EMPLOYMENT TRIBUNALS

Claimant: Mrs E Dimbylow

Respondent: Create Learning Trust

Heard at: Manchester Employment Tribunal

On: 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28 February 2025

Before: Employment Judge M Butler
Ms B Hillon

Representation
Claimant: Mr F Mortin (of Counsel)
Respondent: Ms S Gorton (of King's Counsel)

JUDGMENT

1. The allegations of being subjected to a detriment on the grounds of having made a Public Interest Disclosure are not well founded and dismissed.

2. The allegation of unfair dismissal is not well founded and dismissed.

3. The allegation of wrongful dismissal is not well founded and dismissed.

4. For the avoidance of any doubt, all claims in this case are dismissed.

REASONS

INTRODUCTION

5. A decision in this case was handed down orally on 28 February 2025. The respondent made a request for written reasons by email dated 07 March 2025. These are those written reasons.

6. The hearing started before a full tribunal panel. Unfortunately, due to ill-health, a member from the employer side of the panel was unable to continue. The member notified the tribunal on the morning of 21 February 2025 (that being day 5 of the hearing). The parties were notified of this on 21 February 2025. It was agreed that the tribunal would not sit on 21 February 2025, with the hope that the panel member would be fit to continue on 24 February 2025. However, the member

informed the tribunal late on 21 February 2025 that she had been medically advised to rest the week commencing 24 February 2025. The parties were informed and agreed by email for the case to continue before a panel of 2. The hearing resumed on 24 February 2025 before a panel of 2.

7. The claimant worked as a teacher for the respondent from 01 January 2012 until her dismissal on 27 September 2022. She presented her claim form on 31 January 2023, and this was following ACAS early conciliation that took place between 09 November 2023 and 15 December 2023.

8. The case was first considered at a Case Management Preliminary Hearing before Employment Judge Feeney on 06 June 2023. EJ Feeney decided to list the case for a public preliminary hearing to decide matters relating strike out and/or deposit orders.

9. Employment Judge Leach at a public preliminary hearing on 04 January 2024 refused to apply deposit orders to issues 2.3(a)-(d) in the list of issues. However, he did strike out a series of detriment complaints and the complaint of automatic unfair dismissal (see pp.64-66).

10. For completeness, Employment Judge Illing in a preliminary hearing on 23 October 2024, determined an application made by the respondent for specific disclosure. The claimant was directed to disclose the Charity Commission letter of claim dated 09 January 2019. An application for specific disclosure of correspondence between the claimant and her husband and the Charity Commission was refused.

11. The list of issues was appended to the back of EJ Leach's case management orders (pp.77-82). The tribunal was provided with an agreed list of issues at the outset of the hearing. And the parties confirmed that these remained the issues to be determined in this case. This covered all the claims contained within the claim form, and were the issues determined by this tribunal.

12. The tribunal on day 4 (20 February 2025), did raise questions concerning the pleaded case, insofar as it related to unfair dismissal. This was following Mr Mortin focusing a series of questions on what appeared to be suggestive that Mr Spence (who provided HR assistance to the respondent) applied improper influence over the dismissal process, whilst the claimant's particulars of claim did not appear to raise any such suggestion. Mr Mortin explained on day 5 (21 February 2025) that the claim form referred to Mr Spence and his involvement, and that this was also covered by the pleading that a fair and reasonable process had not been carried out. Taking a pragmatic view, the tribunal did not seek to prevent Mr Mortin from asking questions about improper influence, despite it not being specifically pleaded. This did not cause any difficulties with the case progressing.

13. The tribunal was assisted with an evidence bundle that initially ran to 1862 pages. However, across the evening of day 1, morning of day 2, the claimant had disclosed a further set of documents that ran to some 371 pages (discussed further below).

14. On Friday 21 February 2025, the respondent disclosed financial documents that related to companies under the control of the claimant and her husband. And on Wednesday 25 February 2025, there was further disclosure by the respondent in respect of the accounts of Socatots for the period of 2012-2015.

15. Neither party raised objections to any of the above additional documents being admitted into evidence. And they were duly admitted.

16. However, the tribunal does consider it necessary to record the following, in respect

the disclosure of documents that took place on 17/18 February 2025. Mr Mortin explained that he was only made aware of the documents during a conference with the claimant on 17 February 2025, at around 17.15. And that to comply with the ongoing duty of disclosure he had had the documents sent to the respondent. However, it is somewhat surprising that such relevant and crucial documents were only being identified and disclosed following the start of the hearing. The documents included the Scott Schedules, which the claimant makes several references to in her witness statement, and which she must have known were not included in the bundle. And further, is a document that the claimant says exonerates her of any wrongdoing, and therefore is crucial to at least the wrongful dismissal claim. Furthermore, the additional documents include what are said to be the claimant's observations of the disciplinary hearing created at the time. And documents created by the claimant's husband before and during attendance at the disciplinary hearing. There is no explanation why these have not been disclosed earlier, and the tribunal makes the point that this is far from what is expected from parties with respect disclosure.

17. Because of the above, the tribunal did not hear any evidence on 18 February 2025. This was to enable the tribunal to consider the additional documents, for Mr Gorton and respondent witnesses to have sufficient time to consider them, and to enable Mr Gorton to take any instructions from those affected by matters raised in the documents, before witnesses were sworn in.

18. The tribunal heard evidence from the claimant, who gave evidence on her own behalf.

19. The respondent called the following witnesses:

    a. Mrs Russell, a Trustee of the respondent and the chair of the disciplinary panel.
    b. Mr Butcher, Chair of the Trustees at the respondent, and the chair of the disciplinary appeal panel.
    c. Mr Spence, HR Business Partner with Cook Lawyers, who provided employment and HR support to the respondent.
    d. Mrs Hammond, School Governor and the Investigating Officer.
    e. Mrs Harvey, Deputy Headteacher of the respondent, and acting head around September 2022.
    f. Ms Woodward, currently the deputy CEO of the trust, but was the CEO at the time of the claimant's dismissal.

20. The tribunal was grateful to both Counsel for the way they approached this case, and the way they presented it. Both acted with courtesy, diligence, and professionalism. And the process benefited from the way the case was presented on behalf of both parties.

PRELIMINARY MATTERS

21. There was dispute over who would give evidence first in this case.

22. Mr Mortin submitted that the claimant ought to give evidence first, as the burden initially rested on her with respect establishing that she had made a qualifying disclosure. Mr Mortin also made submissions with respect the claimant having a preference to give evidence first, for reasons connected to her anxiety.

23. Mr Gorton submitted that the claimant was back in work and was fit to attend the hearing. And that the initial burden of proof rested more on the respondent, as the central claims were that of unfair dismissal and wrongful dismissal. Mr Gorton placed the detriment claims as, at best, an add on to the dismissal complaints.

24. The tribunal agreed with Mr Gorton. It considered that the primary claims in this case were the dismissal complaints. And in those circumstances, the primary burden of proof rested with the respondent, and this would suggest that the respondent's evidence was heard first. The tribunal considered whether the claimant's health would necessitate that her evidence be heard first and concluded that that would not be necessary. In short, the claimant had presented as being fit for the duration of the hearing. The tribunal could adjust the hearing where it was necessary. And the claimant was represented by Counsel.

25. In the circumstances, the tribunal decided to hear the respondent's evidence first.

CREDIBILITY

26. The tribunal considered it appropriate and necessary to make findings on the reliability and credibility of the witnesses that gave evidence in this tribunal.

27. The tribunal records that there were occasions where witnesses gave some evidence that had not been included in a witness statement. And this was present for most, if not all the witnesses in respect of relatively minor matters or in response to a question being asked. And similarly, there were occasions where a witness was asked a question, but the answer given did not entirely match the question being asked. However, little weight was given to this when assessing credibility and reliability of the witnesses. In short this happens in most cases. And given that this was a case that goes back some years, the tribunal allowed each witness a degree of latitude and some leeway. The tribunal, considering these matters, was not left with an impression, for the most and at least for those reasons, that credibility or reliability was an issue for any individual.

28. However, the tribunal did consider that this went beyond that identified above with Mrs Hammond on occasion. Where crucial evidence that the tribunal would have expected to be in a witness statement was missing. This particularly relates to a conversation that Mrs Hammond said took place with Mr Spence in advance of the investigation report being produced. Mrs Hammond gave this evidence under cross-examination and there was no reference to it in her witness statement. Given that Mrs Hammond's involvement in this case concerned her investigation into the claimant and the production of an investigation report, it was somewhat surprising that such evidence was not included in her witness statement. However, the tribunal was also aware that the claimant's case that Mr Spence applied improper influence over the process was not entirely clear on the pleaded case and this was a factor also considered.

29. However, similar observations to that made above with respect Mrs Hammond, were also present in the claimant's evidence. Most notably, the claimant's evidence around the Wembley box and use of it by her family to attend a music concert. Evidence around payments into the claimant and her husband's pension pots from Aragorn Limited (matter referred to at para 27 of the Charity Commission letter of claim, see p.124) Details around the claimant's involvement in charity and company affairs. Evidence on family matters that the claimant says affected why she could not present her detriment claims sooner. All of these matters were evidence that was important to the issues before this tribunal, and yet not included in the claimant's witness statement.

30. But beyond evidence being given in cross examination that the tribunal expected to be in the claimant's witness statement, there are other matters that the tribunal took into account when assessing the credibility and reliability of the claimant as a witness. Namely:

a. There were multiple examples of where a point put to the claimant was obvious, however, she tried to avoid conceding it. Most notable was in respect of an entry into the claimant's diary at p.1809. It was clear on any reading of the entry that the claimant was recording what her husband had told her were Mr Fenton's views on her case. And yet the claimant sought to suggest that it was unclear. It was only after Mr Gorton pushed further that she finally accepted it.
b. The late disclosure of highly relevant documents by the claimant.
    i. The Charity Commission letter of claim is clearly highly relevant to these proceedings, and yet the claimant sought to withhold disclosure of it. Only disclosing it following an application for specific disclosure.
    ii. The Scott Schedule, and the claimant's own minutes of the disciplinary hearing are both highly relevant to these proceedings. The Scott Schedule particularly. It was more than surprising that the first time the respondent was provided with a readable copy of this was the evening of day 1 of this hearing and it was not in the hearing bundle, given its centrality to the claimant's case.
c. The approach of the claimant to certain questions where she would answer with "there would be an answer, but I do not know it." Or she would suggest she did not know the answer, but her husband would know. And yet the claimant has not called any other witnesses who would have that answer. It is always a matter for a party as to who they call to give evidence, but such an approach affects the reliability and credibility of her evidence.
d. The skewing of evidence. Again this happened on several occasions. Most notably was the skewing of evidence where the claimant suggested that Cooks lawyers were disrupting her trade union representation. However, on consideration of the events it became clear that the emails between cooks Lawyers and the claimant's then Trade Unio representative did not support such a skewed interpretation.
e. The serious allegations the claimant made against the Charity Commission report in her claim, before changing the allegation of malice to concern only the press release, when cross-examined by Mr Gorton.
f. The untruths the claimant told around other income during the disciplinary hearing (p.167), and reference to the closing down of DBA Sport in the investigation meeting, when the reality was different.
g. The change of approach to answering questions on Development Management and Trademark Management. When answering such questions under cross-examination, which was early afternoon on 25 February 2025, the claimant answered primarily with 'I do not know or understand what they cover'. However, when re-examined on the same issues on 26 February 2025, her answers became more specific and detailed.

31. Considering the above, the tribunal considered that for the most, the respondent witnesses largely answered the questions posed, were consistent with contemporaneous documents and appeared to concede matters where it was necessary, and this included when they were being asked to look back in hindsight. The tribunal was impressed with the openness of the answers provided, for the most, by respondent witnesses. And had the impression that they were here to assist the tribunal. In contrast, the tribunal was left with concerns with the claimant as a credible and reliable witness, for the reasons outlined above.

32. Although there is some criticism of Mrs Hammond for omitting certain specific detail from her witness statement, the tribunal concluded that it would prefer the evidence of the respondent witnesses where there was a dispute of fact that could not be resolved through consideration of documentary evidence.

