflict with her duty to investigate the disciplinary matters independently. Various matters were raised with her by, in particular the deputy head Ms Woodcock, and it was clear to us that Ms Garrett was not inappropriately “advising” the school. Matters of a potentially disciplinary nature, such as the way in which the claimant was using his Twitter account, which were potentially relevant to the investigation, were raised with Ms Garrett. Ms Garrett was clear, for example on 13 January 2021, that she would not be suggesting any further action on social media posts.

157. On 23 February 2021 the claimant’s trade union representative emailed Ms Garrett to raise a potential conflict of interest, in that the claimant now understood that she worked for the firm of solicitors that was advising the respondent. Ms Garrett responded on 26 February 2021 to say that while the solicitors assisted the governors on the process to follow, and Ms Garrett assisted with drafting the wordings of allegations, there was no conflict with the ensuing investigation.

158. Mr Savla in his evidence was candid about understanding how the claimant might perceive some sort of bias in the independent investigator being supplied by the school’s solicitors. However, he said that from his own experience in accountancy, big firms were well used to managing potential conflicts of interest by establishing clear boundaries between departments. The tribunal’s industrial experience is that it is not uncommon for large firms or employment consultants engaged by organisations to supply independent investigators. We have seen nothing in our examination of the copious paperwork generated by the investigation which gives us any cause for concern about Ms Garrett’s impartiality.

159. On 25 January 2021 the claimant was interviewed by Ms Garrett. The minutes of that meeting were in the bundle from [1609]. Prior to the meeting there had been correspondence between Ms Garrett and the claimant’s trade union representative, the claimant was allowed access to his emails, was provided with documents and was given prior notice of the sort of questions that Ms Garrett would be asking him.

160. The meeting took place by Teams and lasted from 9.30am to 3.50pm, but the claimant was given the opportunity to ask for breaks. After the meeting the claimant was provided with an opportunity to make post-meeting notes to be added to the minutes of his interview.

161. The claimant's case in his pleadings and witness statement was that this was a "hostile" meeting. He did not elaborate. In cross-examination the claimant was asked what he meant by hostile, and he confirmed that Ms Garrett had not been aggressive or unpleasant. He changed his evidence and said that Ms Garrett did not want to listen to him when he made suggestions. He could point to nothing in her tone or manner that was hostile. He questioned why three hours of the interview were spent dealing with safeguarding issues and appeared accusatory.

162. The claimant's assertions appeared to us generalised and broadbrush and he did not give concrete examples. We have had the benefit of reading the 48 page transcript of the investigator interview within the context of the surrounding evidence of the investigation as a whole. There is nothing in the evidence to suggest any hostility, which the claimant accepted in cross-examination, having regard to the natural meaning of this word. There is nothing to substantiate the claimant's generalised assertions of Ms Garrett not being interested in what the claimant had to say or her being accusatory. The claimant was given ample opportunity to put his case across. He was provided with questions before the interview, given the opportunity to view his emails or other documents, given a substantial amount of time to provide answers during the investigation meeting and to make additions to the interview minutes after the meeting. It is in the nature of an investigation meeting that an investigator will have to put the allegations which the individual is facing. The minutes would suggest that Ms Garrett did this fairly. It appeared to us that it is not that Ms Garrett was not interested in what the claimant had to say; indeed, as will be seen, she accepted much of what he had to say and she determined that there was no case to answer in respect of some of the disciplinary charges.

<u>The grievance investigation</u>

163. As set out above, the claimant initially raised the grievance on 7 October 2020, which he agreed on 15 October 2020 could be looked into as an informal complaint. We have set out above the circumstances pertaining at the time. Following this, a decision was made to initiate a disciplinary investigation, at which point the claimant reinstated his grievance on 20 November 2020. The claimant then went off sick on 1 December 2020.

164. On 15 January 2020 a barrister, Mr Islam Choudhury, was instructed to investigate the grievance. We see from the index of the report which Mr Islam Choudhury was later to produce [898] that he was provided with over 800 pages of documents (not including policies, instructions and terms of reference) and interviewed eight witnesses, including the claimant.

165. Mr Islam Choudhury produced his final report on 4 March 2021 [822ff] and it is over 60 pages long. We will not set out the detailed conclusions in this report, but in summary:

a. The allegation of race discrimination was not upheld, although Mr Islam Choudhury stated he could not rule out unconscious bias in respect of what the claimant terms micro-aggressions and unconscious bias at paragraph 1(b)(i) to (iv) of the list of issues below;

b. The allegation of Ms Ford undermining trust and confidence in the appointment of the new governor was upheld;

c. Ms Ford should have disclosed a potential conflict-of-interest to the EGM on 15 November 2020, but the decision to suspend was not related to any allegations the claimant had made;

d. Ms Ford failed to take adequate steps to address the issue of stress raised by the claimant;

e. the claimant was not suspended because of alleged protected disclosures;

f. The respondent failed to investigate the claimant's grievance.

166. Mr Islam Choudhury made various observations and recommendations, which included:

a. His own report should be placed before the investigating officer of the disciplinary investigation and any disciplinary panel if convened;

b. The claimant should be referred to occupational health;

c. Steps should be taken to address the lack of diversity on the Board of Governors;

d. The Board of Governors should undertake unconscious bias and equality and diversity training;

e. The relationship between the claimant and Mr Savla was very poor with mutual mistrust, and the relationship between him and Ms Ford seemed broken beyond repair. Mediation was recommended;

f. Even taking into account the claimant's stress, his communication style was unduly negative or aggressive.

167. On 2 April 2021 claimant went off sick again with anxiety and depression.

168. On 9 April 2021, Mr Savla emailed the claimant to inform him that Ms Garrett had completed her investigations, and the respondent was reviewing her disciplinary report. Mr Savla was unaware of the claimant's fit note at this stage. He indicated that the suspension would be lifted as the investigation was complete. In the normal course of events, this would mean the claimant would return to work. In the light of recent sickness absence, the respondent requested the claimant to attend occupational health to identify any support measures or adjustments that may need to be made to allow a smooth return to work.

169. On 16 April 2021 the claimant attended school for what was, by prior arrangement, to be a two hour visit. It is not necessary for us to make detailed findings about this visit in order to determine the issues in this case. However, during the course of this visit the claimant behaved in a manner which Mr Islam Choudhury was later to find, in determining a further grievance the claimant later raised, was inappropriate and poor.

Ms Garrett's investigation report

170. On 20 April 2021 Mr Savla wrote to the claimant providing him with a copy of Ms Garrett's investigation report, and notifying him that he was re-suspended.

171. Ms Garrett's report is 31 pages long with an appendix. It included the following:

a. Confirmation that Ms Garrett had read the grievance investigation report.

b. Detailed background to the investigation;

c. Detailed commentary on the methodology of the investigation, including confirmation that Ms Garrett had no prior knowledge of the case or any previous involvement with the respondent;

d. Detailed findings and conclusions on each of 8 allegations.

172. In respect of each allegation Ms Garrett concluded as follows:

a. Breach of health and safety policy: no case to answer.

b. Breach of safeguarding policy: no case to answer.

c. Failure to deal with parental complaints: despite conducting himself in a number of respects in a way that was rude, discourteous, unhelpful and unprofessional, there was no disciplinary case to answer.

d. Serious financial mismanagement in relation to gaining relevant approval/authorisation of equipment/leases and other matters: there was a case to answer at a disciplinary hearing.

e. Failure to disclose financial information and accounts when repeatedly requested: there was a disciplinary case to answer.

f. Breach of reporting obligations regarding finance: there was a disciplinary case to answer.

g. Failure to disclose personal relations with external companies: there was a disciplinary case to answer.

h. Failure to comply with reasonable management instructions from the governing body: there was a disciplinary case to answer.

173. On 4 May 2021 the claimant provided a reference for a colleague, Ms Afriyie, who was due to be interviewed for a role of deputy head in another local school. It was provided in a pro forma format on the respondent school's headed paper. The claimant set out his relationship to the applicant as "line manager". He ticked a number of relevant boxes,

including whether he would re-employ the applicant or appoint her to a similar post in his school. He provided the reference from his personal email account.

174. On 9 May 2021 Mr Islam Choudhury produced an addendum grievance report in respect of a grievance the claimant had raised on 19 April 2021 in relation to the claimant's visit to the school on 16 April 2021 and his subsequent re-suspension. In short, Mr Islam Choudhury did not uphold this grievance, found that the respondent had acted appropriately, and found that the claimant's evidence to the grievance investigation was "*deliberately misleading, as it completely misrepresents what was actually said and by whom*". He found that "*matters escalated wholly as a result of [the claimant's] poor behaviour and he is entirely to blame for what occurred*". He added "*I also find that the grievance, and Mr MUNDY-CASTLE's statement, are an attempt to deliberately misrepresent what had occurred. I got the impression from reading the documents that Mr MUNDY-CASTLE is engaging in gamesmanship in respect of his dispute with the School, rather than genuinely seeking to take steps to resolve the dispute to enable him to come back to work*".

175. On 26 May 2021 Mr Savla tasked a governor, Ms Smith, to investigate whether the provision of the reference for Ms Afriyie potentially amounted to misconduct. The claimant accepted in evidence that on this day he also had an interview for the role of Head Teacher of another school.

176. On 15 June 2021, Ms Smith emailed Mr Savla to inform him that it had come to her notice on her Twitter feed that the claimant had participated in a diversity webinar the previous day, which could be seen on YouTube. The claimant had been asked during this webinar about how BAME staff should approach disciplinary allegations, and he responded that they should "*play the long game*".

177. On 16 June 2021 Mr Savla wrote the claimant to invite him to a disciplinary hearing on 30 June 2021 to consider allegations of gross misconduct in respect of the matters which Ms Garrett had found a case to answer. The claimant was provided once more with a copy of the disciplinary procedure, warned of the potential outcome of dismissal in the event of a finding of gross misconduct, and that the panel would consider whether there had been an irretrievable breakdown in trust and confidence. The claimant was informed that the hearing would be conducted by a panel of governors and was given the identity of the panel, which included Mr Taylor, a governor at the respondent school and two others. The claimant was invited to submit further paperwork by 25 June 2021 which he may wish to be considered by the panel.

178. There was email correspondence between the claimant's trade union representative and Mr Savla between 17 and 28 June 2021 about paperwork for the hearing and moving the date of the hearing.

    a. On 23 June 2021, the claimant's representative raised that the claimant had attended his GP the previous week and was unfit to

attend meetings because of his anxiety and depression for which he was prescribed medication. The GP had previously certified him as unfit to attend meetings and the claimant did not feel able to attend the proposed meeting on 30 June 2021. The representative also indicated that it would be inappropriate to deal with the disciplinary issues before the grievance process had been concluded. He raised concerns about the proposed external panel members due to their connections with local schools. He further proposed engaging in mediation as recommended by Mr Islam Choudhury prior to any consideration of a disciplinary hearing.

b. Mr Savla responded that day setting out his view that the claimant had been given opportunities to attend occupational health, and that it would not be in the claimant's interest to delay the disciplinary hearing any further as this would risk the matter not been determined prior to the summer holidays. He said that if the claimant did not feel well enough to attend he could put in a written statement or be represented by the trade union representative. He indicated that external governors had been asked to be on the panel to ensure independence the claimant's complaints about the governing board and also because other members of the board were new. Mr Savla said that mediation was not appropriate given comments made by Mr Islam Choudhury in the most recent grievance investigation report and comments made by the claimant in recent email correspondence regarding his future at the school.

c. The trade union representative responded on 24 June 2021 attaching a further GP fit note. He observed that the claimant had received 1400 pages of documents the previous day and was likely to receive more. The claimant would need time to read all the documents during his illness. The claimant had been advised by his GP to stay off emails. The hearing should be postponed until after an occupational health Dr had the chance to assess the claimant in four weeks' time.

d. On 28 June 2021 Ms Scott, the school's Governance Manager wrote to the claimant's trade union representative rescheduling the meeting to 21 July 2021. It was set out that the school did not expect any further delay from that date. The claimant was invited to provide any further documentation you wished the panel to consider by 9 July 2021.

179. On 25 June 2021 Ms Smith provided her investigation report into the reference allegation. She found that the provision of a professional reference in the capacity of Head Teacher whilst on suspension could be considered misconduct and/or gross misconduct. She further was of the view that provision of this reference by personal email could be considered misconduct and/or gross misconduct.

180. On 30 June 2021 the claimant was sent a letter formally inviting him to a disciplinary hearing on 21 July 2021, and was provided with the further investigation report into the reference allegations. The letter noted

previous postponements of the hearing and set out that there would be no further postponements. The identity of the panel, comprising of Mr Taylor and two external governors was confirmed. The claimant was provided with a right of accompaniment and was invited to outline any specific needs he might have at the disciplinary hearing because of a disability.

181. The claimant says that in July 2021 that he discovered racist and Islamophobic social media posts by a teacher. The claimant asserts in his witness statement (paragraph 308) that he reported this to governors and referred the matter to LADO. He says that the deputy head defended the teacher's conduct and tried to force pupils to delete the evidence. He says that this was a protected act.

182. Beyond this assertion, the claimant has provided no further evidence of this. It has not been easy to determine what, if any, information was disclosed.

183. In oral evidence Mr Savla stated that a social media account bearing the teacher's name was brought to the governors' attention. The matter was investigated and it was clear that the social media profile was a fake one created in that teacher's name. The teacher was not responsible for any offensive content.

184. In the absence of any contemporaneous documentary evidence it has not been easy to make findings of fact with a high degree of confidence. When matters come down, essentially, to two competing assertions, on the one hand by the claimant and on the other by Mr Savla, we prefer the evidence of Mr Savla for reasons given in the section of this decision on credibility. We find that it is more likely than not that it was brought to the governors' attention that offensive social media posts were being made ostensibly from an account bearing the name of the teacher. We find that the matter was investigated, and that it was determined that this was a fake account, and that the teacher had not committed any misconduct.

185. On 15 July 2021, the claimant's trade union representative forwarded an email the claimant had sent him the previous day in which the claimant made various observations about the proposed hearing on 22 July 2021. This included:

a. The claimant indicating that he had been prepared to resign to allow the school to move on, but the school had not engaged positively with this conversation.

b. He said that he was currently unfit for work signed off with anxiety and depression receiving medication and psychological therapies. The school had only recently referred him to occupational health.

c. He indicated his concern that one of the proposed members of the disciplinary panel, Mr Henry, was a governor at a competitor school which was headed by someone who had been approached to set the claimant's performance targets.

d. He said that he needed access to electronic files and would like to call some witnesses. He indicated he was awaiting permission to contact these witnesses.

e. He indicated that if he was dismissed he would seek redress through the courts.

f. He indicated he would be happy to work with the school to find an amicable way forward.

186. There was further correspondence on 16 July 2021 between Mr Savla and the trade union representative, in which the representative spoke of outstanding grievances and the claimant's inability to participate in either the grievance or disciplinary process as he was not fit to attend meetings. He proposed that the claimant would be guided by his GP with whom he had another review at the end of the month. This might mean that the matter needed to be looked at "next term". He indicated that two new grievances had been raised against governors which should be concluded before the disciplinary hearing.

187. On 19 July 2021 the claimant indicated that he was self-isolating for Covid-related reasons until 28 July 2021. Accordingly, the respondent sent an invitation to a Microsoft teams meeting to allow him to attend virtually.