LIST OF ISSUES

33. An agreed list of issues was provided to the tribunal in advance of this hearing commencing. For ease these have been attached to the back of this judgment.

THE LEGAL FRAMEWORK

Unfair dismissal

34. The burden of proof rests on the employer to establish that the claimant was dismissed for a potentially fair reason, in this case the respondents says it was for misconduct.

35. Where the employer satisfies this burden in respect of establishing a potentially fair reason, the tribunal must then apply the statutory test contained within s.98(4) so as to consider whether the dismissal was fair or unfair, which is expressed in the following way:

> (4) 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.

Public Interest Disclosure/Protected Disclosure

36. It is at s.43B of the Employment Rights Act 1996 (hereinafter 'ERA') where it is set out what is meant by a qualifying disclosure (relevant to the claimant's detriment claim:

> **43B Disclosures qualifying for protection.**
>
> (1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, [F2 is made in the public interest and] tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,
>
> (e) that the environment has been, is being or is likely to be damaged, or
>
> (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately

concealed.

37. In essence, what a tribunal must determine can be broken down into its constituent parts:

    a. Did the claimant disclose any information?
    b. If so, did the claimant believe, at the time they made the disclosure, that the information disclosed was in the public interest and tended to show one of those matters listed in s.43B(1) ERA?
    c. If so, was that belief reasonable?

38. Under section 47B ERA:

> "(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."

Counsel submissions

39. Both Counsel referred to specific case law and legal principles, which they considered relevant to the issues in this case.

40. Mr Mortin referred to, amongst others, the following:

    a. The EAT in **Martin v London Borough of Southwark EA-2020-000432 (previously UKEAT/0239/20) (10 June 2021, unreported)**, reminding the tribunal that a sturcutred approach to determining a protected disclosure should be followed: (i) there must be a disclosure of information; (ii) the worker must believe that the disclosure is made in the public interest; (iii) if the worker does hold such a belief, it must be reasonably held; (iv) the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs 43(1)(a) to (f) ERA; (v) if the worker does hold such a belief, it must be reasonably held.

    b. The EAT in **Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38**, where Slade J explained that a protected disclosure must involve information and not simply be raising of concern or allegation:

> *"… the ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around." Contrasted with that would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information.*"

    c. The EAT in **Western Union Payment Services UK Ltd v Anastasiou UKEAT/0135/13 (21 February 2014, unreported)**, where Judge Eady applied the Cavendish distinction and commented that:

> "*the distinction can be a fine one to draw and one can envisage circumstances in which the statement of a position could involve the disclosure of information, and vice versa. The assessment as to*

whether there has been a disclosure of information in a particular case will always be fact-sensitive."

d. That in **Millbank Financial Services Ltd v Crawford [2014] IRLR 18**, it was held that there can be a qualifying disclosure of an employer's omission to act, not just of a positive act.

e. **Simpson v Cantor Fitzgerald Europe UKEAT/0016/18, [2020] ICR 236**, which explained that the ET retains discretion in whether to aggregate multiple alleged protected disclosures. Thus, if there is some doubt as to whether a disclosure on its own is capable of amounting to a disclosure of information it may be aggregated with another to cross that threshold.

f. It is not necessary for the information itself to be actually true. It follows that a disclosure may nevertheless be a qualifying disclosure even if it subsequently transpires that the information disclosed was incorrect (see **Darnton v University of Surrey [2003] IRLR 133**). The test is a subjective one.

g. On public interest, Mr Mortin referred to the Court of Appeal decision of **Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) [2018] ICR 731**, and the factors laid down, namely the numbers in the group whose interests the disclosure served; the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed; the nature of the wrongdoing disclosed; and the identity of the alleged wrongdoer.

h. When making a qualifying disclosure, a claimant is not required to identify a breach of a specific legal obligation but needs to identify some concern of a breach of the law: **Bolton School v Evans [2006] IRLR 500, EAT.**

i. With respect detriments, submissions on **Blackbay Ventures Ltd v Gahir [2014] IRLR 416** were made. And particularly the guidance of Judge Serota, who summarized the approach as follows: each disclosure should be separately identified by reference to date and content; each alleged failure or likely failure to comply with a legal obligation should be separately identified; the basis upon which each disclosure is said to be protected and qualifying should be addressed; save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation; the ET should determine whether or not the Claimant had the reasonable belief referred to in s 43B(1) ERA, whether each disclosure was made in the public interest; and where it is alleged that C has suffered a detriment, it is necessary to identify the detriment and where relevant the date of the act or deliberate failure to act relied upon by C.

j. For something to amount to a detriment, it needs to be capable of reasonably being considered to amount to a detriment by the individual concerned (see **Jesudason v Alder Hay Children's NHS Foundation Trust [2020] EWCA Civ 73**).

k. S.48(2) ERA confirms the employer must prove on the balance of probabilities that the act, or deliberate failure, complained of was not on the grounds that the employee had done the protected act; meaning that the protected act did not materially influence (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower (see **Fecitt v NHS Manchester [2011] EWCA Civ 1190**). The ET will likely also need to consider the question of separability in connection with the making

of the protected disclosure and C's behaviour in connection with this or arising from it (per **Kong v Gulf International Bank UK Ltd [2022] EWCA Civ 941**).

l. Cairns LJ said in **Abernethy v Mott Hay and Anderson [1974] IRLR 213, [1974] ICR 323** that "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

m. In determining the principal reason for the dismissal, the ET must not take account of events occurring subsequent to the conclusion of the dismissal process, or even of events which predated the dismissal if they were not known to the employer when it dismissed the employee (**W Devis & Sons Ltd v Atkins [1977] AC 931**).

n. A significant exception to the rule in **Devis** is that the employer should take account of evidence which emerges in the course of an internal appeal pursuant to **West Midlands Co-operative Society Ltd v Tipton [1986] 1 All ER 513.**

    i. remains fundamental starting point for determining whether a dismissal on grounds of conduct is fair in circumstances where the employer suspects a particular employee has committed the misconduct in question. The three elements read:

    "*What the tribunal have to decide every time is, broadly expressed, whether the employer who discharged the employee on the ground of the misconduct in question (usually, though not necessarily, dishonest conduct) entertained a reasonable suspicion amounting to a belief in the guilt of the employee of that misconduct… 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. It is the employer who manages to discharge the onus of demonstrating those three matters, we think, who must not be examined further.*"

o. The ET must decide on the reasonableness of the decision to dismiss by considering the objective standards of the hypothetical reasonable employer rather than by reference to the ET's subjective views i.e. whether R acted within the range of reasonable responses test.

p. **Vaultex UK Ltd v Bialas [2024] EAT 19** adds an important point to this, namely that if the employee raises matters they say should have led to a lesser penalty, the question is whether the employer took those matters into consideration; if it did so and still decided on dismissal, it may be difficult to show that it acted outside the range

q. Likewise, this band of reasonable responses test also applies to the procedural steps taken by R (see **Whitbread plc v Hall [2001] EWCA Civ 268**). Any such procedural issues need to be considered together with the reason for dismissal as the two impact upon each other.

r. Procedural defects in connection with the disciplinary process including the appeal (see **Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 664**).

s. length of service must always be taken into consideration particularly in circumstances where conduct is in issue as it goes to whether dismissal was a reasonable sanction to impose (**O'Brien v Boots Pure Drug Co [1973] IRLR 261**) albeit it's application may be limited if the ET finds that an act of gross misconduct was indeed committed by C.

t. Further, the ET should consider both substantive and procedural fairness when considering the application of s.98(4) ERA. In **Polkey v AE Dayton Services Ltd [1987] 3 All ER 974, HL**, Lord Bridge strongly emphasised the importance of procedural safeguards including that "*in the case of misconduct, the employer will normally not act reasonably unless he investigates the complaint of misconduct fully and fairly and hears whatever the employee wishes to say in his defence or in explanation or mitigation*".

u. In **A v B [2003] IRLR 405**, the EAT stated that the gravity of the charges and the potential effect on the employee will be relevant when considering what is expected of a reasonable investigation.

v. In **Roldan v Royal Salford NHS Foundation Trust [2010] EWCA Civ 522**, the Court of Appeal held that the severity of the consequences to the employee of a finding of guilt may be a factor in determining whether the thoroughness of the investigation justified dismissal.

w. In **Louies v Coventry Hood and Seating Co Ltd [1990] IRLR 324**, the employer dismissed the employee for theft and relied heavily upon two written statements stating that the employee had been involved in the theft. The EAT held that it will be a very rare case for the procedures to be fair where the employer relies almost entirely upon written statements but fails to permit the employee to have sight of them.

x. The Court of Appeal in **Shrestha v Genesis Housing Association Ltd [2015] EWCA Civ 94**, per Richards LJ at [23]:

> "To say that each line of defence must be investigated unless it is manifestly false or unarguable is to adopt too narrow an approach and to add an unwarranted gloss to the Burchell test. **The investigation should be looked at as a whole when assessing the question of reasonableness. As part of the process of investigation, the employer must of course consider any defences advanced by the employee, but whether and to what extent it is necessary to carry out specific inquiry into them in order to meet the Burchell test will depend on the circumstances as a whole.** Moreover, in a case such as the present it is misleading to talk in terms of distinct lines of defence. The issue here was whether the appellant had over-claimed mileage expenses. His explanations as to why the mileage claims were as high as they were had to be assessed as an integral part of the determination of that issue. What mattered was the reasonableness of the overall investigation into the issue." [emphasis added]

y. In **Chhabra v West London Mental Health NHS Trust [2013] UKSC 80** at [37], Lord Hodge considered the extent to which an HR department can permissibly influence a disciplinary investigation. It is recorded:

"*37. Thirdly, I consider that the Trust breached its contract with Dr Chhabra when Mr Wishartcontinued to take part in the investigatory process in breach of the undertaking which the Trust's solicitors gave in their letter of 24 February 2011 (para 21 above). In particular, when Mr Wishart*
proposed extensive amendments to Dr Taylor's draft report and Dr Taylor accepted some of them, which strengthened her criticism of Dr Chhabra, the Trust went outside the agreed procedures which had contractual effect. Policies D4 and D4A established a procedure by which the report was to be the work of the case investigator. There would generally be no impropriety in a case investigator seeking advice from an employer's human resources department, for example on questions of procedure. I do not think that it is illegitimate for an employer, through its human resources department or a similar function, to assist a case investigator in the presentation of a report, for example to ensure that all necessary matters have been addressed and achieve clarity. But, in this case, Dr Taylor's report was altered in ways which went beyond clarifying its conclusions. The amendment of the draft report by a member of the employer's management which occurred in this case is not within the agreed procedure. The report had to be the product of the case investigator. It
was not. Further, the disregard for the undertaking amounted to a breach of the obligation of good faith in the contract of employment. It was also contrary to para 3.1 of policy D4 as it was behaviour which the objective observer would not consider reasonable: Dr Chhabra had an implied contractual right to a fair process and Mr Wishart's involvement undermined the fairness of the disciplinary process."

z. In **Ramphal v Department of Transport [2015] IRLR 985**, the EAT overturned a finding of a fair dismissal in connection with there being undue interference from HR:

"*47. I am unable to accept that submission because it was a decision in the Supreme Court of a Justice of the Supreme Court in carefully chosen words that it was an implied term that the report of an Investigating Officer for a disciplinary enquiry must be the product of the case investigator; I would say a priori when the investigator, as in this case, had the dual role as dismissing officer…*

53. It seems to me that Human Resources clearly involved themselves in issues of culpability, which should have been reserved for Mr Goodchild. Mr Goodchild clearly went beyond discussing issues of procedure and law. He accepts that he discussed his emerging findings…

55. In my opinion, an Investigating Officer is entitled to call for advice from Human Resources; but Human Resources must be very careful to limit advice essentially to questions of law and procedure and process and to avoid straying into areas of culpability, let alone advising on what was the appropriate sanction as to appropriate findings of fact in relation to culpability insofar as the advice went beyond addressing issues of consistency. It was not for Human Resources to advise whether the finding should be one of simple misconduct or gross misconduct…