188. On 20 July 2021 Mr Savla sent a lengthy email to the claimant's trade union representative. In it he pointed out that only four governors could conceivably hear both the disciplinary hearing and any subsequent appeal. He set out that there was only two days before the disciplinary hearing and it was not possible to change the panel. In any event he set out his view as to why Mr Henry was not compromised in any way and would be independent. Mr Savla dealt with issues relating to documents and any questions the claimant might have of Ms Squires. He pointed out the claimant had been given numerous opportunities to provide any evidence he felt was relevant to the disciplinary process. If the claimant felt any specific documents were missing Mr Savla indicated he would be happy to try and obtain them in advance of the hearing.

189. On 20 July 2021 the claimant emailed Mr Savla reiterating concerns about the panel. He indicated that he had an occupational health appointment that day. He set out certain questions he wished to be addressed with Ms Squires. He requested certain documents, namely a quote for a video shoot. The claimant asked that two members of staff be interviewed about their lack of knowledge that Doc Hearts was connected with the claimant's brother. He made reference to the signing of his contract of employment at the pub. He asked that Ms Squires's emails be checked to confirm when Ms Squires received his declaration form as Ms Garrett's investigation report was inaccurate on this point. He made reference to the signing of a contract with a further company which he said was an ad hoc arrangement.

190. On 20 July 2021 an occupational health report indicated that the claimant would be fit to return to work at the cessation of his current fit

note which ran to 1 August 2021. It further indicated that he would be fit to attend meetings from this date.

191. On 21 July 2021 Mr Savla responded to the claimant's representative in respect of the claimant's email the previous day. He indicated that the questions raised by the claimant would be forwarded to the relevant parties and any responses would be collated in advance and presented to the panel. He indicated that he would be happy for Ms Squires to write a statement, but said he would be happy to state that the canteen was approved by the board on review of cash flow forecast done by the governors as minuted (Ms Squires's specific responses to these questions were provided to the representative later that day). He said that in terms of quotes for the video shoot, the claimant had provided something to the investigator based on items provided after the claimant had been on site to collate information, and her report was based on that. He indicated it in terms of statements from colleagues, he was happy to accept that they had input into approving the appointment. He indicated that the declaration of interest form was submitted to Ms Squires on the evening of 21 January 2021 prior to the interview date.

192. Later on 21 July 2021 the claimant sent a lengthy email to Mr Savla. He made various observations about the assertions made by Mr Savla. He also said:

> "*After my OH meeting I spoke to my GP this morning and on her advice i will be going to Nigeria at the weekend as you have stated that I am not expected to be available for meetings over teh summer period and my GP again stressed that a complete break and rest would be great for me as I have been dealing with this issue since November 2020. If the school goes ahead and dismisses me tomorrow as i fear is the forgone conclusion my legal representaives will appeal due to the due process issues as I would like an opportunity to represent myself at a hearing and present these new clarificcations by you about the inaccuracies within the investigation report. please bear in mind that I will be away recouperating over teh summer holidays when setting an appeal hearing date*."(sic)

193. Also on 21 July 2021 the claimant emailed Mr Savla to tender his resignation with immediate effect "*subject to an understanding that the disciplinary hearings ceases to take place. As has been acknowledged by both parties that Trust and Confidence on both sides has broken down and, in the interests of the school moving on, and for my own career to progress, I have decided that this is the best course of action. For the avoidance of any doubt my resignation with immediate effect, is conditional on the hearing not progressing as planned*".

194. Mr Savla took legal advice on this. As a result of this advice, he was concerned that the claimant would potentially later try to withdraw his resignation (which is exactly what later happened) and may subsequently try to claim constructive dismissal. He took the view that in a potential

gross misconduct situation it might be sensible to proceed with the hearing and to make findings in any event. Mr Savla emailed the claimant's trade union representative to advise that the hearing would proceed but no record of the decision grounds would be made until 28 July 2021. One of the rationales for this approach was to allow the school and the claimant the opportunity to reach a settlement under an ACAS agreement.

195. At 5:30 pm on 21 July 2021 the claimant again emailed the school to confirm that he had tendered his resignation with immediate effect that afternoon.

196. It is not entirely clear from the contemporaneous documentation, but the claimant accepted in evidence that the disciplinary hearing had initially been scheduled for 21 July 2021, but was moved at his request because he attended a court hearing on that day in the family courts. The claimant accepted in cross examination that this was an in-person hearing, which he attended, and that he did not apply to postpone for medical, self-isolation or other reasons.

The disciplinary hearing

197. The disciplinary hearing took place before a disciplinary committee of governors on 22 July 2021. The committee was chaired Mr Taylor, who had been at the school since March 2021. Also on the panel was Mr Henry, ex-chair of governors at the school, and Ms Stotesbury, a retired teacher governor. The minutes of the hearing were in the bundle at [2257-2258] and will not be set out in any depth. The committee considered the allegations which Ms Garrett found the case to answer in her investigation report, and those relating to the reference. Mr Savla attended the meeting to present the management case and Ms Garrett attended virtually. Ms Scott attended to take notes.

198. The committee first considered whether to proceed in the claimant's absence. Mr Savla presented evidence that there had been an inconsistency as regards the medical evidence presented to the school and what had been observed during that period. It was noted that this was the third postponement (this was incorrect, it was the third date offered, but there had been two postponements), the claimant had maintained an active social media presence during the period, had attended a number of webinars, had had an interview for a head teacher post, had set up a business in February which he had been promoting and had indicated that he would be travelling to Nigeria at the weekend. Mr Savla also drew the panel's attention to the resignation letter that had been received from the claimant, and the agreement that no decision would be formalised unless a compromise agreement was not reached by the end of 27 July 2021. Mr Savla said that there was anxiety among staff, parents and governors about the way the claimant presented himself in social media and that further delay to concluding the disciplinary issue would not be in the interests of the claimant, the school, the pupils, the parents and staff. The committee decided to proceed in the claimant's absence. Although not recorded in the minutes, the panel was aware that the claimant was approaching two years' service at this point.

199. Mr Savla then presented the management case, summarising the disciplinary report in respect of the allegations which were allowed to proceed. The panel asked a number of questions. We note that one question was as follows: "*In the grievance PMC has gone with the race card straight away, this is clearly a big thing for him, [Mr Savla] are you the only non-white member of the Board?".* After Mr Savla indicated that he was the only non-white member of the board, but that there was more of a "mixture" in terms of the senior leadership team at school, there was a follow-up question on the claimant's awareness of bias and discrimination within the education sector which was a key issue for him. The unidentified questioner went on to express a concern that while the grievance investigation did not uphold racial allegations, Mr Islam Chowdhury stated that this could be unconscious bias, and Mr Savla's thoughts were invited. Mr Savla indicated that he did not take the view that there was unconscious bias, and had there been any it would have been unlikely that the claimant would have been appointed. He went on to say that even if it comes out to have been unconscious bias it had all been raised on decisions being passed by the school and higher authorities "*and this has been used as a racecard*". He went on to say that the issue was more about transparency, openness and honesty. If there had been indications of unconscious bias governors would be asked to leave.

200. Mr Taylor said in evidence that he could not recall which of his colleagues on the panel had made reference to the "race card", but that he did not find it helpful, and that he had focussed on relevant matters.

201. The panel also considered a lengthy email the claimant had sent the previous day. Within the minutes were a number of questions the panel would have asked the claimant had he attended.

202. The management summed up. Mr Savla concluded that there had been a breakdown between the governors and the Head Teacher. He indicated that the claimant had played "a long game", as he had indicated on his webinar, with a view to trying to make the process as long as possible.

203. After the meeting finished the panel deliberated and made its decision to uphold all allegations of misconduct.

204. On 23 July 2021 the respondent's solicitors emailed the claimant's representative with a without prejudice offer of settlement. The claimant responded to this email the following day. He made a number of observations about the disciplinary process, about race discrimination and rejected the proposal of settlement. He indicated that he was formally withdrawing his resignation. On 27 July 2021 Mr Savla, having taken legal advice, wrote to the claimant's trade union representative to say that the respondent did not accept the request to withdraw his resignation, and indicated that the disciplinary outcome would be confirmed in due course.

205. In his witness statement (paragraph 309) the claimant asserts that he raised a "whistleblowing grievance" concerning fraud committed by EU in relation to claiming full-time salary despite only working four days a

week. In his witness statement the claimant said that he had explained that uncovering this unlawful activity was the likely basis of EU's prejudice against them prompting him to make false and malicious allegations against him. The claimant's case, as set out in paragraph 16a)vii) of the List of Issues, is that disclosure of "alleged fraud re: working hours committed by [***EU***]/the respondent…28/7/21" was a protected disclosure.

206. We note at paragraphs 230-234 of the claimant's witness statement that the claimant's evidence is that the claimant himself says that he discovered a number of "add-on payments" in respect of EU's salary at some point earlier and that he had challenged EU about this, and taken steps to remove these elements, reducing his salary by £10,000.

207. On 30 July 2021 the disciplinary panel's decision to dismiss was confirmed by letter. The letter set out the procedures adopted, some context, its decision to proceed in the claimant's absence and then set out its unanimous decision in respect of seven allegations.

a. Serious financial mismanagement in relation to gaining relevant approval/authorisation of equipment/leases: the panel concluded that the evidence confirmed the leases including tables, Wi-Fi and canopies were confirmed to be financial leases and not operating leases and there was no evidence to support a contention that the claimant had obtained prior authorisation from the governing board or the Secretary of State, in breach of the Finance Policy and Procedures and the Handbook.
b. Failure to disclose financial information and accounts when repeatedly requested: the evidence suggested not obtaining and sharing three quotes for contracts.
c. Breach of reporting obligations regarding finance: the evidence suggested the claimant did not provide financial reports regularly when asked and did not seek ESFA approval for finance leases.
d. Failure to disclose personal relations with external companies: the claimant did not disclose a declaration of interest in relation to Doc Hearts until after the company had been contracted to start work, and had only been disclosed once the investigation questions had been submitted prior to the investigation meeting in January 2021.
e. Failure to comply with reasonable management instructions from the governing body: the evidence suggested the claimant had not provided quotes to the governors when requested.
f. Providing a reference to Ms Afriye in the capacity of Head Teacher during suspension and in breach of the terms of suspension: the evidence showed that the reference had been completed as line manager and head teacher and had commented on her work ability and experience commenting that he would re-employ her. The reference did not state that it had been provided as a personal reference. The claimant would not have been aware of any safeguarding concerns which may have arisen during the course of his suspension.

g. Providing a reference via a personal email address: this allegation was not upheld.

208. The panel concluded that each allegation upheld was serious enough to amount to gross misconduct according to the disciplinary policy. The decision was made that the claimant should be dismissed without notice. The panel considered alternative options, but that with so many allegations proven, dismissal was justified and fair. In considering alternatives to dismissal the panel considered that there were no mitigating factors and due to the seriousness of the conduct and the seniority of the claimant's position there were no alternatives to dismissal. It was noted that the claimant was a Head Teacher with prior experience in a similar role and should have been aware of standards expected of him. The panel also did not consider that a wider potential breakdown in relationships provided any mitigation. The panel concluded that each proven allegation justified dismissal on its own, and collectively the six proven allegations supported a decision to dismiss. The panel also concluded that the implied duty of trust and confidence had been seriously damaged by the claimant's conduct, and there had been an irretrievable breakdown in the relationship as a result of the claimant's conduct, which would also justify dismissal. The panel did not conclude that it was appropriate to make a referral to the Teaching Regulation Agency, as the misconduct related to the claimant's leadership and financial management rather than concerns about his role as a teacher.

209. The claimant was given a right of appeal and notified of the procedure for doing this. The letter set out the effective date of termination of employment was the 22 July 2021. The claimant was not entitled to any notice period or payment in lieu of notice.

210. The letter was sent by post, and the parties agree that the claimant received it on 2 August 2021.

<u>Letter to staff and parents</u>

211. At 5:21 PM on 29 July 2021 the claimant tweeted "*Just to be clear to all families at my school. I love being a school leader and look forward to coming back to school in September 2021 to carry on leading my school. I love the journey I have started and wish to be given the opportunity to complete the job I started in 2019*".

212. We accept the evidence of Mr Savla that this tweet was seen by members of staff and families who contacted the school expressing some confusion and uncertainty. We observe that this tweet was sent out when the claimant had resigned, withdrawn his resignation, knew that a disciplinary hearing had proceeded in his absence and had engaged in settlement discussions with the respondent. We further accept Mr Savla's evidence that he was very concerned that the claimant was putting out misleading information. As a result of this, Mr Savla took further advice from the respondent's solicitors. The advice was to the effect that, while normally the school would not comment on confidential staffing matters until after an appeal, given the misleading information, the school could advise families and staff that the claimant had been dismissed. The advice

was not to indicate that the claimant had been dismissed for gross misconduct. However, on or around 29 July 2021 an email was sent to staff and parents indicating that the claimant had been dismissed for gross misconduct on 22 July 2021, and setting out continuity arrangements.

213. Mr Savla accepted that he was wrong to include the reference to the reason for the dismissal and not confine himself simply to the fact of it. However, the communication was factually correct, and we accept that, in his haste and in order to correct misinformation, he mistakenly included this additional information.

Reference of 11 August 2021

214. There was correspondence in the bundle [1077-80] in early August 2021 in respect of an application by the claimant for the role of Assistant Director, Standards, Safeguarding and Partnerships at the London Borough of Lambeth. The claimant was asked for contact details for his current employer and on 10 August 2021 the claimant emailed the recruiting authority to say that he had been working as an independent consultant since January 2021, and could provide references from the head teacher of the school "*where I am working/supporting at the moment*". He said he had been providing school improvement and coaching support to the leadership team. Later that day he sent an email to say that he was currently working with another organisation which would be happy to provide a reference. The recruiting authority responded to say that due to safer recruitment requirements they would be contacting current and previous employers from the past three years, so would still need to contact the respondent. The recruiting authority wrote another email on 11 August 2021 requesting the contact details of the current chair of governors at the respondent school as a matter of urgency. The claimant provided Mr Savla's email address, but indicated he was in legal conflict with the governors, but they could confirm that the conflict was not over safeguarding.

215. On 11 August 2021, in response to a request from Lambeth, Mr Savla provided a letter of reference to the claimant in respect of his application for the role at Lambeth [2299]. The final paragraph of this letter is as follows: *"[Mr Mundy-Castle demonstrated the knowledge around leading the teaching and learning at the school including safeguarding measures and improvement of student facilities. Whilst there were no issues in respect of safeguarding, it did come to light that Mr Mundy-Castle had provided a professional staff reference during his employment with us without having access to the staff file*".

216. We accept the evidence of Mr Savla, that in circumstances where the claimant had been dismissed for gross misconduct, this was a generous reference. We note that the dismissal letter in respect of the reference provided to Ms Afriye set out that the panel had considered providing a reference when the claimant had not been in the school since November 2020 was a serious safeguarding breach, particularly so given the claimant's position as a level 3 Designated Safeguarding Lead. The role in which Mr Savla provided a reference to was clearly a safeguarding

role. Thus we can see how it might be highly inappropriate for Mr Savla not to have made reference to the claimant having provided a professional staff reference without having access to the staff file. We find that the letter as a whole, and the specific information on this particular issue, is reasonable and measured, to the point of generosity.

Appeal

217. On 12 August 2021 the claimant appealed his dismissal. He set out his grounds over six pages [2300-6]. Very much in brief, he referred to his inability to attend the hearing due to ill health and factual inaccuracies relating to this issue, the punishment being too harsh, differential treatment with various white staff, other factual inaccuracies in the dismissal decision, the existence of new evidence, and various issues of mitigation (medical and personal issues, the pandemic, regular turnover of governors, lack of support and induction). The respondent accepts that this was a protected act.

218. On 22 September 2021 an appeal hearing took place before an appeal committee consisting of Mr Wallace, Chair, Ms Salami and Ms Montgomery. Mr Taylor, the dismissing officer, presented the management case and the claimant attended with his trade union representative. Mr Savla also attended as well as Ms Scott as the notetaker. The minutes of the meeting were in the bundle at [2466-83]. Very much in brief, the claimant made a preliminary statement at the hearing, Mr Taylor and Mr Savla gave evidence in respect of the allegations under appeal and were questioned by the claimant. Further questions were asked by the appeal panel. The claimant then presented evidence of his own and management had the opportunity to respond. The claimant provided a final summing up. After this the claimant briefly referred to four previous cases in which he claimed that the school had dealt differently with allegations of misconduct, and stated that he felt he was treated more harshly because he was black. He asserted that a staff member had been caught stealing, MP had been paid through the school twice and in his other role he was abusive to people and that Mr Savla had sat on his disciplinary hearing, OE was found on a pornographic site, and FT left voluntarily whilst under investigation for grooming a student. Mr Savla then gave a closing statement.

219. The appeal panel considered the evidence, but felt that given the comparator issues raised by the claimant, it would be appropriate to investigate further. The panel met again on 3 October 2021. The claimant provided further information to the panel on 7 October 2021. The panel met again on 12 October 2021 to consider the further evidence provided by the claimant.

220. On 14 October 2021 the appeal panel provided an outcome letter in respect of the appeal hearing. The panel allowed the claimant's appeal in respect of the disciplinary finding that he had breached reporting obligations regarding finances which led the school to breach its statutory obligations regarding financial reporting, and the allegation that he had provided a reference in his capacity as head teacher during his

suspension (the decision on this allegation was not unanimous). The panel upheld all other disciplinary findings. The panel set out its reasoning in respect of all allegations.

221. The panel considered the inconsistent treatment argument raised by the claimant, and dealt with each comparator in turn.

a. In respect of the member of staff caught stealing, the panel commented that no safeguarding concerns had been raised with this member of staff, the values were low and, although the sanction did appear generous, the panel noted that the employee in question also lost his family home as a consequence of the decision. There were genuine reasons why the school chose to enter into a settlement agreement, and no evidence that the decision was racially motivated.

b. In respect of MP: this member of staff was not paid twice. Both the LADO and the police were involved in the matter at the relevant time, and both confirmed that no minors were involved and no safeguarding issues arose. Stress had been put forward as mitigation (similar to the claimant) but there were clear differences between the two cases, most importantly that the staff member acknowledged wrongdoing and expressed remorse, indicating that they acknowledged and understood misconduct and satisfied the employer that there would be no repeat of it.

c. In respect of OE: this incident allegedly took place in 2009. No records were held relating to this incident, no further information could be obtained and no determination could be made on the allegation.

d. In respect of FT: the panel referred to the email chain [2828-31] which we have referred to above, quoting from certain emails which made clear that LADO had seen fit to allow the school to proceed as they saw fit, and confirming that the claimant was involved in the decision-making in relation to FT's termination of employment. The panel commented that it was concerned at the claimant's decision in this regard, and that the panel viewed this as a lack of understanding of safeguarding duties and a failure of judgement.

222. The panel went on to deal with all matters of mitigation raised by the claimant. In relation to health and personal issues, noted that the issue of health arose after the misconduct had taken place and did not mitigate them. It observed that the turnover of governing body members was, in part, due to the claimant's conduct and the breakdown of relationships with governing body members. The panel concluded the claimant had more than enough experience to cope with the challenge of moving from an MAT to a SAT school. The panel noted that the claimant never raised any concerns about lack of induction, support or training during his employment, and, as an experienced head teacher, would be expected to have raised such concerns if appropriate.

223. In conclusion, the panel observed that in the claimant's haste to make rapid changes he disregarded the principles, processes and procedures he was duty-bound to comply with. Had he followed the school's policies and processes and worked with the governing body rather than against them then his employment would not have been terminated.

224. On 1 November 2021 Mr Islam Chowdhury provided an addendum grievance report, in relation to a further grievance advanced by the claimant. In short, the grievance appeared largely to be a request for a review of Mr Islam Chowdhury's previous findings. He did not uphold the grievance, and confirmed the previous findings, with the exception that, having spoken further to Mr Savla, he was satisfied that he acted at all times on a non-discriminatory basis.

Go Fund Me

225. In 2019 the claimant had set up a Go Fund Me fundraising page for the canteen in his own name. The campaign raised over £2000. In January 2022 it was brought to Mr Savla's attention that less than £100 had been transferred by Go Fund Me to the school.

226. On 15 January 2022 Mr Savla emailed the claimant outlining the discrepancy in sums and to say "*I believe only you had the access to the Gofundme page therefore if you can arrange for this access to be given to the school or if the funds sitting in the account can be transferred to the school then amount collected would reconcile to the amount on the gofundme page*".

227. The claimant responded later that day to say that the account balance had been transferred over 15 months previously, and this could be checked. He felt that he had been accused of sitting on money and took offence to this assertion. He said he would contact Go Fund Me once the school checked its accounts.

228. Further checks were made, which confirmed what the claimant had told Mr Savla.

229. We accept Mr Savla's evidence that the reason why he contacted the claimant as he did was because, on the information available to him at the time, there appeared to be a discrepancy in terms of sums paid from the funding campaign. Further checks revealed that this was not in fact correct, and Mr Savla did not take the matter further.

Allegation of harrassment

230. There was further correspondence from the claimant on 4 March 2022 to Mr Savla, copied to the governors, in which the claimant pursued updates on the Go Fund Me issue.

231. The respondent's solicitors emailed the claimant's solicitors forwarding the claimant's email earlier that day and asking them to confirm, in the light of previous correspondence between solicitors, that the claimant should not contact the respondent directly, and that they had

to explain the potential consequences if the claimant fails to comply with reasonable requests not to contact them. They said that if the claimant fails to heed that request than the respondent reserved its rights as regards notifying the tribunal or the police.

232. The claimant solicitors responded on 9 March 2022 pointing out that the respondent had contacted the claimant directly in relation to matter which was not subject to the tribunal claim, which they confirmed they had informed him he should not contact them about. The respondent solicitors responded pointing out repeated requests on 20 January, 21 February and 4 March 2022 for the claimant not to contact the respondent directly. They pointed out that the respondent would take such action as is appropriate with regard to the ongoing tribunal claim and notifying the police of what they said was the claimant's harassment of their client.

Newspaper article

233. On 11 May 2022 an article was published in the Basingstoke Gazette about the claimant taking the respondent to an employment tribunal. The article included the following: "*Hiten Savla, chair of governors at Woodcote School, confirmed to the Gazette that he sent a letter to parents in August last year informing them that Mr Mundy-Castle had been dismissed. He said the matter was dealt with internally by the trust and he was unable to disclose any details*".

234. The claimant asserts in his witness statement (paragraph 359) that Mr Savla had "*reached out to the Basingstoke Gazette and gave them a statement that I had been dismissed for gross misconduct, which led to them publishing three damning stories about me in the local press in, which led to me having to leave a temporary job I was discharging… Mr Savla could have chosen to not comment on the Basingstoke Gazette story as he was aware I was at tribunal with the school yet he chose to confirm the story and the Basingstoke Gazette stated to me that with his confirmation of gross misconduct they were now able to run the story to my detriment*".

235. Mr Savla dealt with this allegation in paragraph 208 of his witness statement and in oral evidence. He denied providing an interview to the newspaper or providing them with a copy of the dismissal letter. He said that normally when the school is contacted by press the school would or pass on the request to solicitors. He said the newspaper contacted the school in May 2022 with information that could only have come from the claimant. He said he took advice and provided very basic factual information, as the information the newspaper had appeared inaccurate. In oral evidence he said that he had given no comment to the newspaper.

236. We conclude that it would be very odd indeed for Mr Savla to have "reached out to" the newspaper, provided documents to them and then effectively given no comment other than to confirm the claimant's dismissal (note, not for gross misconduct as asserted by the claimant). We do not find that Mr Savla approached the newspaper, and we find that all he did was confirm the claimant had been dismissed, which the

newspaper clearly already knew, and that he did not comment any further. We do not find that Mr Savla set out to embarrass the claimant or sabotage his then employment.

ESFA determination

237. On 24 May 2022 the ESFA issued a Notice to Improve in relation to governance and compliance concerns. The notice set out that the trust had entered into four finance leases between November 2019 in July 2020 without seeking prior approval from the ESFA. The notice set out how this breached a number of requirements.

Findings on certain comparators

238. We have dealt with some of the evidence in relation to some of the comparators in the account above. It is perhaps helpful to draw together some of the findings and separate them from our chronological narrative of events, and where necessary, make further findings on individual comparators.

List of Issues 3a). Member of staff "caught stealing"

239. This comparator was raised at the appeal hearing, and we deal with this comparator in our findings under the Appeal section above at paragraph 221a. Mr Wallace also gave evidence at paragraph 22 of his witness statement.

240. He was a caretaker of the school and not a member of teaching staff. As part of his terms and conditions he and his family were provided with accommodation at the school. We understand that he is white.

241. At some point, and it is difficult to determine when, he was suspected of using school resources, possibly a credit card, for his own financial gain. Mr Wallace's evidence, which was not challenged, and which we accept, was that the value of financial gain was low.

242. The school entered into discussions with the comparator which led to his leaving the school under the terms of a settlement agreement. His leaving the school led both to the termination of his employment and to the loss of his family home.

243. We observe, as set out above, that the respondent also explored the possibility of settlement with the claimant when disciplinary issues arose with respect to him.

List of Issues 3b. Racist and Islamophobic social media posts

244. We have dealt with this matter at paragraphs 181-184 above. We have found that the claimant raised an allegation that this individual made racist posts on social media. The school investigated and determined that a fake profile had been created in this individual's name, and that he had not been responsible for posting racist and Islamophobic content online.

List of Issues 3c) Hiten Savla

245. Mr Savla was a governor. It is difficult to see what treatment of him is alleged to be comparable. He was on the board of governors and was not subject to any disciplinary issues.

List of Issues 3d. WS

246. Setting out issues in respect of WS has presented us with significant challenges, and we have referred to this person at paragraph 128 above. We have anonymised both the name of this individual and their role because of the risk of jigsaw identification. We are grateful to Mr Ross for indicating that the identity of the children of WS is not relevant to the determination of the issues in the case.

247. The thrust of the claimant's comparator evidence in this case, as we have set out in the introduction, is that there was a pattern of leniency in respect of disciplinary matters afforded to white staff which was not afforded to him and which indicates that his race was a factor in his treatment.

248. There was nothing in the evidence presented to us or in submissions advanced on the claimant's behalf to suggest that WS's circumstances are at all comparable to the claimant's. There were no disciplinary issues in respect of this person. It appears that their relevance is that they were a parent of children about whom a section 47 inquiry was raised. The claimant asserts that he made protected disclosures about this inquiry. We will deal with this matter in our conclusion below, but we find that there is no evidence in respect of WS which assists in inferring discrimination.

List of Issues 3e). MP

249. Both the name and the role of this individual was anonymised to prevent jigsaw identification. We have referred to this individual in the context of our findings in the Appeal section above, as the claimant raised their treatment as an example of differential treatment at appeal.

250. In 2018 it came to the attention of the school that MP appeared on a "findom" website or social media site. The claimant produced screenshots of this at [c144ff]. Findom is an abbreviation for a phenomenon known as financial domination. It is clear that the website included contributions from a number of individuals and included unsavoury material such as homophobic content and nude pictures. MP did not post nude pictures, but there is one reference "@rtfaggot", a photograph of MPs face, and one of their feet and socks.

251. MP was taken through a disciplinary process. They were not suspended, but they were interviewed, and attended a disciplinary hearing which resulted in their being given a final written warning.

252. During the disciplinary process MP explained their involvement with findom, accepted their stupidity in getting involved, expressed remorse and set out their difficulties with stress. They were specifically questioned about the fact that some of the posts they had made appeared to be during school hours. They explained that there was a feature called

"SummAll" which automatically generated tweets, and they confirmed that they had never posted content in school hours.

253. We repeat our findings at paragraph 221 above that the school involved the police and LADO, were satisfied that no minors were involved and that MP expressed remorse and referred to mental health difficulties. We would add that MP was not a member of the senior leadership team of the school. We would also observe that a final written warning was the most serious sanction short of dismissal.

List of Issues 3f) Ms Woodcock

254. Ms Woodcock was the deputy head teacher. The claimant's evidence about alleged differential treatment appears at paragraphs 86, 105, 106 and 108 of his witness statement. He did not put her forward as a comparator during his appeal when he alleged differential treatment about others.

255. The claimant's case appears to be that Ms Woodcock recruited a teaching assistant who, it subsequently transpired, had been on police bail for child sex offences at the time of recruitment. He says that the teaching assistant was allowed to work at the school without DBS clearance. He also says that Ms Woodcock lied about having safer recruitment training, and that she had undertaken recruitment without having had such training. The claimant says that he pressed the then chair of governors, Mr Cooper to discipline Ms Woodcock, but that he resigned before anything was done, and that the governors subsequently "*never sanctioned any disciplinary action to be taken against*" her.

256. Mr Savla accepted in evidence that the teaching assistant had been recruited and that he began work while his DBS certificate was awaited. He said that this was at a point when there were long waits for DBS documentation, and that the teaching assistant never worked unaccompanied.

257. The only contemporaneous documentation about this appeared at [448-9]. This was an email which appears to be from police notifying the claimant that the teaching assistant was on bail for child sex offences. The claimant forwarded this email to governors. In it he says "*Please keep confidential as we did not follow any safeguarding procedures when we employed him and we exposed students at [the school], as he had an outstanding grooming charge when employed*".

258. While this may provide some support that there may have been deficiencies in the recruitment of the teaching assistant, it does not support the claimant's account that he was pressing for disciplining anyone whoever may have been responsible.

259. For reasons we outline below in our findings on credibility, we are hesitant to take the claimant's assertions at face value. We do not accept that he was pressing for action to be taken against Ms Woodcock, and we do not accept that the governors were reluctant to take it, as he seems to suggest.

260. Additionally, there is no contemporaneous documentation to support his assertion that Ms Woodcock had lied about safer recruitment training or that the governors were somehow slow to take action on it.

List of Issues 3g) FT

261. We have set out our findings in relation to FT above at paragraphs 67-70 and 221. There is little we need to add, save to recap that the account that the claimant presented to the tribunal was sharply at odds with the contemporaneous documentation. The claimant was deeply involved in the very decision-making he characterises as unduly lenient.

List of Issues 3h) CR

262. This individuals name and their role are subject to anonymity due to the risk of jigsaw identification. Again, we have certain challenges in setting out the facts we have found in respect of any comparable treatment the claimant alleges, and we do so with some care.

263. CR's role was not akin to the claimant's role as head teacher. We have set out at paragraphs 67-70 above that CR was the parent of HA whom, the claimant alleged, was groomed by FT.