[57] I consider that an employee facing disciplinary charges and a dismissal procedure is entitled to assume that the decision will be taken by the appropriate officer, without having been lobbied by other parties as to the findings he should make as to culpability, and that he should be given notice of any changes in the case he has to meet so that he can deal with them, and also given notice of representations made by others to the Dismissing Officer that go beyond legal advice, and advice on matter of process and procedure."

aa. On wrongful dismissal, the words of Langstaff P in **Rawson v Robert Norman Associates Ltd UKEAT/0199/13, [2014] All ER (D) 154 (Apr)**:

"*There is a vital distinction between the facts which underlie a claim for unfair dismissal, in particular where that dismissal is for conduct reasons, where the dismissal itself is admitted, and the Tribunal's approach where it is considering questions of contributory conduct or whether the employee is himself in breach of his contract. Unfair dismissal requires an Employment Tribunal to evaluate the employer's conduct. In a conduct dismissal it examines the employer's view of the employee's behaviour. It is not concerned with whether that behaviour actually occurred, only whether, on the facts, the employer reasonably might conclude after a reasonable investigation that it did. When it comes to look at questions of whether the claimant has been guilty of contributory conduct, in a claim in which the claimant succeeds, it is not concerned any more with what the employer thinks the employee did. It is concerned with what he actually did. The same is true if there is any question of wrongful dismissal which involves looking at whether the employee himself was in breach of contract. Many claims for wrongful dismissal or constructive dismissal involve an assertion that it was the employee and not the employer who, in the circumstances, was in breach of contract. In such a case, what is relevant is not what the employer thought happened, however reasonable that might be. It is what actually happened. A Tribunal needs to know, and say why it takes the view that it does, that the conduct happened as allege or did not.*"

bb. In **Software 2000 Ltd v Andrews [2007] IRLR 568** (Elias P presiding) the EAT reviewed the authorities and gave the guidance regarding the correct approach to applying **Polkey.**

41. Whilst Mr Gorton referred the tribunal to, amongst others (and without repeating principles relied on by Mr Mortin), the following:

a. **Iceland Frozen Foods**:

"*Since the present state of the law can only be found by going through a number of different authorities, it may be convenient if we should seek to summarise the present law. We consider that the authorities establish that in law the correct approach for the Industrial Tribunal to adopt in answering the question posed by [s 98(4) of the 1996 Act] is as follows.*

(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 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'."

b. **Post Office v Foley**:

"*It was also made clear in Iceland Foods [1982] IRLR 439 at p.442, 24-25 that the members of the tribunal must not simply consider whether they personally think that the dismissal is fair and they must not substitute their decision as to what was the right course to adopt for that of the employer. Their proper function is to determine whether the decision to dismiss the employee fell within the band of reasonable responses 'which a reasonable employer might have adopted.*

In one sense it is true that, if the application of that approach leads the members of the tribunal to conclude that the dismissal was unfair, they are in effect substituting their judgment for that of the employer. But that process must always be conducted by reference to the objective standards of the hypothetical reasonable employer which are imported by the statutory references to 'reasonably or unreasonably' and not by reference to their own subjective views of what they would in fact have done as an employer in the same circumstances. In other words, although the members of the tribunal can substitute their decision for that of the employer, that decision must not be reached by a process of substituting themselves for the employer and forming an opinion of what they would have done had they been the employer, which they were not."

c. The range of reasonable responses applies equally to the conduct of investigations and the procedure used as it does to the decision to dismiss (penalty) as was made clear in **Sainsburys Supermarkets v Hitt**:

"*In order to prevent further confusion, for which I may be thought to be partly responsible, I should emphasise clearly that, as held by the Court of Appeal in Whitbread v Hall, the range of reasonable responses approach applies to the conduct of investigations, in order to determine whether they are reasonable in all the circumstances, as much as it applies to other procedural and*

substantive aspects of the decision to dismiss a person from his employment for a conduct reason."

d. Micro analysis of what an employer did or didn't do is not permissible nor acceptable, as per **Post Office v Foley**:

> "*The extent of the tribunal's substitution of itself as employer in place of the bank, rather than taking a view of the matter from the standpoint of the reasonable employer, is evident from the tenor of the views expressed by the tribunal on the quality and weight of the available evidence against Mr Madden. I refer to the tribunal's cumulative critical comments on the bank's internal investigation by Mr Murphy, on the disciplinary hearing by Mr Fielder and on the probative value of the material on which Mr Fielder based the summary dismissal: that 'there was no clear culprit for the misappropriation of the cards'; that there was 'no firm evidence of the precise dates on which the cards were taken'; that there was 'no direct evidence that Mr Madden had accessed the Nixdorf system'; that there was no investigation of the 'personal or financial affairs' of other members of the staff; that no account was taken of the nature of the goods bought with the stolen cards; that Mr Fielder failed to take account of the fact that a man in Mr Madden's financial and career position would not have jeopardised all for such a 'relatively paltry theft'; that 'the facts of the case should have produced more than reasonable doubt in Mr Fielder's mind'; that the investigators had closed their minds to any possibility other than the guilt of Mr Madden; that Mr Fielder 'came to a hasty conclusion that Mr Madden was probably guilty' and was content to accept the report of the investigators too readily and uncritically; and that Mr Fielder's decision to dismiss Mr Madden, who had a stainless record of 11 years' service, would effectively ruin his career and was not taken on reasonable grounds.*
>
> *In my judgment no reasonable tribunal, properly applying the approach in Burchell [1978] IRLR 379 and Iceland Foods [1982] IRLR 439 to the facts, could have concluded either (a) that the bank had failed to conduct such investigation into the matter as was reasonable in all the circumstances or (b) that dismissal for that reason was outside the range of reasonable responses. Instead of determining whether the bank had made reasonable investigations into the matter and whether it had acted within the range of responses of a reasonable employer, the tribunal in effect decided that, had it been the employer, it would not have been satisfied by the evidence that Mr Madden was involved in the misappropriation of the debit cards or their fraudulent use and would not have dismissed him. The tribunal focused on the insufficiency of the evidence to prove to its satisfaction that Mr Madden was guilty of misconduct rather than on whether the*
> *bank's investigation into his alleged misconduct was a reasonable investigation. This case illustrates the dangers of encouraging an approach to unfair dismissal cases which leads an employment tribunal to substitute itself for the employer or to act as if it were conducting a rehearing of, or an appeal against, the merits of the employer's decision to dismiss. The employer, not the*
> *tribunal, is the proper person to conduct the investigation into the alleged misconduct. The function of the tribunal is to decide whether that investigation is reasonable in the circumstances and whether*

the decision to dismiss, in the light of the results of that investigation, is a reasonable response."

e. The EAT in **Rhonda Cynon Taf County Borough Council v Close** followed this approach:

> "*In short, we are satisfied that although properly directing itself in form, the tribunal has in fact descended into the arena and substituted its view for that of the employer as to how the procedure should have been conducted. We are reinforced in this view by a consideration of the decision of the Court of Appeal in Foley v Post Office [2000] IRLR 827. In that case the court inferred that the tribunal in that case had substituted its view for that of the employer because it was 'evident from the tenor of their views ... on the quality and the weight of the evidence' (per Mummery LJ, p.832). In that case the employers were criticised for finding that the employee had been involved in fraudulent behaviour given the lack of precise dates when this was alleged to have happened; and in the absence of any step taken by the employer to consider whether other members of staff may have had a reason for acting dishonestly. The court considered these criticisms to be unjustified. In our view the approach of the tribunal in that case is similar to the emphasis placed by the tribunal in this case on the lack of any proof that the claimant was asleep, and the failure to consider whether other witnesses may have had their own motives for lying in their witness statements.*"

f. An ET is obliged to consider the fairness of the entire disciplinary process when assessing whether a dismissal was fair or unfair. That is not an analysis that hinges on whether an appeal was conducted as a review or a rehearing. It hinges on whether the overall process that led to dismissal was fair. As the Court of Appeal stated in **Taylor v OCS Group Ltd**:

> "*It seems to us that there is no real difference between what the EAT said in Whitbread and what it said in Adivihalli. Both were consistent with Sartor. In both cases, the EAT recognised that the ET must focus on the statutory test and that, in considering whether the dismissal was fair, they must look at the substance of what had happened throughout the disciplinary process. To that extent, in our view, the EAT in the present case was right. However, in Whitbread, the EAT used the words 'review' and 'rehearing' to illustrate the kind of hearing that would be thorough enough to cure earlier defects and one which would not. Unfortunately, this illustration has been understood by some to propound a rule of law that only a rehearing is capable of curing earlier defects and a mere review never is. There is no such rule of law……*
>
> *Although the context of these observations is far removed from that of a claim for unfair dismissal before an ET, these observations do serve to underline the pointlessness of seeking to determine whether an internal appeal process was a rehearing or a review. In our view, it would be quite inappropriate for an ET to attempt such categorisation. What matters is not whether the internal appeal was technically a rehearing or a review but whether the disciplinary process as a whole was fair.*"

g. On Polkey, **Software 2000 Ltd v Andrews** [2007] IRLR 568 at para 54:

"'(1) In assessing compensation the task of the Tribunal is to assess the loss flowing from the dismissal, using its common sense, experience and sense of justice. In the normal case that requires it to assess for how long the employee would have been employed but for the dismissal.

(2) If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the Tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself. (He might, for example, have given evidence that he had intended to retire in the near future.) [emphasis added].

(3) However, there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made.

(4) Whether that is the position is a matter of impression and judgment for the Tribunal. But in reaching that decision the Tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

(5) An appellate court must be wary about interfering with the Tribunal's assessment that the exercise is too speculative. However, it must interfere if the Tribunal has not directed itself properly and has taken too narrow a view of its role.

h. With respect wrongful dismissal, the test for gross misconduct as summarised by Mrs Justice Rice Collins in in **Palmeri v Charles Stanley Ltd [2021] IRLR 563, HC**:

"*42. The test I am required to apply for that is variously formulated in the authorities. It includes considering whether, objectively and from the perspective of a reasonable person in the position of Charles Stanley, Mr Palmeri had "clearly shown an intention to abandon and altogether refuse to perform the contract" by repudiating the relationship of trust and confidence towards Charles Stanley (Eminence Property Developments v Heaney [2011] 2 All ER (Comm) 223). In a case like this "the focus is on the damage to the relationship between the parties" (Adesokan v Sainsbury's Supermarkets Limited [2017] ICR 590 per Elias LJ paragraph 23). There is relevant analogy with the formulations in the employment cases: "the question must be — if summary dismissal is claimed to be justifiable — whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service." (Laws v London Chronicle [1959] 1 WLR 698, pages 700-701) It*

must be of a "grave and weighty character" and "seriously inconsistent – incompatible – with his duty as the manager in the business in which he was engaged" (Neary v Dean of Westminster [1999] IRLR 288, paragraph 20), or "of such a grave and weighty character as to amount to a breach of the confidential relationship between employer and employee, such as would render the employee unfit for continuance in the employer's employment" (Ardron v Sussex Partnership NHS Foundation Trust [2019] IRLR 233 at paragraph 78)."

i. Matters discovered post-dismissal can be relied upon by an employer in a wrongful dismissal claim: **Boston Deep Sea Fishing v Ansell.**

CLOSING SUBMISSIONS

42. The tribunal received written closing arguments and heard closing oral argument on behalf of both parties. These are not repeated here but have been considered and taken into account in reaching this decision.

FINDINGS OF FACT

We make the following findings of fact based on the balance of probability from the evidence we have read, seen, and heard. Where there is reference to certain aspects of the evidence that assisted us in making our findings of fact this is not indicative that no other evidence has been considered. Our findings were based on all of the evidence, and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why we made the findings that we did.

We do not make findings in relation to all matters in dispute but only on matters that we consider relevant to deciding on the issues currently before us.

The tribunal has made use of subheadings in this judgment to try to direct the reader accordingly. However, there is some overlap across the sub-headings and therefore to fully understand the judgment this document needs to be read as a whole. Furthermore, the tribunal when considering individual issues is using the paragraph numbers from the list of issues (attached to the back of this judgment).

<u>General Findings</u>

43. The claimant had continuous service for the respondent since 01 January 2017 up until her dismissal on 27 September 2022. The claimant was initially employed by Sandiway Primary School. However, her employment transferred to a multi academy trust (the respondent) on 01 October 2019. The claimant was employed as a teacher and was also a Special Educational Needs and Disabilities Co-Ordinator (SENDCo).

44. The respondent is a Multi Academy trust that consists of three Primary Schools in cheshire West and Chester Local Authority.

<u>Findings on Qualifying Disclosures: Public interest disclosure 1 (paragraph 2.1(a)) and public interest disclosure 2 (paragraph 2.1(b))</u>

45. The claimant was aware of the Whistleblowing Policy of the respondent (pp.116-119) during her employment and at least from the beginning of January 2022. She understood that she could access this policy online and was able to read it whenever she so chose.

46. Generally, the respondent, as with other mainstream schools, received funding for Special Education Needs (SEN) support in 3 ways:

    a. Element 1 Funding. This is general funding paid to the school by a local authority. This is based on an age weighted pupil formula for which the respondent has no control. This is essentially student-number based. This is often referred to as delegated funding.
    b. Element 2 Funding: Where SEN/SEND students require additional or specific support, in addition to the delegated funding, a school can allocate up to £6,000 of such support. This will be the first £6,000 where there is a need for support that goes beyond £6,000. This is often referred to as 'notional funding'.
    c. Element 3 funding: A school can apply for 'top-up' funding where a child has an EHCP, and the needs of a child go beyond that that can be covered by the Element 2 Funding. This funding (which is the top up funding + the £6,000 notional funding when there is an EHCP) is child specific.

47. The respondent could adapt the way it utilized the delegated funding and the notional funding. There was no specific legal obligation in the way that such funding was used, save for ensuring that SEN children got the support that they needed. And the claimant understood that this was the funding model for SEN students within the respondent.

48. The claimant understood that the respondent's SEN provision was primarily through Teaching Assistant (TA) support.

49. Some of the TA salaries would be funded out of the school's SEN budget. Again, the claimant understood this.

50. At the time of the alleged detriments, the school had one pupil who had an EHCP, which attracted notional funding (Pupil 1) only. And a second pupil, which attracted 'top-up' funding (Pupil 2). The school had drawn up a draft EHCP for another student, but this had not yet been agreed and the school had not been provided any funding in relation to the student subject to the draft EHCP.

51. The school at the time of the alleged detriments employed 8 Teachings Assistants (TAs). Some of the TA provision would be used to satisfy some of the school's obligations in respect of Pupil 1 and Pupil 2. As well as providing support for other SEN students.

52. On 07 February 2022, the claimant emailed Ms Jenni Goodwin, who was the Chief Finance Officer (CFO) of the respondent (pp.131-132). She asked Ms Goodwin to send to her a breakdown of the SEND budget from the previous year. This was to include how much was spent overall and on what.

53. Ms Goodwin replied to the claimant on 07 February 2022. She attached the relevant documents (pp.133-134, referred to by the claimant in paragraph 20 of her witness statement). These documents provided a breakdown of the income received. And a breakdown of the expenditure, insofar as on SEN equipment and SEN professional services. It did not include the expenditure on TAs.

54. The claimant emailed Mr Priddey on 09 February 2022 for a meeting to discuss the SENDCo role (p.1859).

55. On or around 14 February 2022, the claimant met with Mr Priddey. The claimant did not take any notes of this meeting.

56. On the claimant's own evidence, the claimant did not state to Mr Priddey that public funding was greater than expenditure and she believed this was a misallocation of funding (paragraph 22 of the Claimant's witness statement (WS). The claimant accepted under cross examination that she at no point mentioned the words 'misallocation of funding'.

57. On the claimant's own evidence, at the very most, she stated that the income from pupil funding was far greater than the expenditure of resources. However, the tribunal finds that the claimant did not say this. The tribunal makes this finding carefully, given the claimant gives evidence on it at para 22 of her WS, and Mr Priddey, the only other person at the meeting is not giving evidence. However, given that the claimant knew that the school had significant TA support, that SEN provision was largely through allocation of TA support, that the document she had been sent the 2020/21 and 2021/22 SEN budget document and it is clear that TA costs are not included on that document, and given that SEN provision is something that the claimant tells the tribunal is vitally important for which Mr Priddey took no action and yet she did not pursue this further (see finding below), the tribunal finds on balance that this information insofar as stating that pupil funding was far greater than the expenditure on resources was unlikely to have been disclosed to Mr Priddey.

58. In respect of public interest disclosure 2, the tribunal finds that the claimant did not disclose the information to Mr Priddey as alleged on or around 14 February 2022 for the same reasons above. Further, the claimant told the tribunal that she made this disclosure against the background of new funding for specific children being obtained. However, the claimant's oral evidence contradicted this, in that she accepted that only 2 children attracted funding and that this was the case throughout this period. In other words, there was no new funding for specific children obtained. This led the tribunal to reject the claimant's evidence on this matter.

59. The claimant at no point following her meeting with Mr Priddey sought to escalate any concerns about misallocation of SEN student funding to anybody. The claimant did not raise this matter again until the presentation of her claim form on 31 January 2023.

<u>Conclusions on public interest disclosure 1 (paragraph 2.1(a)) and public interest disclosure 2 (paragraph 2.1(b))</u>

60. The tribunal has made findings that the claimant did not make the disclosures of information as alleged for public interest disclosure 1 and public interest disclosure 2. Even had such comments been made, the tribunal still would have concluded that these were not qualifying disclosures, as the tribunal would have concluded that the claimant had not established that she had a reasonable belief that the information tended to show a failing in the legal obligation that she has identified. First, the information lacks specifics that links to a misallocation of funding and a failing in legal obligations as pleaded. Second, the claimant's lack of action thereafter, given she was the respondent's SendCo, would suggest that the claimant did not have a reasonable belief that this was such a serious legal failing. And third, given the claimant's understanding of the allocation of resources and funding she had at the time, and the data contained on the document at pp133-134, the tribunal was not satisfied that the claimant would have such a reasonable belief in those circumstances.

61. The alleged public interest disclosure 1 and public interest disclosure 2 are found not to be qualifying disclosures.

<u>Findings on Qualifying Disclosures: Public interest disclosure 3 (paragraph 2.1(c)) and</u>

public interest disclosure 4 (paragraph 2.1(d))

62. Given the tribunal conclusions on the reliability and credibility of witnesses above, the tribunal preferred the Mrs Harvey's evidence in respect of the discussions between herself and the claimant on both 21 April 2022 and 06 September 2022, where there was a conflict in the evidence.

63. The tribunal finds that there were general discussions on these days around allocation of SEN resources generally, but nothing specifically raised around misuse of funding. Further supporting this conclusion is that the claimant around these dates was keeping diary notes and there is no reference to such a specific disclosure of information or such conversations between herself and Mrs Harvey. And such information or allegations were not raised at any other point by the claimant.

64. Specifically with respect public interest disclosure 3, the claimant accepted under cross examination that her evidence in her witness statement did not match that which was pleaded as public interest disclosure 3. Under cross examination she explained that her concerns were clear, but that she did not make the specific disclosure of information on which this alleged disclosure is brought. The claimant has not given evidence that supports that she made the specific disclosure as recorded in the agreed list of issues, and that is because she did not make such a specific disclosure.

65. Specifically with respect public interest disclosure 4, the claimant did read the child's EHCP and did raise concerns around the correct use of child's funding to Mrs Harvey on 06 September 2022. Although the claimant had misunderstood the funding position in respect the child in question, the tribunal was satisfied that the claimant had a reasonable belief that there was funding attached to the child and that it was not being used in a way that satisfied the school's legal obligations under the EHCP. Particularly through the use of multiple TAs, that were being pulled away from supporting other children and classes, whilst the EHCP required a single member of staff to be used for the student. The evidence of the claimant and Mrs Harvey were consistent with one another on this point, with Mrs Harvey accepting that the claimant at the time was raising concerns that the respondent was potentially not complying with the child's EHCP terms.

Conclusions on public interest disclosure 3 (paragraph 2.1(c)) and public interest disclosure 4 (paragraph 2.1(d))

66. Given the tribunal's findings above, the alleged public interest disclosure 3 is found not to be a qualifying disclosure.

67. The tribunal concluded that public interest disclosure 4 was a qualifying disclosure. The tribunal has found that the claimant made a disclosure of information as pleaded. That she had a reasonable belief that this tended to show that the respondent was failing to comply with a legal obligation placed on it through the EHCP. As this was the agreed discussion that took place. Further, given that this concerned the compliance with an EHCP and involved the education of children, the tribunal was satisfied that the tribunal had a reasonable belief that this was being made in the public interest.

Findings on Detriment 1 (para 2.3.1)

68. Mr Priddey more likely than not did not raise any request made by the claimant for a greater allocation of time for her SENDCo role following a request she made on 09 February 2022 because at the time Mr Priddey was not raising many things that he was supposed to be raising. This was not limited to matters raised by the

claimant. This was a proposition accepted by the claimant under cross-examination. And this is the reason why Mr Priddey did not raise the claimant's request. It was not caused by a qualifying disclosure.

Conclusions on detriment 1 (para 2.3.1)

69. Even had the claimant established that she had made a qualifying disclosure that predated this detriment, the tribunal would have concluded that it was not caused by such a qualifying disclosure but for other reasons unconnected to such. The claim must therefore fail and is dismissed.

Findings on Detriment 2 (para 2.3.2)

70. On 28 April 2022, there was a Senior Leadership Team (SLT) meeting scheduled. The claimant and Mrs Harvey were due to meet Mr Priddey at 13.00.

71. Mr Priddey did not attend this scheduled meeting.

72. The claimant went to find Mr Priddey at around 13.20.

73. Mr Priddey did not attend this meeting as he had to address an issue with year 5 group (see p.1805). The claimant spoke to Mr Priddey who explained that the meeting was no longer happening and that he had a meeting with Ms Woodward that he had to attend. Mr Priddey then explained that he would meet with the claimant to discuss a child after school. This meeting again did not happen. However, the claimant managed to speak to Mr Priddey that afternoon, and arranged to meet the following morning at 8.15 (p.1805).

74. The claimant met with Mr Priddey at 08.15 on Friday 29 April 2022 (p.1806).

Conclusions on detriment 2 (para 2.3.2)

75. The tribunal is not satisfied that in the circumstances the claimant has been subjected to a detriment. The claimant was still able to meet with Mr Priddey to discuss the issues she wanted to raise in respect child SE, albeit later than planned due to unforeseen events. It would be unreasonable for the claimant to view this as detrimental treatment. Mr Priddey was clearly not seeking to avoid meeting with the claimant, nor did he refuse. Rather, he rearranged the meeting when he could not attend the initial meeting.

76. Further, even on the claimant's own evidence any such treatment had nothing to do with her having raised matters with Mr Priddey. The claimant's diary entry is quite telling in explaining the reason behind why Mr Priddey did not attend the meeting as arranged, and that was due to having address an issue with a year 5 group of students. Furthermore, Mr Priddey did meet with the claimant the following morning. This is inconsistent with Mr Priddey trying to avoid meeting the claimant as she had made a qualifying disclosure. Had that been the case then Mr Priddey would not have arranged and met with the claimant the following morning. Equally important is that Mrs Harvey, who not made any alleged qualifying disclosure, was subjected to the same treatment as the claimant, namely Mr Priddey not attending the arranged meeting. In those circumstances, the tribunal finds there was no causative link to any alleged qualifying disclosure.

77. The claim must therefore fail and is dismissed.

Findings on Detriment 3 (para 2.3.3)

78. Mrs Harvey made the decision of what was happening on the day of the SEN

Review, which took place on 07 July 2022. Mrs Harvey decided that the reviewer would meet with the leader on the day, before then seeing how SEN provision worked in the classroom. The focus was going to be on practical application of SEN provision rather than discussions with those responsible. And that is how the SEN review worked on that day. The tribunal accepted the evidence of Mrs Harvey on this matter.