264. The claimant's evidence (paragraph 98-99 of his witness statement) was that CR refused to support the investigation into the allegation that FT had groomed CR's child. He said that CR was not an appropriate person to hold the role that they had and should not hold the role that they retained and that this issue should be taken to the head of governors. He said that the head of governors, then Mr Cooper, later informed him that CR had stepped down from one role, but retained another and Mr Cooper did not confront CR about their misconduct.

265. There was no contemporaneous evidence to corroborate the claimant's account. Such evidence that there was (2828-30) on the related issue of FT's leaving employment shows that the claimant presented an inaccurate picture to the tribunal on this related issue. It also show the claimant acknowledging that LADO was taking the view that it was a matter for the school to proceed as it saw fit.

266. Further, and again setting out things with care to avoid jigsaw identification, the tribunal can well see that CR found themselves in a difficult personal situation, having a role within the school, and having a child subject to an inquiry about whether they had been groomed. CR's difficult position is evident, and their decision to relinquish one role is understandable. Their decision to retain another role does not seem unreasonable, and certainly does not appear to be the "misconduct" that the claimant alleges against them. We also note that there is absolutely no evidence that the claimant was pressing the board of governors to take any action against CR.

Not named comparator - OE

267. While not set out in the List of Issues, the claimant appeared to suggest that another member of staff, OE had been treated leniently. He

says that there was evidence that this individual had uploaded pornographic pictures of themself onto the internet.

268. As we have set out above in our findings of fact on appeal at paragraph 221c) the allegations relate to some ten years previously and there was no documentation to assist. The claimant produced some pornographic pictures in his bundle, but there is no way we are in a position to make any findings of fact 1) that this was the individual in question, or 2) that, if it was, how they were or were not dealt with by the school. This evidence has been of no assistance in our determination of whether there was lenience shown to white staff.

The claimant's supporting evidence

Ms Gray

269. Ms Gray provided a witness statement and gave evidence remotely by CVP. She had been Head of Art from 2010 to 2019 before the claimant took on his role. She is a black woman.

270. Her one page witness statement included an allegation that she had been unfairly suspended from school while pregnant. She said that the disciplinary process was unfair and that unspecified racist comments were used in evidence against her and that someone else was not suspended. She said that the school tried to discredit her after she left by providing references that raised child protection issues.

271. A reference for a role was provided by the respondent on 1 March 2019. This reference was a positive one, which indicated the school would re-employ Ms Gray "*with enthusiasm*". A pro-forma section of the reference on child protection indicated no issues with child protection, but set out, in response to a question about whether there had been "*allegations or concerns*" that relate to the safety of children, that "*Complaint from parent found to be totally unjustified by a panel of governors and no action taken by the LADO*".

272. We find that Ms Gray was suspended following serious allegations raised in a parental complaint. Ms Gray was taken to a disciplinary hearing, which found the allegation to be a false one, and, we find, that the school did not take steps to discredit the claimant, as is evident from the only document we have on the issue. We can well understand that the whole disciplinary process was a stressful ordeal for Ms Gray, but there was nothing from which we could conclude that it was initiated or conducted in bad faith, and the process led to her exoneration.

Other witnesses

273. Eleven other short witness statements were provided in support of the claimant. The respondent did not seek to cross-examine these witnesses, as it did not feel that they were relevant to the issues in the case, and that it would not be proportionate to require the attendance of the witnesses. In brief, the evidence was as follows:

a. Mr Comrie has known the claimant in a professional and personal capacity for a number of years and considers him an outstanding

professional. Since the issues with the respondent he has struggled to find employment, and the issues have had a profound effect on him.

b. Ms Njie was employed as an administrative apprentice at the school at around the same time as the claimant. She said that there was a lot of rumour and speculation when the claimant was dismissed and that his reputation was not protected. She considers that he was treated unfairly by an unnamed manager, and she considers this was racist.

c. K Lakshminarayanan was a student at the school. Before the claimant took over there was a problem with bullying, some of it racially motivated. Unnamed staff were prejudiced against black students. The claimant made things better. There were rumours following his dismissal.

d. Mr Keefe was the head of music. There were problems with the fabric of the school and the claimant made improvements. The claimant was supportive of his development.

e. Mrs Brown was the head of drama. The claimant made improvements to the school. He supported her own and colleagues' development. She was not informed of what was happening when the claimant was disciplined and there were rumours circulating.

f. Ms Dixon was the head of another school. She considered the claimant a supportive professional black leader. She was shocked at his suspension and noted rumours about the reason for his dismissal and the profound effect it had on the claimant.

g. Mr Singh Sall worked with the claimant at Richmond Park Academy and considers him a person of integrity and a pillar of society.

h. Ms Hyatt-Cort was an academic law teacher at the school between 2016-19. She felt that very little information was passed to staff when the claimant was disciplined and that rumours circulated. Before the claimant's appointment there were numerous problems with behaviour and the fabric of the school which the claimant improved. Changes he made were resented by the senior leadership team. She witnessed a teacher make a racist remark about a student before the claimant's appointment.

i. Mr Jones is the chief executive of a business that provides support to schools and has worked with the claimant at several schools. He gave evidence of an email exchange with a Ms Davies, who said she was the partner of a parent of a student at the school, in which Ms Davies had informed him that the claimant had been dismissed by the respondent, and attached a letter to parents and staff. Ms Davies also referred to the claimant working at a school in Basingstoke and that the Basingstoke Gazette would be running a story about it.

j. Ms Afriyie was an assistant head teacher the school from 2020. She said the claimant made improvements to the school. She mentioned instances of microaggressions at the school, including the assistant principal referring to the qualifications of a black pupil applicant to the school as being fake. This was referred to the claimant who intervened and offered the boy a place at the school. The claimant raised issues about two black teachers not moving up the pay scale. She raised this with Mr Savla who said it was because of performance issues, which Ms Afriyie felt there was no evidence to support. Ms Afriyie said she was threatened with disciplinary action for undermining the acting head teacher when she raised issues to the governing body about allegations of racism. She said that the claimant had been disciplined for writing a reference for her when the acting head teacher had not (we observe that the acting head teacher would have had access to the personnel file as she was not suspended). Numerous rumours circulated about the claimant, which Ms Afriyie said the governors did not properly address. Ms Afriyie felt her concerns about institutional racism were ignored.

k. Ms Ratti was a student at the school. She commented on the positive changes the claimant made at the school. She said that rumours circulated when the claimant was disciplined. She felt that there were issues of bullying and racism at the school.

Reliability of evidence

274. We would observe that there is a difference in the accounts being put forward by the claimant, and the respondents and their witnesses. Before we embarked upon our fact-finding we reflected on the observations made by Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Limited and another* [2013] EWHC 3560 (Comm) about the fallibility of human memory. He observed that the vividness of memories and the confidence in their accuracy of those who hold them is no guarantee of reliability. Memories are fluid and malleable and external information can cause dramatic changes to them. Memories of past beliefs can be unreliable in that they are liable to be brought into alignment with current beliefs by external influences. The process of litigation itself "*subjects the memories of witnesses to powerful biases*" which cause the memory of events to be based increasingly on such things as the contents of a witness statement and later interpretations of an event rather than the original experience of the event.

275. All of this led Leggatt J to the conclusion that "*the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts*". These observations, though made in the context of commercial litigation in the High Court, are applicable to employment litigation.

276. We make a few observations about reliability of evidence. We found the claimant's evidence unsatisfactory in a number of respects.

a. In a number of respects the claimant has made assertions, often in the form of very serious allegations, which do not stand up to scrutiny when the contemporaneous documents are examined. One example is his assertions about how leniently the school treated FT in comparison with himself. In making this assertion the claimant is seeking to persuade the tribunal that the school treated a white man more leniently than him. He makes this assertion in his pleading and repeats it in his witness statement. When the documents are examined it is clear that, firstly, he presents an inaccurate account of the facts, and secondly, that he omits a crucial detail: that he himself was involved in the decision-making that he attacks. Another such example is his evidence to this tribunal about the Doc Hearts appointment (paragraph 121 above) where we found that what the claimant told the tribunal was at odds with what he told the Garrett investigation, and which we found was not true.

b. The claimant sought to "pivot" when presented with documentary evidence that undermined his evidence. Again, when taken to contemporaneous documents about FT in cross-examination he began to talk about what he was really trying to say was something about FT's PILON. Despite being an intelligent and articulate man, his evidence was difficult to follow, and he gave the appearance that he was trying to obfuscate.

c. The claimant is prone to hyperbole, to the point of misrepresentation. He alleged in his pleadings, confirmed in how he framed the List of Issues and in his witness statement that he was "*visibly frogmarched out of the school like a criminal*". We find that the claimant presented this account to paint the respondent in a negative light. When the minutes of the suspension meeting were put to him in cross-examination, and it was clear that he told Mr Savla that the police would need to be called to get him out of the building, it became clear that escorting the claimant from the premises was a reasonable approach by the respondent. It was clear to us that he was not frogmarched out of the building like a criminal.

d. Some of the evidence was strongly suggestive of the claimant misleading the respondent during the course of his employment. An example of this was his telling the FGB that he had committed the school to £25,000 of expenditure in respect of the WiFi, when two weeks previously he had committed the school to £38,000 expenditure.

e. We had some concerns that some of the emails provided by the claimant were not printed straight from the email account, but instead were clearly cut and pasted into a Word document. When a document is printed straight from email the header makes it clear

whether or not there are attachments to the email (eg [585]). Page 547 of the bundle is a potentially critical document in that the claimant's evidence in his witness statement is that he attached to this email a document containing protected disclosures. We raised this concern with the claimant while he was giving evidence, highlighting two emails which appeared to be cut and pasted into Word documents. In respect of one of those emails he provided a copy of the printed up email, and a photograph of his computer screen which suggested that this email did in fact forward an email that the Word document suggested that it did. He did not provide anything in respect of the email at [547]. As we have set out above, we found his evidence about "dragging" an icon into the Word document at [547] difficult to follow (obfuscatory, even) and we have found as a fact that this email did not in fact contain the attachment he asserted was attached in his witness statement. We find it hard to resist the conclusion that the claimant created a Word document to present a misleading account of a protected disclosure he did not make at that point in time.

f. Mr Islam-Choudhury, as set out above at paragraph 174, found that the claimant had deliberately misrepresented the facts to mislead the grievance investigation and was engaging in gamesmanship. We do not simply adopt Mr Islam-Choudhury's assessment of the claimant's credibility and motives. However, Mr Islam-Choudhury has meticulously set out in his 17 page report the allegations raised by the claimant, and the extracts from the evidence (6 appendices running to 109 pages) which led him to that conclusion. On the face of it, it is not an unreasonable conclusion. Perhaps the most that can be said here, is that the fact that a different investigative process raised serious concerns about the claimant's reliability as a historian of fact gives us some comfort that our own assessment of his reliability is not wide of the mark.

g. In contrast, the respondent's witnesses, for the most part, anchored their evidence in the contemporaneous documents rather than in bald assertion. They made appropriate concessions (Mr Savla conceding that he could see the claimant's perspective on the possible scope for partiality in Ms Garrett's appointment, Mr Taylor conceding that the "race card" remark was unhelpful, for example). These concessions appeared to be genuine reflections, rather than the claimant's concessions, which appeared more to be "pivoting" when presented with contemporaneous documentation that undermined his evidence.

h. In all the circumstances, we have felt ourselves unable to accept the claimant's assertions at face value in a number of respects. As *Gestmin* suggests, we have looked for reliable evidence in the documents rather than mere assertions. Additionally, if there is a conflict of evidence between the claimant and the respondent's

witnesses, all things being equal, we have preferred the latter's evidence.

The law

Direct discrimination

277. In respect of direct discrimination, Section 13(1) of the EqA provides as follows:

> *A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

278. Section 23(1) of the EqA deals with comparisons, and provides:-

> *On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.*

279. The EAT in *Chief Constable of West Yorkshire v Vento* [2001] IRLR 124 made clear that using examples of individuals who were not true comparators was a proper way of constructing a hypothetical comparator.

280. The burden of proof provisions (which apply equally to harassment) are set out in section 136 EqA 2010:-

> *(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

281. When considering direct discrimination, the tribunal must examine the "reason why" the alleged discriminator acted as they did. This will involve a consideration of the mental processes, whether conscious or unconscious, of the individual concerned (*Amnesty International v Ahmed* [2009] IRLR 884). The protected characteristic need not be the only reason why the individual acted as they did, the question is whether it was an "effective cause" (*O'Neill v Governors of St Thomas More Roman Catholic Voluntary Aided Upper School and anor* [1996] IRLR 372).

282. Guidance on the application of the burden of proof provisions of the Sex Discrimination Act 1975 (which is applicable to the EqA, including claims of harassment and victimisation) was given by the Court of Appeal in *Igen v Wong [*2005] IRLR 258:

> *"(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is*

unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word "could" in SDA 1975 s 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s 74(2)(b) of the SDA 1975 from an evasive or equivocal reply to a questionnaire or any other questions that fall within s 74(2) of the SDA 1975.

(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

283. Tribunals are cautioned against taking too mechanistic an approach to the burden of proof provisions, and that the process of drawing inferences of discrimination is a matter for factual assessment and is situation-specific, and that the tribunal's focus should be on whether it can "*properly and fairly infer … discrimination*" (*Laing v Manchester City Council* [2006] ICR 1519). The Supreme Court has observed that provisions "*will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence, one way or the other*" (*Hewage v Grampion Health Board* [2012] UKSC 37).

284. The Court of Appeal has emphasised that "*The bare facts of a difference in treatment, without more, sufficient material from which the tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination"* (*Madarassy v Nomura International plc [2007] IRLR 246*). "*Something more*" is needed for the burden to shift. Unreasonable behaviour without more is insufficient, though if it is unexplained then that might suffice (*Bahl v Law Society [2003] IRLR 640*).

285. The EAT has also provided some recent guidance both on comparators and on the shifting burden of proof in *Leicester City Council v Parmar* EA-2023-000353-JOJ. In its review of the case law the EAT observed that "*the purpose of a Tribunal's consideration of comparators is to use it as an evidential tool to see whether an inference of discrimination is justified. It is not an end in itself*" and "*The usefulness of the tool will, in any particular case, depend upon the extent to which the circumstances relating to the comparator are the same as the circumstances relating to the victim. The more significant the difference or differences the less cogent will be the case for drawing the requisite inference*".

Harassment

286. Section 26(1) EqA provides: -

A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

287. Section 26(4) EqA sets out factors which tribunals must take into account: -

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a)the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect.

288. Section 212(1) EqA provides that conduct amounting to harassment cannot also be direct discrimination.

289. The Court of Appeal in *Richmond Pharmacology v Dhaliwal [2009] IRLR 336* stated:-

"an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so….We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

290. The Court of Appeal again emphasised that tribunals must not cheapen the significance of the words of section 26 EqA as "*they are an important control to prevent trivial acts causing minor upsets being caught up by the concept of harassment*" (*Land Registry v Grant [2011] ICR 1390*).

Victimisation

291. Section 27 EqA deals with victimisation and provides: -

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

292. A person suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work (*Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11.* An unjustified sense of grievance is not sufficient (*Barclays Bank plc v Kapur (No. 2) [1995] IRLR 87* and *EHRC Employment Code*, paragraphs 9.8 and 9.9).