79. Ms Jane Williams, the new Director of Sen for the respondent shadowed the reviewer during the process. This was to upskill Ms Williams so that she had the capacity to run reviews in the future.

80. The claimant was involved in the initial meeting with the reviewer on 7 July 2022, in her capacity as SENDCo. The claimant was involved in this part of the process.

81. The reviewer then met with parents, interviewed relevant staff members, did a class walk and then gave a feedback session based on what she had identified.

82. The claimant was invited to and attended the feedback session. She was involved in this part of the process.

Conclusions on detriment 3 (para 2.3.3)

83. The claimant was not subject to a detriment as pleaded. First, the claimant was not marginalized. And was involved in specific parts of the day and was able to participate freely. Second, the newly appointed Trust Director of Special Educational Needs and Disabilities was not involved in organizing the day. This was done by Mrs Harvey. Thirdly, it would not be reasonable for the claimant to view this as a detriment in circumstances where the SEN review was to test SEN provision on the ground floor rather than to spend the day with the SENDCo. The focus was on how SEN provision translated to practical assistance to children. And that is what took place.

84. And even if the tribunal is wrong on that, the tribunal accepts the respondnet's evidence that the SEN review was organised to ensure that the reviewer was able to assess SEN provision within the classrooms. And was in no way influenced or caused by the claimant making an alleged qualifying disclosure.

85. The claim must therefore fail and is dismissed.

86. Findings on Detriment 4 (para 2.3.4)

87. On 01 September 2022 the respondent discovered that two Looked After children would be starting at the school the following week, and this was following a phone call from the children's Foster Carer on 01 September 2022.

88. Mr Priddey had been the designated member of staff for Looked After children. However, on his leaving the employ of the respondent, this responsibility was due to pass to Mrs Harvey, however, she had not yet undertaken the necessary training at this stage.

89. The claimant was not designated to deal with Looked After children.

90. Mrs Harvey contacted Ms Susan Walker for support. Ms Walker was supporting Mrs Harvey in her role as acting head.

91. The claimant attended an inset day on or around 01 September 2022.

92. Mrs Harvey sought out necessary information about the children on 01 September 2022 from Foster Carers and social workers and had to locate the EHCP, which

applied to one of the children. The EHCP was sourced on 02 September 2022. However, funding took some 18 months to come through due to the complicated nature of transferring an EHCP from one local authority to another.

93. The reason that the claimant was not involved in discussions around timetable arrangements for the child with an EHCP between 02 Sept 2022 and 06 September 2022 was for several reasons: because of the unexpected announcement that the two children would be joining the school which necessitated a lot of work, there was a lot of background work to do to understand the needs of child, and the need to locate and receive a copy of the EHCP.

94. The claimant was provided with a copy of the child's EHCP on or around 06 September 2022.

Conclusions on detriment 4 (para 2.3.4)

95. The tribunal does not consider that the claimant was subjected to detrimental treatment in these circumstances. The child concerned was a Looked After Child, which did not fall within the remit of the claimant. Mrs Harvey not involving the claimant in any discussions concerning that child at the stage of being informed that they will be attending the school is not a detriment. Indeed, the claimant, on her own case had discussions with Mrs Harvey about this child on 02 September 2022, which was the day Mrs Harvey received a copy of the child's EHCP. The short period thereafter saw Mrs Harvey work tirelessly to put in place suitable provision for a child that would be joining the school imminently. And once Mrs Harvey had a copy of the child's EHCP and had sorted out timetable provision, she shared it with the claimant. This is not detrimental treatment.

96. Further, the tribunal accepts Mrs Harvey's evidence that this was a stressful period where her focus was in ensuring that the school could accommodate the two children who were joining at short notice. Any such treatment was not because of any alleged qualifying disclosure made by the claimant.

97. The claim must therefore fail and is dismissed.

Findings on Detriment 5 (para 2.3.5)

98. Following the SEN review, it was included in the Strategic and Leadership Management Plan that "the SENDCo was to write an action plan to address the SEND review findings. Share action plan with SLT"

99. On 08 September 2022, the staff, including the claimant, were told that Ms Williams, as Director of SEND, would be attending school the following Monday to check the SEN children's personal profile targets and to support staff in writing them if needed.

100. The tribunal accepts the evidence given by Mrs Harvey on this point, that Ms Williams was new in her role, and was wanting to get to know the respondent's procedures and processes. And to help her with this she was attending the school to work alongside and with the claimant.

Conclusions on detriment 5 (para 2.3.5)

101. Given the tribunal's findings above, the tribunal is not satisfied that this reaches the level of being detrimental treatment. Nor is it satisfied that any such treatment was in any way connected to the claimant having made a qualified disclosure. Rather, the tribunal considers that the reason behind Ms Williams involvement was due to her keenness to get started in her new role.

Time limits

102. All the detriment claims are brought out of time, even if taken from the date of the last alleged detriment. The claim form was presented on 31 January 2023, and this was following ACAS early conciliation that took place between 09 November 2023 and 15 December 2023.

103. Taking the dates above, any claim where the detriment took place before 26 September 2022 is brought outside of the primary time limit. The date of final detriment in this case is 08 September 2022.

104. The tribunal is taking a proportionate approach to the reasons pertaining to time limits and is only providing limited reasons on this matter. The tribunal does not consider it necessary to go any further than this given its clear findings and conclusions in respect the detriment claims above.

105. The claimant around the time of dismissal, that being 27 September 2022, had access to legal advice. The clamant could get advice from her trade union, as she had done so previously. She had no disablement preventing her from commencing a claim around the time of the alleged detriments, or from researching what was necessary to bring a claim. The claimant is an intelligent person. At its height, the claimant gave oral evidence that she had family issues going on at the time. However, this lacked specificity. There is nothing in the claimant's witness statement that explains why claims were not brought sooner. In those circumstances, the tribunal would have concluded that the claimant has not satisfied the tribunal that it was not reasonably practicable to bring her detriment claims in time. And the claim would have been dismissed for want of jurisdiction.

Findings on Unfair dismissal and Wrongful dismissal

106. As a teacher the claimant understood that she would be held to the highest standards both inside and outside of school. The public needs to have trust in teachers and in the way that they conduct themselves.

107. Teachers are subject to the Teachers Standards (pp.244-258). Part 2 of the standards (p.257) is about personal and professional conduct and covers conduct both inside and outside of the classroom.

108. The Teacher's Standards does not provide an exhaustive list of examples that would breach it. However, it focuses on probity and propriety matters. Although not specifically mentioned, it would include issues of dishonesty and disreputable behavior, which would not be acceptable as a teacher. Such matters are obvious and do not need to be spelled out. The claimant accepted this under cross-examination.

109. The school has an applicable disciplinary procedure where a disciplinary process is being followed (pp.300-310). As part of the process, where an employee intends to rely on a written statement of case or other written evidence, these must be submitted at least 5 working days prior to the hearing (see clause 6.4 on p.304).

110. The claimant has been a teacher from around 1995. Neither the claimant nor her husband had been an accountant. And neither hold nor have ever held any accountancy-related qualifications, such as in auditing.

111. Neither the claimant nor her husband is or have been a Trademark Attorney or a specialist dealing with trademarks. And neither are nor have been involved in offering Development Management Services.

112. The claimant's husband has held a management role previously, in Data Warehousing. However, that career ended in or around 2015.

113. Socatots (Mid-Cheshire) Limited (Socatots) was incorporated on 03 October 2005. The claimant and her husband have been the sole directors and shareholders (50% each) of this company since at least 2012. On the Company House register, the claimant identified herself as a teacher (p.1466).

114. On 09 November 2009, the claimant, and her husband, along with two other named directors, established the non-charitable company 'Dream it Believe it Achieve it' (DBA).

115. On 13 July 2012, DBA Sport CIC (DBA Sport) was incorporated. The claimant and her husband have been the sole directors and shareholders (50% each) of this company since its inception. On the Company House register, the claimant identified herself as a director (p.1465).

116. On 18 April 2013, Aragorn sport Limited (ASL) was incorporated. The claimant and her husband have been the sole directors and shareholders (50% each) of this company since its inception. On the Company House register, the claimant identified herself as a director (p.1465).

117. On 10 September 2012, the claimant and her husband applied to register DBA as a charity, with herself and her husband named as the only two charity trustees. As part of this application, the claimant and her husband sought to be remunerated. The Charity Commission (CC) objected to this application on the basis that any conflict of interest between the charity and the trustees could not be managed.

118. Following amendment of DBA's articles of association, the appointment of two additional trustees and the removal of remuneration packages, the CC recommended on 24 June 2013 that the CC's model articles of association be adopted.

119. By special resolution dated 04 July 2013, DBA's articles were amended to adopt most of the model articles. However, Article 7(2)(b) of the model articles was removed. The words omitted were "...where that is permitted in accordance with, and subject to the conditions in, sections 185 and 186 of the Charities Act 2011." In short, this disapplied the so-called 'no-conflict' duty. the claimant and her husband confirmed to the CC that the special resolution had replaced the articles of association with the model articles but did not inform the CC of the above omission.

120. Including Article 7(2)(b) would not have affected DBA's contracts in place with external companies of which the claimant and her husband had no controlling interest, such as an external independent lottery provider.

121. On 29 July 2013, the CC registered DBA as a charity, although it had charitable status since 4 July 2013.

122. The claimant rarely got involved in DBA's business, although she knew and understood the purpose and objectives of the Charity and the associated businesses and what was happening on a day-to-day basis. The claimant confirmed that paragraph 5 of Ms Clarke's statement in this regard was accurate (p.409).

123. The claimant understood that with a charity the scrutiny and obligations were more intense. This was because the charity is dealing with public money, and

as such is held to higher standards. Further, the claimant understood that she had a fiduciary duty as charity trustee, to ensure that she did not put herself in a position where there was a conflict of interest between her personal interests and that of the charity. The claimant further understood that the trustees could not use charity money to enrich or further themselves.

124. The claimant understood that if she was to take benefits directly or indirectly from DBA then that would be a serious matter. And that this could impact on her employment as a teacher as it would be contrary to the Teachers Standards, as it would fall into and potentially breach part 2 of those standards. The claimant also understood that if knowledge of such a matter, if it happened, made its way into the public domain then this would be an aggravating feature. Particularly because it could legitimately affect the views of parents on who teaches their children. And this could also harm a school's reputation, by association with a teacher who had acted in this way.

125. A school's reputation is important.

126. If a school found out that a teacher had potentially benefited directly or indirectly form a charity, and was subject to a CC investigation, it would be legitimate for the school to investigate that conduct. And this had the potential to destroy the relationship between the teacher and the school, and dismissal could be result. The claimant accepted all of this under cross-examination.

127. On 05 January 2017, the Charity Commission opened a statutory inquiry into the Charity DBA. This was communicated to the claimant (through her husband) by letter dated 19 January 2017, and a further letter dated 25 January 2017 (pp.401-402).

128. On 09 January 2019, the Charity Commission issued a letter of claim against both the claimant and her husband (see pp.120-130). This had significant detail of the allegations against both the claimant and her husband, including:

a. They had misapplied nearly £1,000,000 of charity funds.
b. That they had caused DBA to make payments to companies in which they had an interest and which they had control totaling £975,805.76.
c. The omission of the words from the model articles was a deliberate choice to allow such payments to be made.
d. Analysis of the connected companies and payments made to them by DBA.

129. The claimant understood that as a trustee of DBA, and as directors of the companies in which she was a director, she had a duty to check that the audited accounts were accurate before they were signed off.

130. The financial documents for DBA to year end 30 November 2013 are at pp.1543-1560. During this period, DBA had a massive increase in funding due to the London Olympics/Paralympics. The income rose from £488,568 in the year up to 30 November 2012, to £4,202,883 (£4,091,886 of which was through activities generating income) in the year up to 30 November 2013 (p.1553).

131. During this period, DBA makes a payment of £267,500 to ASL for trademark management (p.1556 and p.1559). And declares grants payable at a total of £643,585. Of which £447,328 goes to DBA Sport.

132. On 24 June 2013, DBA makes 6 separate payments to ASL, with the purpose recorded as being Development Management. This totals £67,500 (p.1893).

133. Further payments are made from DBA to ASL. With two payments made on 24 July 2013, and further payments made on 16 September 2013 and 08 October 2013. These are again recorded as being for Development Management. And total £160,000.

134. The payments in total from DBA to ASL during the accounting year up to 30 November 2013 for Development Management total £227,500. There is no mention of Development Management payments in DBA's financial documents (p.1556).

135. There is also a payment made by DBA to Socatots on 18 December 2013, in the sum of £50,000, for Accounts Audit Management (p.1983). The claimant does not know what this payment was for.

136. The year end accounts for DBA up to 30 November 2014 is at pp.1561-1579. The total income for this year was £1,097,757 (£979,383 of which was through activities generating income, p.1572)). Further, in this document the claimant's husband is described as the sole director of ASL (p.1579). And yet this is inaccurate.

137. There is a payment made from DBA to ASL on 31 January 2014 and three further payments made on 01 April 2014. These are now for Development Management Trademark. These total £48,000 (p.1931).

138. DBA owned a car, which was made available for the employees of DBA Sport (p.1579).

139. DBA took a 3-year box at Wembley (p.483). This was highly valuable. The claimant attended at least one concert with her family, that being One direction. The claimant could not identify anything that supported that she paid DBA for that benefit, and therefore the tribunal concludes that she did not. And used this benefit free of charge. The claimant likely attended more events. The tribunal reaches this conclusion on the basis that the claimant in answering on this issue was very equivocal and explained that it was 'possible' that she attended more events but could not recall. If the claimant had not attended any other events, then she would have stated so.

140. ASL abbreviated accounts for the period 18 April 2013 to 30 April 2014 are at pp.1607-1614. During this period the claimant and her husband sold trademarks to ASL for the sum of £20,000 (p.1613). In short, the claimant and her husband sold a trademark of a charity in which they controlled to a company which they controlled.

141. ASL made a payment into the claimant and her husband's pension pots of £150,000 during this financial period, which the claimant accepted was made (para 27 on p.124). The claimant did not include this in her witness statement, however accepted it under cross-examination.

142. During this period, the claimant and her husband also made sales of £60,000 to DBA Sport. The claimant was not able to explain this transaction.

143. The year end accounts for DBA up to 30 November 2015 is at pp.1580-1592.

144. Most of the income referred to above was generated through DBA operating a social lottery. This was run through an external independent company, which the claimant had no vested interest in. The lottery campaign had stopped by 01 December 2014 (p.1590).

145. The year end accounts for DBA Sport up to 31 July 2014 is at pp.1480-1482. At this point, the company's indebtedness for that financial year is £0.

146. In the year ending 31 July 2015, DBA Sport was recorded as owing the claimant £34,108 and her husband £34,107 (p.1490). This was not a cumulative figure, but for that year alone. This was despite the claimant not doing any of the work for the company.

147. For the year ending 31 July 2016, DBA Sport was recorded as owing the claimant £268,448 and her husband £268,447 (p.1497).

148. For the year ending 31 July 2019, DBA Sport was recorded as owing the claimant's husband £647,354 (p.1521).

149. For the year ending 31 July 2023, DBA Sport was recorded as owing the directors the sum of £1,243,773 (p.1527).

150. The figures above, are despite the claimant telling her employer during the disciplinary hearing that she had very little involvement in DBA Sport, and that they been looking to close it down form around July 2022 as her husband's health had been deteriorating (p.167). The claimant was being untruthful when she said this.

151. By a Tomlin Order dated 12 September 2019, the claimant and her husband settled the claim that was brought against them by the CC (pp.419-421). As part of this agreement, the claimant and her husband agreed to pay a settlement sum of £250,000, which included £225,000 compensation and £25,000 for costs. This settled the legal claim only. And had no impact on the ongoing statutory inquiry that had been opened by the CC. This document did not express that the initial letter of claim could not be disclosed as part of legal proceedings, nor did it preclude discussing details of the claim.

152. On 30 September 2019, the CC wrote to the claimant (pp.422-423) explaining the following:

> "The Commission considers that your conduct as set out in paragraphs 8 to 53 of the Commission's letter of claim dated 9 January 2019 amounts to mismanagement and/or misconduct in the administration of the charity in that, over a prolonged period of time, you failed to act in the best interests of the charity and to properly apply the property of the charity. The Commission further considers that there are grounds to seek to disqualify you from being a charity trustee or trustee for a charity under section 181A of the Charities Act 2011 (the Act").
>
> However the Commission is willing to take into account that agreement has been reached to settle the Commission's claims against you for breaches of duties; that you have resigned from DIBIAI, and that you are not a trustee of any other charity. In the circumstances, the Commission is willing to accept from you an undertaking that you will not be or act as trustee, charity trustee or senior manager of any charity in England or Wales. If such an undertaking is provided the Commission will not seek your disqualification under s.181 of the Act, with the additional advantage to you that your name will not therefore be entered upon the Commission's register of removed trustees.
>
> A draft undertaking in the terms set out in this letter is enclosed for your consideration."

153. The claimant understood that if she did not agree to a voluntary undertaking

then the CC would use its discretionary powers to seek disqualification of the claimant as a trustee or charity trustee. The claimant accepted this under cross-examination.

154. Ms Clarke, of Knights Plc, responded on the claimant's behalf on 09 October 2019, seeking an adjustment to the voluntary undertaking such that she could continue in a senior management role of a charity (pp.424-425). Within this communication Ms Clarke explains that the school at which the claimant was working was moving towards academy model. This information could only have come from the claimant. However, this was inaccurate as the school already transferred to the Create eLearning Trust, with effect from 01 October 2019 (p.1843).

155. An agreement was reached, and the claimant signed a voluntary undertaking on 26 October 2019 (p.426).

156. At this stage the statutory inquiry by CC was continuing. The claimant had not been informed otherwise and there was no communication with her or her husband by the CC to suggest otherwise.

157. The statutory inquiry/investigation by CC was effectively concluded when the CC sent a draft report on the statutory inquiry to Mr Dimbylow on 28 February 2022 (pp.427-428). The claimant never communicated the completion of the report or its existence to the respondent between 28 February 2022 and 12 April 2022, which is the date when the respondent became aware of the report. The report concluded that:

a. 'there had been significant breaches of trust. Failures to manage conflicts of interest in respect of payments to connected parties resulted in substantial unauthorised financial benefit to Matthew and Emma Dimbylow.'
b. 'Matthew Dimbylow amended the governing document to ensure that the Dimbylows could receive funds from the charity via their companies. The actions of Matthew and Emma Dimbylow amounted to serious mismanagement and/or misconduct in the administration of the charity.'

158. On 07 April 2022, the CC sent an email to the claimant, through Knights Plc, confirming that it would proceed to publish the report on the statutory inquiry. The report was published on 07 April 2022.

159. The respondent became aware of the report on or around 12 April 2022 (see.580), with Mr Priddey emailing Ms Woodward about its existence.

160. On 21 April 2022, Mr Priddy attended at one of the claimant's classes to discuss the existence of the report. This was the claimant's first day back at work following the Easter break. The claimant had not approached Mr Priddey or any other member of the SLT to raise matters pertaining to the CC report.

161. Mr Priddey sent further information concerning the report and its media attention to Ms Woodward on 21 April 2022 (see p.581).

162. Ms Woodward considered that the issues contained in the emails and report to be serious issues. And forwarded them to Mr Spence. She had a phone call with Mr Spence during which she explained that she considered that the reading of the report was quite significant, and that she had a 'gut feeling' that this would require a disciplinary investigation. Mr Spence suggested that the matter may be one of gross misconduct. The claimant does not dispute that it would be reasonable for an employer to investigate the matters contained within the report.

Nor does she dispute that the report, if accurate, could impact on her ability to continue as a teacher.

163. Ms Woodward was the commissioning officer and in the circumstances decided to commence a disciplinary investigation. That was her decision and one that she made. The claimant accepted under cross-examination that the reason that she was investigated on conduct grounds was due to the report that had been released and its findings.

164. The claimant attended a meeting with Mr Priddey and Ms Woodward on 22 April 2022. At this meeting the claimant was handed a letter that informed her that there was an investigation into her conduct and that she was invited to attend an investigation meeting on 04 May 2022. This letter was drafted by Mr Spence on Ms Woodwards behalf, based on the discussions that they had had. This letter explains that there would be a disciplinary investigation, with the purpose of the meeting being to discuss the published report, and particularly the conclusions that the claimant had been responsible for serious misconduct and/or mismanagement of charitable funds, particularly paying charity funds to companies controlled by her and her husband. The claimant was invited to bring with her any information she thought would be useful to the investigation.

165. On 29 April 2022, Ms Robinson, a NASUWT local official asked Mr Spence whether the type of misconduct was one of gross misconduct with the claimant's job at risk. This was because this would be used to determine the level at which the Union would provide representation. Mr Spence replied that same day to explain that the allegation was likely one of gross misconduct (see p.583).

166. The claimant was allocated Mr Mike Fenton as her representative, he was a regional representative and selected due to the potential severity.

167. Mr Fenton wrote to Mr Spence seeking clarity of the allegations on 10 May 2022 (see p.594).

168. Mr Spence replied to Mr Fenton on 11 May 2022 setting out precisely what the allegations entailed. In short, this was that the claimant was in breach of the Teachers Standards, which required teachers to demonstrate high standards of personal and professional conduct. And to act with honesty and integrity. And that the claimant's conduct, which caused the publication of the CC inquiry report brought the respondent into disrepute (pp593-594). Mr Spence drafted these allegations. However, these were constructed based on the discussions that Mr Spence had previously had with Ms Woodward.

169. The claimant was absent from work from 16 May 2022 until 20 June 2022.

170. On 17 June 2022, Mr Fenton questioned the independence of Ms Woodward as Investigating Officer, due to her prior involvement and due to her likely influence on any future decisions as CEO (pp.294-295).

171. In response to Mr Fenton's concerns, Ms Hammond was nominated as an independent person who would fill the role of investigation officer on 21 June 2022 (ppp.293-294). Ms Hammond had not had previous involvement in the matter nor any previous involvement with the claimant.

172. Mr Fenton raises concerns about Ms Hammond being independent as she had an intention, and was co-opted on to the LAB.

173. On 23 June 2022, Mr Spence emailed Mr Priddey asking for details of parental complaints. (pp.633-634). Mr Priddey explained that same day that some were second or third hand, which would be less reliable, but that he would log

them. These were provided at some stage to Mr Spence (p243).

174. On 28 June 2022, Mr Fenton raised concerns about Cuddington Primary School not being a neutral venue (p.286). This venue was changed to Cook Lawyers Premises (p.285).

175. On 29 June 2022, Mr Spence emailed Ms Hammond with a suggested script and questions for the investigation meeting. However, it was made clear that Ms Hammond could add or amend freely. Ultimately, it was a decision for Mrs Hammond about what to ask (p.1820). Mr Spence was merely providing HR support in doing this.

176. The investigatory meeting was held on 01 July 2022. Mrs Hammond was the investigating officer. The claimant attended along with Mr Fenton attending as her TU rep. Mr Spence was present and took notes (at pp.663-674). The meeting was explained as a meeting to gather all the relevant information from the claimant. The claimant presented no documents in advance of this meeting. Nor were any produced during the meeting, despite Mrs Hammond inviting the claimant to present any relevant documents. During the meeting the claimant was able to provide her explanations to the questions asked. Her representative was able to ask questions and respond. The claimant explained that she did not consider that anybody needed to be interviewed. And she explained that she was aware of parent complaints (p.674). Mr Spence's notes of the meeting were sent to Mrs Hammond that same day (p.661). Mrs Hammond returns the notes with her amendments on 04 July 2022 (see p.661). No substantive amendments were made to the notes.