Limitation

293. Section 123 EqA governs time limits and provides: -

(1)… proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

…

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Whistleblowing

Whistleblowing Detriments

294. The Employment Rights Act 1996 (“ERA”) provides as follows in relation to protected disclosures:

Section 43A

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

Section 43B

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [is made in the public interest and] tends to show one or more of the following—

…

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

…

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

295. Section 47B ERA provides in relation to detriments:

(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.

296. Section 48 ERA provides *inter alia*:

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

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

297. The authorities stress the importance of the tribunal taking a structured approach to determinations relating to protected disclosures. As set out in *Williams v Michelle Brown AM* UKEAT/0024/19

"First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."

298. There must be a disclosure of information, that is to say the conveying of facts, and it is not sufficient for the claimant simply to have made allegations *Cavendish Munro Professional Risks Management Ltd v Geduld* [2010] IRLR 38. However, a disclosure may contain sufficient information to qualify for protection even if it includes allegations. The question of whether there is sufficient information will be a matter of fact

for us taking into account context and background *Kilraine v London Borough of Wandsworth* [2018] EWCA Civ 1436.

299. In terms of the public interest element, in *Chesterton v Nurmohamed* [2017] IRL 837 the Court of Appeal set out factors to be considered by a tribunal in deciding whether there was a reasonable belief a disclosure was made in the public interest. They are the numbers whose interests the disclosure serve; the nature of the interests affects; the nature of wrongdoing disclosed; the identity of the alleged wrongdoer. Where a disclosure raises questions of a personal character, the question of whether it is reasonable to regard it as being in the public interest is to be answered by considering all of the relevant circumstances of the case. *Dobbie v Felton* [2021] IRLR 679 held that a disclosure relevant to one person could nonetheless be in the public interest.

300. The tribunal is to determine whether, i) the claimant had a genuine belief that the disclosure was in the public interest, and ii) whether he had reasonable grounds for so believing. The claimant's motivation, as such, is not part of the test (*Ibrahim v HCA International* [2019] EWCA Civ 20).

301. In order to bring a claim under section 47B ERA the worker must have suffered a detriment. This must be judged from the point of view of the worker. "*There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and it has the same meaning in whistle-blowing cases*" (*Jesudason v Alder Hay Children's NHS Foundation Trust* [2020] EWCA Civ 73). However, an unjustified sense of grievance cannot amount to a detriment (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337).

302. The tribunal is to determine the reason why the claimant was treated as he was, which requires an analysis of the mental processes, conscious or unconscious, which case the employer to act as they did. It is for the employer to prove that the act complained of did not materially influenced the employer's treatment of the whistleblower (*Fecitt v NHS Manchester* [2011] EWCA Civ 1190). In *Derbyshire v St Helens Metropolitan Borough Council* [2007] ICR 841 the House of Lords observed that it would be difficult to imagine circumstances where an "honest and reasonable" action by an employer could amount to a detriment.

303. In terms of time limits, section 46 ERA provides:

> *(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.

Automatic unfair dismissal

304. Section 103A ERA provides that "*An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure*".

305. The "reason" for the dismissal "connotes the factor or factors operating on the mind of the decision-maker which causes them to take the decision." *Beatt v Croydon Health Services NHS Trust* [2017] ICR 1240.

306. The focus of the Tribunal is on the mind of the individual responsible for making the decision to dismiss. *Royal Mail Ltd v Jhuti* [2019] UKSC 55 provides an exception to this general principle where a person in the hierarchy of responsibility above the decision maker decides to dismiss and hides the true reason behind an invented reason which the decision maker adopts.

307. Where there is an overall plan to dismiss an employee, to which a number of managers are party, then a Tribunal can draw inferences from the overall circumstantial evidence to conclude that the dismissing manager was acting in accordance with that plan *University Hospital North Tees & Hartlepool NHS Foundation Trust v Fairhall,* UKEAT/0150/20 [36].

308. The burden of proof is on the claimant, when they do not have 2 years' service to establish the reason for dismissal (*Smith v Hayle* [1978] IRLR 413.)

"Ordinary" unfair dismissal

309. Section 108 ERA provides that "*Section 94 [the right not to be unfairly dismissed] does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than two years ending with the effective date of termination*".

310. Under section 98(1) ERA 1996 it is for the employer to show the reason for the claimant's dismissal, and that this is a potentially fair reason under section 98(2) ERA 1996. In this context, a reason for dismissal is "*a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee*" (*Abernethy v Mott, Hay & Anderson* [1974] ICR 323).

311. Potentially fair reasons include a reason relating to conduct (section 98(2)(b)).

312. The approach to fairness of dismissal is governed by section 98(4) ERA, which provides: -

> *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
>
> > *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
> >
> > *(b) shall be determined in accordance with equity and the substantial merits of the case.*

313. The EAT set out the approach to what is now section 98(4) ERA in *Iceland Frozen Foods v Jones* [1983] ICR 17.

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

adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.

314. Where the reason for the dismissal is misconduct, the approach to fairness is the test in *British Home Stores v Burchell* [1980] ICR 3

> *"First of all, there must be established by the employer the fact of that belief; that the employer did believe it. Secondly, that the employer had in his mind reasonable grounds upon which to sustain that belief. And thirdly, we think, that the employer, at the stage at which he formed that belief on those grounds, at any rate at the final stage at which he formed that belief on those grounds, had carried out as much investigation into the matter as was reasonable in all the circumstances of the case."*

315. It is important to focus on the wording of section 98(4) ERA, which does not set out a perversity test. It is for the tribunal to decide how serious the claimant's conduct was on the information available to the employer.

316. In *Mbubaegbu v Homerton University Hospital* UKEAT/0218/17 the EAT held that

> "*It is quite possible for a series of accident demonstrating a pattern of conduct to be of sufficient seriousness to undermine the relationship of trust and confidence between an employer and employee. That may be so even if the employer is unable to point to any particular act and identify that alone is amounting to gross misconduct. There is no authority to suggest that there must be a single act amounting to gross misconduct before summary dismissal would be justifiable or that it is impermissible to rely on a series of acts, none of which would, by themselves, justify summary dismissal*".

317. In considering a dismissal that is disciplinary in nature, the tribunal will have regard to the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Conclusions

318. It will be noted that the List of Issues has been structured in a way that sets out the factual allegations under each cause of action, and then, poses further questions for the tribunal to address in respect of the various causes of action. There is very substantial overlap in terms of the allegations the claimant says are acts of direct discrimination, race-related harassment and victimisation. In respect of victimisation, the tribunal has to be satisfied that certain acts attract the protection of section 27 EqA in order to find victimisation proven. Similarly, whether certain disclosures attract protection under section 43B ERA is foundational to the whistleblowing detriments and automatically unfair dismissal claims. Additionally, the reason why the respondent dismissed the claimant is a central issue in all Equality Act 2010 claims as well as both types of unfair dismissal.

319. The way we will approach our conclusions is to determine whether acts were protected, and then address each factual allegation to conclude whether such acts were done, and if so, whether they were done on grounds of race, whether they amounted to harassment, and whether they were done because of protected acts. We will separate out the dismissal and make conclusions about the reason why the respondent dismissed the claimant, and then make further conclusions appropriate to the dismissal in respect of each cause of action. We will then deal with breach of contract.

Were acts or disclosures protected?

Did the claimant do protected acts

320. As the List of Issues makes clear, the respondent accepts that the claimant did the following protected acts:

a. On 7 October 2020 and 14 December 2020 raise in his grievance the question that his colour might be the reason for the distrust against him (**11a**);

b. On 17 November 2020 disclose unequal pay of black staff (**11b**);

c. On 12 August 2021 raise [discrimination issues] in his appeal (**11d**).

321. The List of Issues record that the respondent does not accept that reporting racist and islamophobic messages on Instagram was a protected act, and asserts that this was post-dismissal. The claimant's witness statement simply asserts this was in July 2021 (paragraph 308).

322. As we have set out above, Mr Savla accepted that the respondent had investigated whether a staff member had made such posts, and concluded that a fake account had been created. Such an investigation must have followed a complaint, and so we have concluded that the claimant did this protected act. It is impossible to determine when it occurred, other than some time in July 2021.

323. In the circumstances, we conclude that all of the pleaded protected acts were done, and were protected under section 27 EqA.

Are the disclosures protected?

16a)i) *Disclosure to RSC on 22 September 2020 and to FGB on 6 September 2020 and 22 September 2020*

324. We have found that no disclosure was made on 6 September 2020 (paragraphs 116-8).

325. We also observed that the RSC is not in the Schedule of the Public Interest Disclosure (Prescribed Persons Order) 2014, and so the email to them does not attract protection.

326. However, the email to the governors of 22 September 2020 [587] attaches a confidential report of leadership and governance in which the alleged failings set out in List of Issues **16a)i)** is set out.

327. Without going into the detail, and conscious that the claimant does not have to establish the truth of the alleged wrongdoing, we are satisfied that the information tended to show (on the face of the allegations) that wrongdoing had been done.

328. We have certain misgivings about whether it was in the claimant's reasonable belief that such wrongdoing had occurred, or that it was in the public interest for him to make such disclosures. For example, for the first bullet point, we have found that the claimant was involved in the decision-making in respect of FT.

329. Additionally, the timing of disclosures could be illustrative. At the end of the previous academic year on 16 July 2020 he had been asked to provide copies of the leases. In early September 2020 he had been pressed for confirmation of the terms of the leases that would show them to be operating leases, and he had provided the Hotmail email. When Mr Savla indicated that he had approached the company directly, the claimant said he felt his integrity had been questioned, and he stopped communicating with Mr Savla.

330. We have found that the claimant must have known that he had provided misleading information to the board about the extent of the commitments in the Wifi lease, and it is reasonable to conclude that he felt himself under some sort of scrutiny in circumstances when he knew he had misled the governors. The claimant's email does have the "feel" of a deployment of information rather than a disclosure, and we note Mr Islam-Choudhury's conclusion, in the context of the second grievance, that the claimant was engaging in gamesmanship.

331. Despite these reservations, we are prepared to treat the disclosure as protected.

16a)ii) *safeguarding breach to Ms Ford 5 and 16 November 2020*

332. We make relevant findings at paragraphs 128 and 142 above.

333. There is no disclosure of information tending to suggest relevant wrongdoing. The claimant is informing the board of a section 47 inquiry.

334. There is no protected disclosure, but nonetheless we will consider whether the claimant was subjected to detriment or dismissed because of it, in case we are wrong.

16a)iii) *defamatory/racist Facebook posts*

335. Our findings are at paragraphs 139-140 above.

336. There is some force in Ms Mellor's submissions that there is not sufficient specificity in what are allegations rather than a disclosure of information. It also seems that the claimant is raising to parents that members of the Facebook group were making derogatory comments about staff that could amount to online bullying. It is not clear who or what was failing to comply with what legal obligation.

337. We find that this disclosure was not protected.

338. There is no protected disclosure, but nonetheless we will consider whether the claimant was subjected to detriment or dismissed because of it, in case we are wrong.

16a)iv) *Unequal pay.*

339. The respondent accepts this was a protected disclosure.

16a)v) *Disclosure to National Schools Commissioner re institutional racism*

340. We believe that the claimant means the RSC. In any event, neither body appears in the Schedule of the Public Interest Disclosure (Prescribed Persons Order) 2014, and so the email to them does not attract protection.

16a)vi) *Disclosure to governors re safeguarding 3 January 2021*

341. This disclosure is very similar to that in **16a)i)** and, with some reservations, we conclude that it was protected.

16a)vii) *Allegations of fraud against EU*

342. Our findings are at paragraph 205-6 above.

343. It is hard to tell when this disclosure took place, but it was either just before the disciplinary leading to his dismissal or indeed after his dismissal.

344. Although this allegation rests on the claimant's assertion, and we have indicated some difficulties in accepting uncorroborated assertions from the claimant, we are prepared to accept that the claimant made some sort of disclosure that EU had fraudulently claimed salary he was not entitled to.

345. Again, the timing of this matter is strongly suggestive of a tactical disclosure. The claimant's evidence was that he had taken up the issue of salary with EU directly, and our impression was that this was shortly after the claimant began working at the school. If he had suspected fraud, why had he not raised this with the governors at this point in time, and instead just sat on the information until he was about to face a disciplinary hearing or just after his dismissal?

346. We do not find that the claimant had a reasonable belief that making the disclosure was in the public interest, but find that it was part of his own agenda. The disclosure is not protected. We will consider whether he was dismissed because of this disclosure in case we are wrong.

Allegations of conduct said to be direct race discrimination, harassment, victimisation and whistleblowing detriment (not dismissal)

<u>Unreasonable delay in investigating grievance (**1a** direct discrimination, **7a** harassment, **12a** victimisation)</u>

347. There was a delay in investigating the grievance. We will examine the circumstances of the delay to determine whether it was unreasonable, but more to the point, whether the delay was because of race, a protected act or whether it related to race and the delay was conduct related to race done with the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive

environment for the claimant (in the context of harassment, we will use the shorthand “requisite purpose” or “requisite effect” to refer to all matters within section 26(1)(b) EqA).

348. Our relevant findings of fact on this issue are at paragraphs 122, 129-132, 135, 150, 154 and 163-165 above.

349. At the risk of repetition, we have found that there had been mass resignations of governors prior to October 2020 leaving a governing board of three. Ms Ford had written to the RSC in September 2020 to say that the board of governors was scarcely able to discharge its governance functions, the remaining governors had day jobs and other draws on their time and attention, and the claimant was not even communicating with one of the governors (Mr Savla). Furthermore, the claimant had indicated that he was content for his grievance to be dealt with as an informal complaint. There is the further context of Covid, and a developing picture of disciplinary proceedings being initiated against the claimant.

350. We also note that one more than one occasion, and particularly in his email to Ms Ford of 5 November 2020, the claimant specifically refers to the fact that the governors have not dealt with the complaint of Ms Squires, a white woman. The circumstances of the comparators relied on by the claimant provide no assistance in inferring whether race was a factor in the delay. The fact that the claimant was saying that there was a failure to deal with a white colleague’s complaint would militate against the conclusion that race was a factor in how his own complaint was dealt with.

351. There is nothing from which we could conclude that the claimant’s race was a factor in how his grievance was dealt with. The reason why the respondent took as long as it did to deal with the claimant’s grievance were a complex set of factors which included the state that the diminished board of governors found itself in, the agreement by the claimant to forward his grievance as an informal complaint, the complex emerging picture of the claimant’s alleged misconduct, and the complexity of his complaints, which required the commission of an external barrister. Having regard to all these factors, we find that someone in the same material circumstances as the claimant but of a different race, would have had their grievance dealt with in exactly the same way. There is nothing from which we could conclude otherwise. Similarly, we conclude that someone in the same material circumstances but whose complex complaint did not raise Equality Act issues (a protected act) would have been treated in exactly the same way as the claimant. The protected act was not the reason for the delay. We further find that the conduct (the delay in dealing with the grievance) did not relate in any way to race. The delay was unwanted by the claimant, but we further find that in delaying dealing with the grievance the respondent did not have the requisite purpose, nor created the requisite effect to amount to harassment.

352. In the circumstances, we do not uphold these complaints.

Micro-aggressions and unconscious bias (**1b** direct discrimination, **7b** harassment, **12b** victimisation)

353. Subparagraph 12(b)(iv) (failure to provide support to the claimant) is the only allegation that post-dates the protected acts, and is the only matter that could conceivably amount to victimisation.

354. **Subparagraphs i)** in each of the respective paragraphs (failure of Ms Ford to meet with the claimant despite request) has little to no evidential support. There is no evidence, beyond the claimant's assertion, that he made any requests for meetings or that such were denied or ignored. We have set out above in some detail the detailed, thorough and thoughtful responses (paragraphs 83 and 88) that Ms Ford provided to the claimant at times during his employment. We have also set out our difficulty in accepting uncorroborated assertions from the claimant at face value. An assertion that Ms Ford did not meet the claimant despite requests is at odds with the documentary evidence we have seen. We do not accept, factually, that Ms Ford treated the claimant as alleged.

355. We do not uphold these complaints.

356. In respect of **subparagraphs ii)** (Mr Savla directly contacting the suppliers of the canopies) our findings are at paragraphs 106-114 above. The paragraphs before that highlight the obvious concern among the governors about the claimant's approach and the school finances.

357. The auditors had flagged up concerns to Mr Savla that the canopies leases may have been entered into without prior ESFA approval and it was vital that the governing body should see the paperwork relating to the leases to ascertain what they were. The claimant appeared to be saying that side letters confirmed that the canopies would be the property of the school at the end of the agreement, but these were not provided by the claimant. The governing body were at this stage concerned about the fact that the claimant had been slow to provide financial information, such as the cash flow forecasts. He had not provided leases he had signed until months after he had signed them, and had entered into leases substantially above the delegated limits that he was well-familiar with. The email from Ms Wade was from a personal Hotmail account and not company headed documentation, which Mr Savla understood would be required for any change to the leases (and the information in the email was at odds with the face of the agreements).

358. With all this background we find that the claimant has not established a prima facie case that he has been treated less favourably on racial grounds or for race related reasons or because of protected acts. The reason why Mr Savla took the decision to contact the finance company directly was that he had concerns that the school might be at risk. He needed the documentation to satisfy himself that the school, and indeed the claimant, was not at risk, given the concerns highlighted by the auditors. He, not unreasonably, considered that the claimant had been slow in providing information, even when repeatedly asked for it.

359. We find that Mr Savla would have acted in exactly the same way if the same material circumstances arose with a hypothetical head teacher who was not the same race as the claimant. It was the circumstances that drove his actions not the claimant's race. As set out above, we have not found anything in the circumstances of the comparators which would indicate, broadly speaking, that the school was slow to address or lenient in their approach to white staff when concerns arose. If there was any mistrust here, it was well-grounded in the way the claimant had not provided information, simply asked to be trusted, and provided documentation which (having seen Ms Wade's Hotmail email ourselves) would have done very little to allay well-grounded fears that the school was at risk with the leases.

360. Mr Savla's approach to the finance company was not influenced by or related to the claimant's race.

361. We do not uphold these complaints.

362. In respect of **subparagraphs iii**) (failing to inform the claimant of governor resignations) we are not satisfied that the claimant has established, as a matter of fact, that he was not informed of them.

363. The contemporaneous documentation (the email of 6 September 2020 at [547]) suggests that he was well aware of them as he asks governors to "hold fire" on their resignations. As we have set out above, we find difficulty in accepting the claimant's bare assertions of fact, not least when they do not align with the documents.

364. We do not uphold these complaints.

365. As regard **subparagraphs iv)** (various failures by Ms Ford to support the claimant, we note that there is something of an overlap with sub-paragraph i).

366. Again, there is nothing beyond the claimant's bare assertion that he was not told of the disbanding of the Covid committee or of its meetings, or about parents' concerns. As we have noted above, we find that Ms Ford was supportive of the claimant, although in the latter stages, the relationship was getting fraught. We have also commented on a number of occasions on the other calls on Ms Ford's time and attention. Insofar as we understand the allegations, there is nothing from which we could conclude that in materially the same circumstances Ms Ford would have treated the claimant any differently had he been of a different race or had he not made a complaint of discrimination. We cannot discern any conduct that is in any way related to race.

367. We do not uphold these complaints.

368. The claimant asserts at **subparagraphs v)** that Ms Ford formed an unsubstantiated view of the claimant's guilt in September 2020 purely on Mr Savla's say so.

369. We make relevant findings at paragraphs 79, 83, 85, 88, 91, 102 (a summary), 103, 119 and 122.

370. In very brief summary, by September 2020 Ms Ford had become aware of concerns about finances raised by an anonymous whistleblower, had engaged with the claimant in lengthy and thorough correspondence, attended numerous FGB meetings at which numerous concerns had been raised about the claimant's approach to finances by a number of governors and had herself witnessed his repeated failure to provide cash flow forecasts and other information, been made aware that the claimant had signed leases and not provided them to the respondent, that concerns had been raised by auditors and solicitors that these leases may have been signed without ESFA approval and she had raised her concerns to the RSC.

371. We do not find that Ms Ford had reached an "unsubstantiated view" that the claimant had acted dishonestly on Mr Savla's say so. She was clearly very concerned by what she herself had witnessed, but there is no evidence that she was either rushing to judgment on dishonesty, or taking anything at face value from others.

372. We do not find this factual allegation substantiated as put by the claimant. Broadening it out slightly, we find that any concerns at this stage were not conclusions of dishonesty, but valid concerns based on evidence. Any such concerns had a proper evidential basis, and we can find nothing from which we could conclude that race was a factor. She would have had exactly the same concerns about someone of a different race than the claimant in materially the same circumstance. The comparator evidence does not assist us in inferring that race played any part. Her concerns were not because of or related to race.

373. We do not uphold these complaints.

Wrongful suspension and commencement of disciplinary process, frogmarched out of school (**1c** direct discrimination **7c** harassment **12c** victimisation, suspension also whistleblowing detriment **17**)

374. Relevant findings are at paragraphs 146-9 above.

375. Suspension and commencement of a disciplinary process are acts, by their very nature, generally at the start of process. They are followed by an investigation and possibly a disciplinary hearing. As we have set out the suspension was preceded by the email from EU, who was about to leave employment, and the meeting of the governors on 15 November 2020. It is clear from the contemporaneous documentary evidence that it is disciplinary issues that the Board had in mind when it took the decision to suspend.

376. While it is right to say that EU had raised Covid-related and safeguarding issues (as well as the finance -related ones), which Ms Garrett decided there was no case to answer on, it was perfectly proper for the governors to initiate an investigation in respect of them. There was certainly substantial information before the governors to start a disciplinary process in respect of the financial matters. The governors prudently sought legal advice before taking action, and Mr Savla set out his rationale for suspension in his suspension letter.

377. We do not conclude that the suspension or the commencement of the disciplinary process was wrongful. Although some of the allegations related to Covid and safeguarding did not survive Ms Garrett investigation, it was not wrongful to investigate them. We cannot say whether or not the safeguarding allegations were false as suggested by the claimant, but there was no case to answer on them. In many senses, the fact that many of the initial allegations were "weeded out" by Ms Garrett suggests a robust and fair process. We have found as a fact that the claimant was not frogmarched out of the school, but was reasonably escorted out of the school.

378. We do not accept the claimant has factually established the elements of this issue as it is framed. However, for completeness we find that there is nothing from which we could conclude that the initial disciplinary steps taken by the respondent were initiated because of race, or related to race, all were because of previous complaints. He has not established a prima facie case in this regard. Further, the respondent's approach to suspending the claimant and commencing disciplinary process against him was in no sense because of or related to his race. We do not conclude that it was because he had done protected acts. By the time the claimant had made what could conceivably amount to his first protected disclosure on 22 September 2020, there had already been a course of conduct that had clearly caused the Board significant alarm. The disclosure did not cause the alarm, or affect the trajectory of how the disciplinary process developed.

379. The reason why the respondent suspended the claimant and commenced disciplinary action against him was because a substantial body of evidence had come to its attention that there were numerous potential disciplinary issues which needed to be investigated. We do not find assistance in the comparator evidence that would help us infer discrimination. We do not accept that the evidence shows, individually or as a pattern of behaviour, that white staff were treated more leniently than the claimant.

380. We do not uphold these complaints.

<u>Hostile meeting with Ms Garrett (**1d** direct discrimination **7d** harassment, **12d** victimisation</u>

381. Relevant findings are at paragraphs 157-162 above.

382. We have founded as a fact that Ms Garrett was not hostile during the course of the meeting and conducted herself professionally. We have not found that there was a conflict-of-interest, and we have found no evidence that she conducted the investigation in anything other than a reasonable manner. There is nothing sinister in the fact that certain charges were relabelled and some not proceeded with. If anything it reinforces that this was a thorough, fair and robust process.

383. Factually, the claimant has not established his assertions relating to these issues. For completeness the claimant has not proved facts from which we could conclude that anything about Ms Garrett's approach was

because of or related to race, or because of any complaints that he had made.

384. We do not uphold these complaints.

Holding the disciplinary hearing of 22 July 2021 in the claimant's absence

385. Our findings of fact relevant to this issue are at paragraphs 177-196 and 214-216 above.

386. The primary reason the claimant says that he should not have been required to attend the meeting on 22 July 2021 is because of his medical situation. His GP had certified him sick with stress and depression.

387. Mr Taylor dealt with his reason for holding the meeting in the claimant's absence in his witness statement at paragraphs 13 to 23.

388. We conclude that Mr Taylor took into account the claimant's medical certificate, but concluded that there was a substantial amount of evidence to undermine the claimant's contention that he was not fit enough to attend the meeting. The claimant had been active on social media, had attended webinars, had attended a court hearing, had set up a business which he had been promoting and had indicated that he would be travelling to Nigeria the following weekend. Mr Taylor also had regard to the fact that to date had been postponed, that the school summer holidays were approaching and was aware that the claimant was shortly to acquire two years' service.

389. In addition to what Mr Taylor said that he took into account, we would also observe that the claimant, in seeking employment after the termination of his employment with the respondent, told a potential employer that he had been working as a consultant since January 2021, and gave details of someone he had been working shortly before his application for employment in early August 2021. We also note Mr Islam-Choudhury's conclusion (based on meticulously set out evidence) that the claimant had been indulging in "gamesmanship" in respect of his employment dispute. We also repeat our observations about his credibility.

390. In all the circumstances, we conclude that Mr Taylor's decision to proceed with the disciplinary hearing on 22 July 2021 was a reasonable one based on evidence and valid concerns. The real question, however, is whether the decision was because of the claimant's race, was related to race or because of previous complaints. We conclude that the claimant has not established facts from which we could conclude that Mr Taylor's decision to proceed was in any sense because of, or related to, these matters. We accept Mr Taylor's evidence about the reason why he proceeded as he did. He would have proceeded in exactly the same way with a hypothetical person in the same material circumstances but not the claimant's race, and who had not done a protected act. Again, it was the circumstances which drove the disciplinary panel's decision to proceed, and not unlawful considerations.

391. We do not uphold these complaints.

Letter to parents 2 August 2021 (**1f** direct discrimination, **7f** harassment, **12f** victimisation)

392. Our findings on these issues are at paragraphs 211-213 above.

393. We have found as a fact that Mr Savla wrote to staff and parents because he was concerned that the claimant had tweeted misleading information which was causing confusion and concern among staff and parents. Mr Savla accepts that he was wrong to say that the claimant had been dismissed for gross misconduct, rather than simply that he had been dismissed. We have observed, however, that what Mr Savla said was factually true.

394. It might be said that Mr Savla acted unreasonably by giving the reason for dismissal. But we are focusing on whether he discriminated against, harassed or victimised the claimant.

395. There is nothing from which we could conclude that the reason why Mr Savla included this additional bit of information in this letter was because of the claimant's race, was related to his race or because he had done a protected act. He did not pick up on the advice not to mention the fact that the reason for dismissal and included this in error. We accept as evidence and do not conclude an unlawful reason for including this additional information.

396. We do not uphold these complaints.

Introduction of new evidence at the appeal hearing (**1h** direct discrimination, **7h** harassment **12h** victimisation)

397. Our findings are at paragraphs 217-224 above.

398. We understand the claimant's case to be that the appeal panel made reference to the emails at [2828-30] in which the claimant was communicating with Mr Cooper about FT.

399. The fact of it was that the claimant introduced comparator evidence to the appeal hearing, including that relating to FT. We see nothing wrong in the appeal panel seeking to investigate that matter further. It did so, and was provided with evidence which rebutted the claimant's account. There is nothing wrong with an appeal panel investigating further points raised by an employee in an appeal hearing. We conclude that the appeal panel would have done exactly the same thing with somebody who did not share the claimant's race, had not made protected disclosures but was in the same material circumstances (that is to say advancing fresh evidence at an appeal hearing).

400. There is nothing from which we could conclude that the appeal panel's approach was because of or related to the claimant's race, or because he had made previous protected acts. The reason why the appeal panel took this approach was to investigate the matters which the claimant had raised.

401. We do not uphold this complaint.

Refusal to convene panel on discovery of new evidence on 9 November 2021 (**1j** direct discrimination **7j** harassment **12j** victimisation**)**

402. We confess we were in slight difficulty in understanding this complaint. The appeal outcome was sent on 14 October 2021. It is not clear what new evidence was provided on 9 November 2021. But the respondent's disciplinary procedure only allows for one appeal.

403. The claimant has not factually established this complaint. These complaints are not upheld.

The malicious demand for a repayment of £2,200 on 15 January 2022 (see paragraph 7 above, direct discrimination, harassment, victimisation)

404. Our relevant findings are at paragraphs 225-229 above.

405. As set out above, we are satisfied that the reason why Mr Savla approached the claimant as he did was because, on the basis of the evidence available to him at the time, there appeared to be some money missing in relation to the fund. There was nothing malicious about the demand, and it was just seeking information from the claimant. Mr Savla made further enquiries, having contacted the claimant, and the money was located.

406. We find that Mr Savla would have acted in exactly the same way in materially the same circumstances with someone of a different race from the claimant who had not done protected acts. There is nothing from which we could conclude that Mr Savla's approach to the claimant was because of, or related to, his race or because of protected acts.

The allegation of harassment and threat to call the police of 9 March 2022 (see paragraph 7 above, direct discrimination, harassment, victimisation).

407. Our findings are at paragraphs 230-2 above.

408. As we have found, there was direct contact between the claimant and Mr Savla which caused concern to the latter. The parties were both represented by solicitors at this point, and solicitors for the respondent made the, not unreasonable, suggestion that contact should remain between solicitors.

409. Employment litigation is often emotionally fraught, and we observe that this case is no exception. It was obvious to us that emotions have run high in this case.

410. There is nothing from which we could conclude that the approach taken by the respondent's solicitors was anything other than seeking to protect their client from direct contact by the claimant. There is nothing from which we could conclude that race or previous complaints was a factor in any way.

411. We do not uphold this complaint.

7k Reference to Lambeth - harassment

412. Our findings on this matter are at paragraphs 214-6 above.

413. As we have set out above, we find that it was appropriate for Mr Savla to set out in a reference for a safeguarding related role that the claimant had given a reference without having access to the staff member's file. He did not set out that this was an allegation of gross misconduct which had contributed to his dismissal. It was a factually correct statement and we do not find that it was unnecessary or vindictive. There is nothing from which we could conclude that the text of the reference was in any way related to the claimant's race. There is nothing from which we could conclude that it was. The reason why Mr Savla phrased the reference in the way that he did was because it was factually correct relevant information to include. The reference was not related to race, and was not provided with the requisite purpose or create the requisite effect.