177. Mrs Hammond had considered various documents including the CC report, media publications, the parental complaint chronology document, and evidence she collected from the meeting when reaching her decision that there was a case to answer and recommended that the case proceed to a disciplinary investigation. This was her decision.

178. Mrs Hammond and Mr Spence discussed the investigation at some point between 01 July 2022 and 04 July 2022. Mrs Hammond explained her decision to Mr Spence.

179. Mr Spence produced the first draft of the Investigation report (pp.150-159) and sent it to Mrs Hammond on 05 July 2022 (p.743). It is made clear to Mrs Hammond that she was to read the report and appendices and ensure that it reflected the conversations that they had had and that ultimately it was her view. Mr Spence included additional documents in the appendices that Mrs Hammond had not considered during the investigation meeting, namely newspaper articles collected on 04 July 2022. Mrs Hammond read the draft report and agreed that its contents reflected the decision that she had made.

180. Mrs Hammond forwarded her investigation report to Ms Woodward on 05 July 2022 (see p.742), using an email drafted on her behalf by Mr Spence (p.1828). Ms Woodward considered the pack and decided that the matter would proceed to a disciplinary hearing.

181. Mr Butcher was initially chosen to chair the disciplinary panel. Mr Spence drafted a disciplinary invite letter on behalf of Mr Butcher on 06 July 2022 (p.1780-1781).

182. On 06 July 2022, the claimant acknowledged receipt of the disciplinary hearing invite (p.749). And the claimant referenced the documents that had been provided to Mrs Hammond and Mr Spence as part of the investigation. These

documents had been provided by the claimant at this stage, but no other documents.

183. The claimant sent to Mr Butcher amended notes of the investigation meeting (pp311-323) on 08 July 2022 (p.750). These notes added some additional detail.

184. The disciplinary meeting was rearranged from taking place on 20 July 2022 to 15 September 2022, due to Mr Fenton not being available. The amended invite letter was sent to the claimant on 22 August 2022 (pp.141-142). The letter included that the claimant could call any relevant witnesses, with names to be provided by 08 September 2022. And that the claimant could present additional documents by 08 September 2022.

185. Mr Fenton emailed Mr Spence on 01 September 2022 (pp.811-812). He suggested that the investigation was flawed, and that the Investigating Officer may want to review the information that was available to the Charity Commission. The issue of a neutral venue was raised with sufficient break out rooms. Faye Russell had been added as a member of the panel, making it a panel of 4. And that he had not yet received the bundle of documents for the hearing.

186. Mr Spence replied without first asking Mrs Hammond, to state that Mrs Hammond was declining the opportunity to review the suggested evidence. And advised Ms Russell on responses to the matters raised by Mr Fenton (pp.810-811). Ms Russell gave her response to Mr Spence on 01 September 2022 (p.810). and Mr Spence replied on behalf of Ms Russell that same day. This included explaining that the claimant could send ant additional evidence she wished to be considered by the panel ahead of the disciplinary hearing.

187. Due to the unavailability of Ms Ogboru, a LAB member, she was replaced as a panel member by Ms Ingle (see p.933).

188. Mr Fenton emailed Mr Spence on 08 September 2022, this email had various documents attached to it (pp.1093-1094). And he explained that Mr Dimbylow was going to present to the disciplinary panel the documentation that was available to the CC at the mediation hearing. However, such documentation if it went beyond that referenced already above, was not attached to the email. Mr Fenton again raised concerns about panel composition, the venue and failings to comply with the respondent's disciplinary procedures. Mr Fenton identifies that Ms Clarke, as the claimant's instructed solicitor, would be providing a statement 'next week' and that she would be prepared to answer questions on it, but she would be attending remotely.

189. On 08 September 2022, Mr Spence wrote to Mr Fenton to explain that any additional evidence would need to be submitted by close of business on 09 September 2022. This was to ensure that there was sufficient time or the panel to prepare for the hearing (p.1091-1092).

190. The documents sent by Mr Fenton on 08 September 2022 were all added to the disciplinary pack and sent to the panel on 09 September 2022 (p.1012).

191. Around 08 September 2022, the claimant was signed off sick by her doctor for 14 weeks.

192. Part of the evidence, namely the Scott Schedules sent by the claimant, could not be opened due to the type of file sent (see pp.335 and 405). Mr Spence emailed Mr Fenton to this effect on 12 September 2022 at 13.02, who agreed by email at 13.37 and stated it needed re-sending (p.1256). It is clear to the tribunal

that Mr Fenton could not open the Scott Schedules either from his response. Mr Fenton knew from this point that the respondent could not open and read the Scott Schedules.

193. Mr Spence chased up the issues with opening the Scott Schedules on 13 September 2022 at 12.42, with the claimant copied in, pp.1264-1265), to which Mr Fenton replied that it was in the form intended (at 12.50pm). No attempt was made to resend the Scott schedules by or on behalf of the claimant. Mr Spence again replied, at 12.54, to explain that the Scott Schedule could still not be opened. And he enquired as to whether the claimant's instructed solicitor was submitting any evidence (p.1264).

194. Mr Spence again emailed Mr Fenton on 13 September 2022, at 16.10, again enquiring about whether the claimant's instructed solicitor was providing any evidence (p.1305).

195. On 13 September 2022 at 17.45, Mr Spence received an email from Mr Nicklin (p.1272), a Senior Associate with Knights Plc, indicating that he had been instructed to represent the claimant. He requested to be allowed to accompany the claimant to the disciplinary hearing. He attached a statement from Ms Clarke (pp 408-413) and attached exhibits (pp.414-458). These documents were forwarded to the disciplinary panel on 13 September 2022 (p.1273). These documents were not excluded, despite them not complying with clause 6.4 of the disciplinary process, insofar as they were not submitted at least 5 days before the hearing (p.304).

196. Within Ms Clarke's statement, there is reference to the CC's letter before action (p.408).

197. The claimant at no point informed Mr Fenton that she had instructed a solicitor to represent her at the disciplinary hearing, or in connection to the disciplinary process.

198. Mr Spence sought clarification form Mr Fenton at 18.08 as to whether he was still representing the claimant considering Mr Nicklin's email (p.1304). Mr Fenton sought further information as to why this question was asked at 18.09. to which Mr spence replies at 18.40 to explain that such information would need to come from the claimant (p.1303). The claimant accepted that that was a professional response by Mr Spence, and that the information to Mr Fenton would have to come from her.

199. At 09.03, Mr Spence had a phone conversation with Mr Nicklin, who confirmed that he would be attending the disciplinary hearing instead of Mr Fenton (p.1727). At 13.03, Mr Spence rang Mr Nicklin to confirm that the panel would allow Mr Nicklin to attend the hearing. At 14.15, during a phone call between Mr Spence and Mr Nickln, Mr Nicklin confirmed that he would not be attending the hearing, and that Mr Fenton would be attending instead (p.1727).

200. On 14 September 2022 at 10.07, Mr Spence asks Mr Fenton whether he was still attending the hearing that was arranged for the following day. Mr Fenton replied that same day at 17.05 to explain that the union was no longer acting for the claimant (see p.1302).

201. Mr Spence emailed Mr Nicklin on 14 September 2022. He identified that within the documents that Mr Nicklin submitted on 13 September 2022, there was reference to a CC letter of claim dated 09 January 2022. Mr Spence sought this to be disclosed in advance of the disciplinary hearing. The claimant refused at this

stage to disclose the letter of claim. This was never disclosed by the claimant to the respondent before her employment ended, nor as part of the appeal process.

202. The disciplinary hearing took place on 15 September 2022. The claimant attended with her husband. The claimant and her husband attended the hearing with two boxes supposedly filled with documents, which they placed on the desk. The claimant did not know what was in the boxes. The panel did not know what was in the boxes. At no point did the claimant's husband or the claimant open either of the two boxes or refer to any documents contained within them.

203. The minutes of the disciplinary hearing were not adequate, and both parties agree on this (pp.479-484). However, insofar as the hearing itself, the tribunal finds that the following did take place:

a. The claimant confirmed that they were willing to continue, despite their previous objections.
b. The claimant and her husband were allowed to ask questions and interrogate the evidence in the disciplinary evidence pack.
c. The claimant and her husband were able to answer questions openly.
d. Mr Dimbylow was asked to draw the panels attention to relevant evidence that the claimant was relying on, to which he replied to say that he would come to that. However, he never did draw he panels attention to any such evidence. And this included never presenting any evidence on the Scott Schedules, which the claimant had maintained were important and does so at this hearing. Both the claimant and her husband knew that the panel could not open the Scott Schedules, and yet did not draw the panels attention to them in this hearing. They could have done but did not do so.
e. The panel had set up a hearing that would have facilitated such presentation of documents.
f. The room had equipment to enable a Zoom meeting, or for a person to dial in and present evidence. However, at no point did the claimant raise that Ms Clarke was expecting to dial in to the hearing.

204. Following deliberating on the issue, the panel reached a unanimous decision. The disciplinary panel considered that the allegations were so serious, that the evidence supported a finding of misconduct on both grounds, and that dismissal was the only suitable option in the circumstances. The panel did not close its eyes to other possibilities of other sanctions but centered its decision on that being the only plausible result for the misconduct that they considered to be extremely serious and one that conflicted with the claimant continuing as a teacher with the respondent. The panel took into account the claimant's long employment service and her previous good conduct in reaching this decision.

205. The claimant under cross examination accepted the following propositions, and the tribunal find these as facts accordingly:

a. The allegations of misconduct were dealt with promptly by the respondent.
b. The claimant's complaint insofar as investigations are concerned was that the investigation should not have focused on the CC report.
c. The claimant was informed of the problem/the charge in advance of the disciplinary investigation and understood it.
d. The claimant was invited to an investigation meeting. Received a copy of the investigation report when it was concluded and was invited to a disciplinary hearing.
e. The claimant was prepared and willing to proceed at the disciplinary hearing with her husband as her representative.
f. The claimant and her husband were as prepared as they could be for the disciplinary hearing.

g. The claimant was given an opportunity to deploy her defence at the disciplinary hearing.
h. The venue of Cuddington School alone did not make the dismissal unfair.
i. The respondent offered to record the disciplinary hearing but that this was rejected by Mr Fenton. And this was refused the claimant due to a previous negative experience with a recorded meeting.
j. The claimant did not ask for Ms Clarke to be called during the disciplinary meeting.
k. The claimant was able to read out Ms Clarke's statement.
l. The claimant did not ask for a breakout room during the disciplinary hearing. She did not know whether one was available or not.

206. The claimant's dismissal was confirmed in writing on 27 September 2022 (pp.459-461). This explained that both allegation 1 and allegation 2 had been proved. And that each, individually were acts of gross misconduct that could have resulted in gross misconduct alone. In respect the first allegation it was explained in the dismissal letter that the claimant's conduct had breached part 2 of the Teachers Standards. And explained that the claimant in responding to the allegation was found not to be wholly transparent, reasonable or complete. It concluded that Mrs Hammond had undertaken an appropriate investigation, and it was reasonable for her to rely on the findings of the CC report. Furthermore, that the claimant did not present sufficient evidence to support her contention that the CC report was inaccurate/flawed, despite being given sufficient time to do so. With respect the second allegation, it is explained that the report attracted local and national press coverage. That stakeholders in the school and the wider community have become aware of the claimant's involvement. And this has led to complaints from parents about the claimant's suitability to continue in a teaching role and in a management position. And that this has brought the school and the Trust into disrepute. The claimant was given the right of appeal.

207. The claimant appealed her dismissal by letter dated 10 October 2022. She brought her appeal on 5 grounds (pp.462-464), namely:

a. The meeting notes of the disciplinary hearing were incomplete and differed from that discussed.
b. Mrs Hammond failed to carry out a full, fair and reasonable investigation.
c. The evidence bundle provided to the panel was incomplete.
d. There was no written evidence of parental complaints concerning the claimant.
e. There were failings in considering the claimant's evidence, namely positive press releases and spreadsheets.