Newspaper article

414. Our findings on this matter are set out at paragraphs 214-6 above. We have not accepted the factual assertions the claimant makes in respect of this issue. We find that Mr Savla responded to contact made by a journalist at the newspaper and confirmed very basic details and refused to comment further. We do not find that his limited response was in any way related to race. There is nothing from which we could conclude that it was. The information Mr Savla provided was not related to race, and was not provided with the requisite purpose and did not create the requisite effect.

Allegations relating to dismissal

Dismissal (**1g** direct discrimination **7g** harassment **12g** victimisation **18** automatically unfair dismissal **21-25** "ordinary" unfair dismissal **26** breach of contract)

Rejection of appeal (**1i** direct discrimination **7i** harassment **12i** victimisation)

415. We now consider the claimant's dismissal (including his appeal). We make conclusions about whether the dismissal was an act of direct race discrimination, race-related harassment or a detriment for having made protected acts. We will also make conclusions about whether the reason or principle reason for the dismissal was because he had made protected disclosures. We will go on to consider whether the claimant had sufficient service to bring an ordinary unfair dismissal claim, and if so, whether it was a fair or unfair dismissal. We finally consider the breach of contract claim in relation to notice pay.

416. There is a very substantial overlap in respect of all of these claims. Central is the reason why the respondent dismissed the claimant. We will deal with this first, and then address other issues as appropriate. Our relevant findings run through our decision and we will not set out the paragraphs of our relevant findings in the way we have in relation to other issues, but refer to them as we go through our conclusions.

The reason why the respondent dismissed the claimant

417. As we have set out above in our section on policies and procedures (paragraphs 26-39) that a core part of the claimant's role is that he was the Accounting Officer charged with substantial responsibilities and obligations. He was the Head Teacher, effectively the top of the school executive. He was intelligent, accomplished and articulate, and was familiar with the responsibilities he was charged with (paragraph 48). Some of the obligations and responsibilities of the claimant's are extremely straightforward, such as the £25,000 ceiling on his delegated spending authority and the need to declare interests. Other matters have appeared to us slightly more complex, such as whether an agreement is an operating or a finance lease.

418. It is also clear from the evidence that the claimant presented himself as financially astute, and was viewed by the Board as a details person. In contrast to the case he presented at tribunal, he did not present himself to the respondent as someone who was lacking in induction or training, or in any way struggling to discharge his duties. Quite the contrary, he was consistently telling the Board that he had a great track record, knew what he was doing and would take the school onward and upwards if the Board only trusted him to take things forward in his own way.

419. It is also clear that the Board engaged the claimant with significant enthusiasm and appetite for change. The Board had obligations of its own, and the individuals who gave up their own time to discharge their functions took their responsibility to challenge and to maintain probity did so conscientiously. On a broad review of the evidence, it is clear that what the Board was not prepared to do, was simply to put blind trust in the claimant when matters of concern arose over, in particular, finances. Again, on a broadbrush analysis (having set out the detail with some care), a picture emerges of the claimant complaining about restraints to his financial authority (see eg. paragraph 60, 87, 89-90) while seeking to minimise accountability (paragraph 87 his proposed removal as AO).

420. A tension manifested itself early in the relationship between the claimant and the Board, no doubt in large part due to the legitimate oversight the Board had to exercise, and the wish for more financial freedom and less accountability the claimant desired. It is likely that the claimant's wish for a restructure of the Board early in his tenure was part of this.

421. The evidence shows that early in the relationship the Board were having concerns that cash was depleting quickly and the Board needed better visibility of the finances (paragraph 62).

422. Early in the second month of the claimant's tenure as Head Teacher the claimant committed the respondent to a lease, which was subsequently determined to be a finance lease by the EFSA, which was almost double his delegated authority and without EFSA approval

(paragraphs 64-66). He did not provide the lease to the governors or show them quotes.

423. At paragraphs 74 and 78 we set out our findings that the claimant again entered into a lease agreement in respect of WifI substantially above his delegated limit, without providing quotes to the respondent, which was determined to be a finance lease, without prior EFSA approval. We have found he presented misleading information to the Board about this.

424. The evidence shows that the claimant was repeatedly asked for cash flows from February to July 2020, failed to provide ones until 16 July 2020 (which even then were defective), was resistant to providing them on the basis of being held to a higher standard (paragraphs 77, 82, 85, 88, 89, 91, 98, 100, 102d). The importance of these cash flows was reinforced to him on a number of occasions and the governors expressed extreme disquiet about their non-production (paragraph 85) and Ms Ford explained the difficulties caused to the RSC (paragraph 89).

425. A matter for concern for the Board was also the fact that it appeared that when scrutiny was applied to the claimant he kept threatening to leave (paragraph 82, 87, 89). Various members of the Board were clearly concerned in March 2020 (well before any disclosures) about the financial situation, the claimant's "Trust me" attitude, the lack of visibility of finance from the claimant and the real fear the school would run out of cash (paragraphs 85-6).

426. In this time period, 27 February 2020, it is also noted that an anonymous whistle-blower raised a number of concerns about the claimant, including financial matters.

427. On 6 July 2020 the claimant signed a lease agreement for desks/tables, again, substantially in excess of his delegated authority and without EFSA authority and without referring the matter to the governors.

428. It is only on 20 July 2020 that the governors begin to get a partial sight of the leasing matters and it is clear that it is a cause of alarm. Again, this is well before any disclosures.

429. These revelations led to the informal meeting of 11 August 2020 (paragraphs 103-5) at which significant concerns were articulated. We conclude that the minutes reflect the genuine concerns of the governors, and do not show any sinister motives. They were alarmed at the way things had developed, but they were looking for solutions and not simply to get rid of the claimant.

430. As matters developed the governors had cause to believe that the leases may have been entered into without EFSA approval and expert advice was sought. It appeared to point towards finance leases. Mr Savla was also not reassured by information coming from the claimant in the form of the Hotmail email. He took reasonable steps to reassure himself about the nature of the agreements.

431. The way the claimant approached matters must also have caused concern. He stated his integrity was being impugned and refused to communicate with Mr Savla. It is only at this point that he begins making what he relies on as protected disclosures, which referred back to matters substantially in the past. He then took out a grievance.

432. A further matter arose in the form of the commission of Doc Hearts. We conclude that the claimant engaged the services of a firm that his step-brother had a substantial role in.

433. The allegation of EU were what tipped the matters into a disciplinary process. It has to be said, however, that this followed a substantial pattern of the claimant exceeding his delegated authority by signing leases, not informing the Board or seeking ESFA approval, not providing cash flows when repeatedly being asked for them. The disciplinary process did not drop out of a clear blue sky.

434. We also conclude that the significant concerns that had been worrying the Board over a substantial period of time, and were well evidenced by contemporaneous documentation, were what were driving the Board towards the disciplinary process. The communication to the Board of historic concerns on 22 September 2020 were reactions by the claimant against matters being raised against him and which were developing towards a disciplinary and was not something that was driving the Board towards disciplinary process.

435. We have made extensive findings and already made conclusions about the suspension and the investigation in the context of earlier claims, but we would reiterate that the suspension and the investigation were initiated on a sound evidential basis untainted by race, or previous protected acts or disclosures.

436. We have also concluded that Ms Garrett's investigation was a thorough one, again, untainted by anything unlawful as put forward by the claimant. Its thoroughness and open-mindedness led to some allegations being weeded out. The fact that these were investigated in the first place is no sign that the whole process was tainted. If anything, this weeding out lends support to it being a robust investigation.

437. We have also made conclusions about the decision to press ahead with a disciplinary hearing in the claimant's absence (paragraph 346-352), and again concluded that it was a reasonable decision untainted by the unlawfulness the claimant alleges. The claimant, while he had a GP certificate relating to his health, was acting inconsistently by engaging in social media, setting up a business, carrying out consultancy work, and attending a family court hearing. He is an intelligent man who clearly knows about disciplinary strategies ("Play the long game"), had the assistance of his trade union and was (at the latter stages of the disciplinary process) engaging in settlement discussions. We conclude that the claimant was pursuing a strategy of minimal involvement with the disciplinary process.

438. This meant that the disciplinary panel did not have the benefit of significant input from the claimant. On the basis of what was put before it, we conclude that the disciplinary panel had reasonable grounds to conclude that the claimant had committed the gross misconduct that was alleged against him.

    a. He had repeatedly entered into finance leases without approval from the Board or the ESFA which were substantially above the delegated limits. This breached finance policy and procedures and the Handbook. This was serious financial mismanagement.

    b. He had repeatedly failed to produce financial information and accounts when repeatedly requested in the form of cash flow information. This was breach of his reporting obligations.

    c. He failed to disclose his relationship in respect of Doc Hearts. He had produced a declaration of interest form after the investigation started.

    d. He had repeatedly failed to comply with a reasonable management instruction to produce financial information.

    e. He had provided a professional reference for a colleague when he did not have access to her personnel file and could not have been aware if any safeguarding matters had been raised during his absence from school.

439. Furthermore, as we are considering a claim of wrongful dismissal, we are satisfied not only that the disciplinary committee has reasonable grounds to believe that the claimant had misconducted himself as alleged, we are satisfied that he did commit the misconduct.

440. Having regard to the claimant's role both as Head Teacher and Accounting Officer we consider that dismissal was within the band of reasonable responses. He was ultimately accountable for financial matters and he engaged in a course of conduct of repeatedly entering into agreements above the delegated limit and without appropriate approval. As a fact, this led to ESFA sanction. This was against a backdrop of his repeated failure to provide essential financial information in the form of cashflow despite numerous requests and the importance of the information being stressed to him. When we look at the combination of this persistent lack of transparency coupled with actual financial impropriety, we find that dismissal was an appropriate sanction, both as a "sense check" on whether it fell within the band of reasonable responses, and for the purposes of the wrongful dismissal claim.

441. Coming back to the *Burchell* test, we find that that reason why the respondent dismissed the claimant was that it genuinely believed on reasonable grounds that the claimant had committed the misconduct alleged and upheld against him. We find that the disciplinary panel in no sense dismissed him because he had made any protected disclosures. We do not find that these operated on the minds of the decision-makers in any way. The disclosures were made well after the Board had expressed

concerns about the factual basis of the financial misconduct charges. Mr Savla focused on these at the disciplinary hearing and there was no evidence whatsoever that disclosures of historic matters played any part in the panel's decision-making.

442. In terms of race being in the minds of the decision-makers, we have already set out our conclusion that the comparator evidence does not show a pattern of white staff being treated more leniently. Comparators are tools which allow a tribunal to assess whether any less favourable treatment was done on less favourable grounds. There is nothing in the comparator evidence, or any other evidence, that tends to show any less favourable treatment.

443. We have considered the "race card" remark. If we had found a difference in treatment and a difference in race, this is potentially the sort of thing that *might* have been "something more" that would have shifted the burden. We have not found a meaningful difference in treatment between the claimant and the comparators. They are not in genuinely comparable circumstances. We conclude that the claimant has not established facts from which we could conclude that the decision to dismiss was on racial grounds or was related to race. Even if the burden were to shift, we are satisfied on the evidence that the reason why the respondent dismissed the claimant was that it genuinely believed he was guilty of gross misconduct. It has provided a non-discriminatory explanation for the treatment.

444. There is also nothing from which we could conclude that the claimant's dismissal was in any sense because he had done protected acts.

445. We turn to the appeal.

446. Procedurally, we cannot fault the approach of the respondent. The claimant was given a right of appeal and allowed the opportunity to present it at a hearing. His comparator evidence was explored and investigated. A reasoned outcome was delivered. For what it is worth, we find, if anything, that upholding the claimant's appeal in respect of the reference was a generous finding. The reference to us has every appearance of a professional rather than personal reference. Nonetheless, that was the appeal conclusion. We cannot detect in any aspect of the appeal that would indicate race was a factor in the minds of the appeal officers. The claimant has not established facts from which we could conclude that race, or protected acts, was the reason why the appeal was not upheld. The dismissal of the appeal was not related to race. The protected disclosures were in no sense the reason or the principle reason for dismissing the appeal. The reason why the appeal panel dismissed the majority of the grounds of appeal was because it did not find that the claimant had made out the grounds of appeal on the evidence.

Service

447. We have dealt with matters as though the claimant had sufficient service to bring a claim for unfair dismissal. However, we conclude that he did not have sufficient service to bring such a claim.

448. Our relevant findings are at paragraphs 28 and 40-56 above.

449. The school is not permitted to employ two head teachers at once and the former head teacher was employed until 31 August 2019. The agreement in respect of the preparatory work was subject to a confidentiality and non-disclosure agreement which said on its face that it was not a contract of employment. It only dealt with confidentiality and there were no mutual obligations to provide or to do work. The were no provisions in respect of pay, and this was negotiated after the event. The claimant offered to put the pay though a consultancy company. We do not find that two references in the bundle to Ms Ford saying that the claimant started employment in August or July 2019 is sufficient to displace what can clearly be seen on the face of this agreement or the claimant's contract of employment which gives a start date of 1 September 2019. Before this date he was only ever a head teacher-designate.

450. The claimant's start date was 1 September 2019, and his last day of employment was 2 August 2021. He did not have two years' service.

Overall conclusions in relation to dismissal

451. The claimant did not have sufficient service to bring an unfair dismissal claim under section 98 ERA.

452. If he did, he was not unfairly dismissed.

453. The claimant committed gross misconduct.

454. The reason why the respondent dismissed the claimant was that it genuinely and reasonably believed he had committed gross misconduct.

455. Protected disclosures were not the reason or principal reason for his dismissal.

456. The respondent did not treat the claimant less favourably because of his race by dismissing him.

457. The respondent's dismissal of the claimant did not relate to his race and such conduct did not have the requisite purpose or effect.

458. The dismissal was not a detriment for having done protected acts.

459. All of these claims are not upheld.

Employment Judge **Heath**

Corrected Reasons 23rd September 2024

FOR EMPLOYMENT TRIBUNALS

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IN THE LONDON SOUTH EMPLOYMENT TRIBUNAL

CASE NUMBERS: 2305702/2021 & 301425/2022

BETWEEN:

MR P MUNDY-CASTLE

Claimant

-v-WOODCOTE HIGH SCHOOL

Respondent

LIST OF ISSUES

Direct Race Discrimination

1. Did the following events factually occur:

    a. The unreasonable delay on ("omission to act on") the processing of the Claimant's grievance against the Chair and Vice-Chair from 7 October 2020 for 8 weeks, despite the claimant chasing up the Governors to act on it on 14 and 15 October 2020 (para 7, OC);
    b. Micro aggressions and unconscious bias (para 5 and 8, OC and AC para 41 and 57) as found by the independent barrister in his report dated 4 March 2021:
        i. A failure by Ms Ford, as Chair of Governors, to meet with the Claimant on a 1-2-1 basis from July 2020 despite his requests for the same from September 2020;
        ii. In September 2020 by Mr Savla undermining the Claimant by liaising directly with suppliers/contractors canopies UK Ltd without his prior knowledge or input;
        iii. In September 2020 by Ms Ford failing to inform the Claimant of governors' resignations;
        iv. By Ms Ford's failure to provide adequate support to the Claimant from September 2020 (failure to inform the claimant of the disbanding of the Covid sub-committee and failure to arrange for it to meet, failure to inform the Claimant of any school issues or capability or conduct issues which had arisen, when they arose and failure to respond to parents' concerns raised regarding Covid issues, or to support the Claimant on the same) (Ac, para 41).
        v. By Ms Ford forming an unsubstantiated view in September 2020 that the Claimant had acted in a dishonest manner without such allegations being investigated and purely on Mr Savla's say so.
    c. The wrongful suspension and wrongful commencement of the disciplinary process on 18 November 2020 based on the unsubstantiated disciplinary allegations contained in the letter dated 20 November 2020 (para 1, OC), including being frog-marched out of the school due to false safeguarding issues (AC para 54)

d. Hostile meeting with the Investigating Officer (Rachel Garrett) on 21 January 2021 (AC, para 56) ie: by her conducting the meeting despite the conflict of interest and without clarifying what the safeguarding allegation was, stating only it had been dropped but then relabelling it as a GDPR breach (NB@ it transpired to be connected to the use of children's pictures on the school website (whereas in fact all parents had consented to the same and no parent had complained about) and the school's twitter account (for which the claimant was not directly responsible for the content (and which the parents had in any event consented to and none had complained of));
e. The decision of 21st July 2021 to hold the disciplinary hearing in the claimant's absence and not to postpone that hearing, contrary to medical and OH advice (para 6, OC and AC para 60) and/or not to postpone it (AC para 65);
f. The written communication by the Chair of Governors to parents of 2 August 2021 informing parents of the dismissal, before the appeal was determined (para 6, OC);
g. The dismissal for gross misconduct on 2 August 2021 (by letter dated 30 July 2021) (para 4, OC);
h. The introduction of new evidence without notice at the appeal hearing on 22 September 2021 (para 6, OC)
i. The rejection of the appeal against dismissal on 9 November 2021 (para 6, OC);
j. The refusal on 9 November 2021 to reconvene the panel on the discovery of new evidence (para 3, OC);

2. If so – was such an act/conduct detrimental/less favourable treatment of C

3. If so – was such less favourable treatment by reason of C's race (Black African)? C cites the following comparators:

    a. Mr Steve Callan (the caretaker)
    b. Mr Daniel Ojjeh (Science Teacher)
    c. Mr Hiten Savla (Chair)
    d. WS
    e. MP
    f. Ms Kirstie Woodcock (Deputy Headmaster)
    g. FT
    h. CR

Or in the alternative, a hypothetical comparator.

4. The respondent accepts it is liable under section 109 Equality Act; the respondent is not seeking to run a defence under section 109(4) Equality Act.

5. If so – are such acts in time? The respondent submits that any act that occurred prior to 30/7/21 is out of time (the claim was issued on 1/12/21 with ACAS conciliation dates as follows: DATE A 29/10/21 and DATE B 2/11/21).

6. For such acts that are out of time – do they form a continuing act or is it just and equitable to extend time for the Tribunal to consider such allegation.

In the alternative to Direct Discrimination: Harassment on the Grounds of Race

7. Did the following events factually occur:

a. The unreasonable delay on ("omission to act on") the processing of the Claimant's grievance against the Chair and Vice-Chair from 7 October 2020 for 8 weeks, despite

the claimant chasing up the Governors to act on it on 14 and 15 October 2020 (para 7, OC);

b. Micro aggressions and unconscious bias (para 5 and 8, OC and AC para 41 and 57) as found by the independent barrister in his report dated 4 March 2021:
   i. A failure by Ms Ford, as Chair of Governors, to meet with the Claimant on a 1-2-1 basis from July 2020 despite his requests for the same from September 2020;
   ii. In September 2020 by Mr Savla undermining the Claimant by liaising directly with suppliers/contractors canopies UK Ltd without his prior knowledge or input;
   iii. In September 2020 by Ms Ford failing to inform the Claimant of governors' resignations;
   iv. By Ms Ford's failure to provide adequate support to the Claimant from September 2020 (failure to inform the claimant of the disbanding of the Covid sub-committee and failure to arrange for it to meet, failure to inform the Claimant of any school issues or capability or conduct issues which had arisen, when they arose and failure to respond to parents' concerns raised regarding Covid issues, or to support the Claimant on the same) (Ac, para 41).
   v. By Ms Ford forming an unsubstantiated view in September 2020 that the Claimant had acted in a dishonest manner without such allegations being investigated and purely on Mr Savla's say so.
c. The wrongful suspension and wrongful commencement of the disciplinary process on 18 November 2020 based on the unsubstantiated disciplinary allegations contained in the letter dated 20 November 2020 (para 1, OC), including being frog-marched out of the school due to false safeguarding issues (AC para 54)
d. Hostile meeting with the Investigating Officer (Rachel Garrett) on 21 January 2021 (AC, para 56) ie: by her conducting the meeting despite the conflict of interest and without clarifying what the safeguarding allegation was, stating only it had been dropped but then relabelling it as a GDPR breach (NB@ it transpired to be connected to the use of children's pictures on the school website (whereas in fact all parents had consented to the same and no parent had complained about) and the school's twitter account (for which the claimant was not directly responsible for the content (and which the parents had in any event consented to and none had complained of));
e. The decision of 21st July 2021 to hold the disciplinary hearing in the claimant's absence and not to postpone that hearing, contrary to medical and OH advice (para 6, OC and AC para 60) and/or not to postpone it (AC para 65);
f. The written communication by the Chair of Governors to parents of 2 August 2021 informing parents of the dismissal, before the appeal was determined (para 6, OC);
g. The dismissal for gross misconduct on 2 August 2021 (by letter dated 30 July 2021) (para 4, OC);
h. The introduction of new evidence without notice at the appeal hearing on 22 September 2021 (para 6, OC)
i. The rejection of the appeal against dismissal on 9 November 2021 (para 6, OC);

j. The refusal on 9 November 2021 to reconvene the panel on the discovery of new evidence (para 3, OC);
k. Mr Salva provided a reference to Lambeth Council in 2021 stating that C had safeguarding concerns in regards to staff references. C only discovered his actions recently. To support this allegation C has a copy of the reference that he sought via a FOI request as C was told the reference was not great hence why C was not offered the role he applied for
l. While doing a temporary job in Basingstoke (65 miles away from Croydon) a newspaper article was written about C and he sought to get information as to the genesis of the article published in spring of 2022 and the newspaper confirmed that Mr Savla had provided them with an interview and a copy of C's dismissal letter which he had previously sent to families despite an appeal process not taking place. The newspaper confirmed that they had been contacted anonymously by someone from R. The (new) school was unhappy with the attention the story brought and C had to leave the employment.

8. If so – was such an act/conduct unwanted conduct on the grounds of race and did it have either the purpose or effect of violating C's dignity and/or creating an intimidating, hostile, degrading or offensive environment?

9. Are such acts in time?

10. For such acts that are out of time – do they form a continuing act or is it just and equitable to extend time for the Tribunal to consider such allegation.

Victimisation

11. Did C make a protected act – C claims that the following are protected acts:

    a. The grievance of 7 October 2020 – the claimant states that he feels that his "colour" is the reason for the amount of distrust against him – the grievance was updated on 14 December 2020 (AC para 53) ***The respondent accepts this is a protected act***.
    b. Unequal pay disclosure to governors on 17 November 2020 (para 4 OC) ***The respondent accepts this is a protected act.***
    c. In July 2021, reporting to the Governors the racist and Islamophobic messages posted by a white teacher (AC para 62) ***The respondent does not accept this alleged act. In any event it occurred after dismissal.***
    d. The appeal against dismissal of 12 August 2021 sent to the Chair of Governors (Mr Hiten Savla) (and Sarah Scott) (AC para 67) ***The respondent accepts this is a protected act.***

12. Was C subjected to a detriment by reason of such protected act(s) in respect of the following alleged detriments ***(C to confirm whether the underlined alleged detriments are still pursued given the date of them)***:

    a. The unreasonable delay on ("omission to act on") the processing of the Claimant's grievance against the Chair and Vice-Chair from 7 October 2020 for 8 weeks, despite the claimant chasing up the Governors to act on it on 14 and 15 October 2020 (para 7, OC);
    b. Micro aggressions and unconscious bias (para 5 and 8, OC and AC

para 41 and 57) as found by the independent barrister in his report dated 4 March 2021:

i. A failure by Ms Ford, as Chair of Governors, to meet with the Claimant on a 1-2-1 basis from July 2020 despite his requests for the same from September 2020;
ii. In September 2020 by Mr Savla undermining the Claimant by liaising directly with suppliers/contractors canopies UK Ltd without his prior knowledge or input;
iii. In September 2020 by Ms Ford failing to inform the Claimant of governors' resignations;
iv. By Ms Ford's failure to provide adequate support to the Claimant from September 2020 (failure to inform the claimant of the disbanding of the Covid sub-committee and failure to arrange for it to meet, failure to inform the Claimant of any school issues or capability or conduct issues which had arisen, when they arose and failure to respond to parents' concerns raised regarding Covid issues, or to support the Claimant on the same) (Ac, para 41).
v. By Ms Ford forming an unsubstantiated view in September 2020 that the Claimant had acted in a dishonest manner without such allegations being investigated and purely on Mr Savla's say so.

c. The wrongful suspension and wrongful commencement of the disciplinary process on 18 November 2020 based on the unsubstantiated disciplinary allegations contained

in the letter dated 20 November 2020 (para 1, OC), including being frog-marched out of the school due to false safeguarding issues (AC para 54)

d. Hostile meeting with the Investigating Officer (Rachel Garrett) on 21 January 2021 (AC, para 56) ie: by her conducting the meeting despite the conflict of interest and without clarifying what the safeguarding allegation was, stating only it had been dropped but then relabeling it as a GDPR breach (NB@ it transpired to be connected to the use of children's pictures on the school website (whereas in fact all parents had consented to the same and no parent had complained about) and the school's twitter account (for which the claimant was not directly responsible for the content (and which the parents had in any event consented to and none had complained of));
e. The decision of 21st July 2021 to hold the disciplinary hearing in the claimant's absence and not to postpone that hearing, contrary to medical and OH advice (para 6, OC and AC para 60) and/or not to postpone it (AC para 65);
f. The written communication by the Chair of Governors to parents of 2 August 2021 informing parents of the dismissal, before the appeal was determined (para 6, OC);
g. The dismissal for gross misconduct on 2 August 2021 (by letter dated 30 July 2021) (para 4, OC);
h. The introduction of new evidence without notice at the appeal hearing on 22 September 2021 (para 6, OC)
i. The rejection of the appeal against dismissal on 9 November 2021 (para 6, OC);
j. The refusal on 9 November 2021 to reconvene the panel on the discovery of new evidence (para 3, OC);

13. If so – are such acts in time?

14. For such acts that are out of time – do they form a continuing act or is it just and equitable to extend time for the Tribunal to consider such allegation.

Whistleblowing Detriment and Dismissal

15. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996?

16. The Tribunal will decide:

    a. What did the claimant say or write? When? To whom? The claimant says they made disclosures on these occasions:

        i. Disclosure to the Regional School Commissioner on 22 September 2020 by email [585 email to the Governors 21/9/2020 appears to be this] (having previously relayed the same information in an email to the Board on 6 September 2020 [547]) (para 4 OC). The claimant says the email to the RSC contained the following information:

            - A failure in safeguarding by the then safeguarding lead Governor in relation to a teacher's conduct in September 2019 (AC, para 15-18, 20); tended to show that a criminal offence had been, was being or was likely to be committed; and that a person had failed, was failing or was likely to fail to comply with any legal obligation

            - Failures in safeguarding which allowed staff and third parties (including a prospective school Governor in late 2020 (AC, para 32)) to enter the school without proper vetting and/or recruitment process (AC, para 14; 25 tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation and the health or safety of any individual had been, was being or was likely to be endangered

            - A failure in safeguarding and DBS process in allowing a teaching assistant to be employed without a DBS check, the teaching assistant subsequently being arrested and rearrested for grooming two year 9 (aged 14 years) pupils (AC, para 12); tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation and the health or safety of any individual had been, was being or was likely to be endangered

            - A failure in safeguarding in relation to two other staff in which one was viewing and posting pornographic material on an adult sexual domination site at work (AC, para 14, 24, 36, 37); tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation

            - Breaches of governance and the articles of association AC, paras 21-23, tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation.

        ii. Disclosure of safeguarding breach to Ms Ford by email on 5

October 2020 and 16 November 2020 (AC, para 34 and 42 respectively) [673-674]. tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation

iii. Disclosure of defamatory/racist Facebook group comments (the group included Governors) on 10 November 2020, by letter [698] (AC, para 39) tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation

iv. Unequal pay (based on race) disclosure to governors on 17 November 2020 (para 4 OC and AC para 43) by email [710]. tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation

v. Disclosure to Dominic Herrington, National Schools Commissioner, on 21 November 2020 re institutional racism (and safeguarding) issues (para 4, OC) tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation

vi. Disclosure to the Governors on 3 January 2021 re safeguarding (AC para 51); by email [763] tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation

vii. Disclosure to the Respondent regarding the alleged fraud re: working hours committed by [***EU***]/the Respondent (AC para 63) 28/7/21. tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation

b. Did they disclose information?

c. Did they believe the disclosure of information was made in the public interest?

d. Was that belief reasonable?

e. Did they believe it tended to show that:

i. [a criminal offence had been, was being or was likely to be committed;

ii. a person had failed, was failing or was likely to fail to comply with any legal obligation;

iii. a miscarriage of justice had occurred, was occurring or was likely to occur;

iv. the health or safety of any individual had been, was being or was likely to be endangered;

v. the environment had been, was being or was likely to be damaged;

vi. information tending to show any of these things had been, was being or was likely to be deliberately concealed.]

f. Was that belief reasonable?

g. If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer, or in the case of the Regional Schools Commissioner, or the National Schools Commissioner i.e. were they prescribed persons within the meaning of section 43F?

17. **Detriment Section 47B Employment Rights Act:** was the Claimant suspended on 18/11/2020 on the ground that he had made the above disclosures?

18. **Dismissal section 103A Employment Rights Act:** Was the reason for the dismissal (or if more than one, the principal reason) that the claimant had made the above disclosures.

19. The detriment claim is out of time. The Respondent says the suspension took place on 18/11/20 therefore primary limitation is 17/2/21 and so the claim is nearly 8 months out of time. Should the tribunal extend time if it considers that it was not reasonably practicable for the complaint to be presented before the end of three months.

20. The dismissal is in time.

Unfair dismissal section 98(4) Employment Rights Act.

21. Does C have two years' qualifying service so as to qualify for the right to claim (ordinary) unfair dismissal?

22. What was the reason for dismissal – R says (gross) misconduct?

23. Was dismissal by reason of misconduct substantively and procedurally fair? [Did R have a genuine belief in C's misconduct based on reasonable grounds and following a reasonable investigation. Was the decision to dismiss and the procedure within a range of reasonable responses open to R as a reasonable employer?]

24. In the event that C succeeds on his claim of unfair dismissal – would a difference in process have materially affected the outcome or does the appeal remedy any alleged defect (i.e. should a Polkey reduction be made)?

25. In the event that C succeeds on his claim of unfair dismissal – did C contribute to his own dismissal and should compensation be reduced accordingly.

Breach of Contract (Notice Pay)

26. Does the Tribunal consider that C committed an act (or acts) of gross misconduct?

Overall

27. If C succeeds on any of his claims – what compensation is it just and equitable for the Tribunal to award him?

28. Should compensation be increased of reduced by reason of a failure to comply

with the ACAS code? [C needs to particularise any alleged breach of the ACAS code]

29. Do any caps apply to any awards of compensation (ordinary unfair dismissal – cap of £89,493; breach of contract – cap of £25,000).