208. The claimant was invited to provide any additional evidence that she may have to support her appeal. For example, on 14 November 2022, Mr Spence emailed the claimant asking her to confirm if, and when, she would be submitting any evidence for the appeal hearing (p.471). The claimant did not respond to Mr Spence, so he followed this up on 15 November 2022 (p.1412). Again, Mr Spence asked the claimant to confirm if and when she would be sending through any documents. The claimant at no point provided any additional documents to be considered as part of her appeal.

209. The claimant was invited to an appeal hearing by letter dated 11 November 2022 (p.472). This was due to take place on 21 November 2022. The claimant was informed that the panel would proceed as a panel of 2 as there were insufficient trustees available. That it would be held at Cuddington Primary School. And for the claimant to confirm which documents she says were not provided to the disciplinary panel.

210. Between 14 November and 18 November 2022, there is email correspondence between the claimant and Mr Butcher (pp.1416-1414). During this correspondence the claimant questions the independence of Mr Butcher and suggests that documents were not in the printed and placed in the disciplinary pack before the panel. The claimant raises that the appeal should be a re-hearing rather than a review.

211. On 17 November 2022, Mr Butcher emailed the claimant (pp.1419-1420). This confirmed to the claimant that all documentation had been sent to the disciplinary panel before that had convened. Mr Butcher makes a further request for the letter of claim to be disclosed without any further delay.

212. On 18 November 2022 at 11.06 (p.1414), Mr Butcher decided to postpone the appeal hearing that was due to take place on 21 November 2022 as the claimant had not confirmed whether she would be attending.

213. The claimant responded to Mr Butcher on 18 November 2022 at 12.03 (p.1419). She raised concerns about the composition of the appeal panel. She explained that the letter of claim was not relevant and protected by a Tomlin Order. She (incorrectly) thanks Mr Butcher for confirming that not all evidence was sent to the disciplinary panel and asks for confirmation of which documents were received by the panel. The claimant explains that she will not be attending the hearing unless all these matters were resolved to her satisfaction.

214. Mr Spence advised Mr Butcher on how to respond to the claimant (pp.1417-1418). This including explaining that the appeal panel would proceed unchanged. That the CC Letter of Claim was a relevant document. It corrected the claimant on her misunderstanding of Mr Butcher's email. And it was to confirm that all documents had been received by the disciplinary panel and included a list of all the documents that had been sent to the disciplinary panel. Mr Spence's email was sent to the claimant unchanged by Mr Butcher (p.1427) on 23 November 2022. This email set the date for the postponed appeal hearing, which would now take place on 12 December 2022.

215. The claimant raised some procedural matters as part of the appeal. The respondent's own policy is that an appeal will be by way of a rehearing where the appeal raises procedural issues. The respondent's correspondence is clear that the appeal would have been done by way of a review rather than a rehearing.

216. The claimant emailed Mr Butcher on 08 December 2022 (p.1436). This explained that the claimant would not be attending the appeal hearing unless an appropriate panel could be assembled, a neutral venue agreed, that she was satisfied all evidence was received by the panel and her concerns about Mr Butcher's impartiality were resolved. The claimant also raised that her husband had a medical consultation on that date. The claimant's husband did not in fact have a medical consultation on that date. This was false. The claimant accepted that this was false under cross-examination.

217. For the avoidance of doubt, the tribunal is satisfied that all relevant documents were placed before the disciplinary panel and the appeal panel in advance of those hearings.

218. The claimant did not produce any further documents to be considered at the appeal hearing. And the tribunal accepts Mr Butcher's evidence that had she done so then this would have been considered, and further investigation would have taken place had the new evidence necessitated it. In other words, despite the terms of the appeal being a review, the tribunal accepted Mr Bucher's evidence

that had there been any new evidence to consider, then he would have approached the appeal hearing as a rehearing rather than a review of the previous decision.

219. The claimant did not attend that appeal hearing. The claimant was still signed off sick by her doctor at this stage. However, she never raised that this was the reason why she was not attending or able to attend the appeal hearing. Nor did she seek a postponement of the hearing on this basis.

220. The appeal hearing took place by Zoom, as the claimant was not attending. However, the intention was always to hold this in-person if the claimant was going to attend.

221. The appeal hearing took place in the claimant's absence. The minutes of the meeting are at pp.571-575.

222. As part of the appeal, Mrs Russell presented the dismissal decision and the panel asked questions.

223. The panel took account of all the evidence it had in front of it when reaching a decision on the appeal. The panel did not consider it necessary to undertake any further investigation. The minutes of the meeting records some of the deliberations of the panel in respect of the 6 appeal points raised by the claimant (pp.574-575).

224. The deliberations were between Mr Russel and the second panel member only. Mr Spence was present but did not involve himself in the deliberations. The appeal panel did not consider that a warning would be sufficient in the circumstances.

225. The panel decided to uphold the original decision to dismiss the claimant, having considered all the evidence before it. This was a decision reached by the panel based on the evidence it had in front of it.

226. The appeal outcome letter was sent to the claimant by email on 16 December 2022 (pp.576-579).

<u>Conclusions on Unfair Dismissal</u>

What was the reason for the dismissal and was that a potentially fair reason?

227. The claimant accepted under cross-examination that she was dismissed for reasons connected to her conduct, as depicted in the Charity Commission report. In short, the claimant conceded that she was dismissed for the potentially fair reason of conduct, and that is the finding of the tribunal.

228. Even had the claimant not accepted that she was dismissed for conduct reasons, the tribunal would have found no difficulty in reaching this conclusion. When you take a step back, she was clearly investigated for and dismissed for matters related to dishonesty, which is misconduct. And this is how it is framed in all the documents leading up to the investigation, in the meetings/hearing and decisions that were made.

Substantive fairness

229. Based on the tribunal's findings above it is clear that there has been a reasonable investigation in the circumstances, and this gave the respondent reasonable grounds for believing in the misconduct of the claimant and that the decision makers throughout, Mrs Hammond as investigating officer, Ms Russell as the chair of the disciplinary panel and Mr Butcher as the appeal chair, had an

honest belief that this was misconduct.

230. The claimant's case appears to focus primarily on a flawed investigation process. And this appears to centre on the respondent not doing enough to ensure that the claimant had produced the necessary documents. However, this tribunal considers that the investigation was more than reasonable in the circumstances. The respondent had receipt of a report by the CC, which was based on almost 5 years of investigation. There was no reason for the respondent to look behind that investigation. The report considered the way in which the DBA was set up with the claimant as a trustee, considered that there had been a deliberate changing to the legal documents, considered the setting up of private companies to which payments would be made from the charity, which led to the conclusions contained within the report. Conclusions which, if accurate, even the claimant accepted would be inconsistent with her continuing in a role as a teacher, because it was a serious conduct issue. And one that through public knowledge of such misconduct would bring it the school into disrepute. And indeed, the claimant herself was aware that knowledge of it had gotten into the public domain and had led to parents raising concerns about her continuing in the role of a teacher. Against this the claimant produced very little, if anything, in terms of evidence that undermined the finding of the CC in that report. The claimant was afforded every opportunity to produce whatever evidence she wanted to produce. The claimant referred to supporting documents that undermine the CC report and a Scott Schedule that would explain the payments from the charity. She had every opportunity to provide readable copies of these throughout the process but did not. This was even in circumstances where the respondent was making it clear that the Scott Schedule could not be opened and a copy in a different format would be required. Compounding this approach is that the Scott schedule itself was not produced until the evening of day 1 of this hearing.

231. The respondent undertook a reasonable investigation, which underpinned the reasonable and honest belief of the decision makers. It had a report, that raised serious matters. The claimant was invited and attended an investigation meeting and a disciplinary. She was able to be represented. She was able to raise matters and answer questions. She was given the opportunity to present relevant evidence. And to persuade the respondent that the report was not accurate and should not lead to disciplinary action. This all falls within the band of reasonable responses.

232. Considering the evidence before the investigation officer, the disciplinary panel and the appeal panel, the tribunal accepts that the decisions of each fell firmly within the band of responses available to each. And it fell within the band for the investigating officer to decide to recommend that the case be progressed to a disciplinary case and for the disciplinary panel to conclude that the claimant had acted in a way that was inconsistent with continuing as a teacher, that this breached the Teachers Standards, and that her association with the school would bring it into disrepute, with parental concerns and media coverage being aggravating features. Dismissing the claimant in these circumstances falls within the band of reasonable responses.

233. For the avoidance of any doubt, the tribunal reached this decision by considering the evidence that was before the investigating officer, the disciplinary panel and the appeal panel only. This did not include the letter of claim, nor the Scott Schedule nor the financial documents of the companies that the claimant had a direct interest in. The findings of fact in respect these above are solely in respect the wrongful dismissal claim. As this was information not known at the time of the investigation or any subsequent decisions.

234. The claimant's submissions about Mr Spence applying improper influence

were rejected by the claimant. Mr Spence, in the decision of this tribunal, was giving HR advice that did not stray into improper influence. Mrs Hammond, the disciplinary panel and the appeal panel were all considered to be making their own decisions, with assistance and guidance of HR. And further, the claimant raises concerns about not having seen the written complaints form parents, or at the very least a statement from Mr Priddey. However, the claimant accepted that she had knowledge of such complaints, and these were evidence in her own diary entries. Not having such matters committed to statements did not result in the investigation being an unreasonable one.

235. And further, the following was all considered to fall within the band of reasonable responses:

a. Investigating the claimant in light of the CC report;
b. Mrs Hammond deciding that there was a disciplinary case to answer based on the evidence in front of it. Particularly the CC report and the subsequent media attention.
c. Relying on the CC report, and requiring the claimant to present evidence to the contrary before the investigating officer, the disciplinary panel and the appeal panel.
d. Finding that both of the disciplinary charges were satisfied, based on the evidence before the disciplinary panel.
e. Dismissing the claimant in the circumstances, having considered the claimant's long and clean employment record, and having considered whether other sanctions would be appropriate.
f. Giving the opportunity to appeal.
g. Reaching the appeal decision in the circumstances, based on the evidence before the appeal panel.

236. Given our findings above, the tribunal concludes that there was no procedural unfairness in this case, such as to make the dismissal unfair. The tribunal is not seeking a counsel of perfection. And although there are specific matters raised on behalf of the claimant, the tribunal did not consider this made the dismissal unfair. For example, the claimant raises concerns about the following:

a. who commissioned the initial investigation, and how this appeared inconsistent with the respondent's internal documents. This despite it being explained that the documents had not been updated since the move to a Trust and so reference to the Board of Governors was outdated.
b. the lack of a document entitled terms of reference. This is despite the claimant understanding the charges, and that such a document would add little.
c. the panel composition of both the disciplinary panel and appeal panel and how these also appeared inconsistent with the respondent's internal documents. The tribunal was satisfied that the panels adopted were reasonable decisions of the respondent.
d. about the neutrality of the venue. The tribunal was satisfied that the venue was neutral, especially given that the claimant did not work form that premises.
e. who gathered press articles during the investigation process. With Mr Spence offering support.
f.

237. All such matters were considered in reaching this decision. And Mr Gorton is correct in his submission that this tribunal is not tasked with micro-analysing the procedure adopted by a respondent when considering whether a dismissal was fair or unfair. Rather, it takes a holistic view of the process, and considers whether the procedure adopted falls within the band of reasonable responses. And the

tribunal was satisfied that the procedure adopted by the respondent did fall within the band of reasonable responses.

238. Given the tribunal's conclusions above, the tribunal turns to consider its position with respect *Polkey*, in the alternative. Th tribunal always has to engage in a degree of speculation when considering *Polkey*, And given the seriousness of the allegation, given the approach adopted by the claimant in respect of provision of evidence, or lack of proactivity in that regard, had there been any procedural defects that would have rendered the dismissal unfair, then the tribunal would have concluded that a fair procedure would have made no difference to the decision to dismiss. And a 100% *Polkey* reduction would have bene applied.

239. And even further, the tribunal would have also concluded that given the evidence before this tribunal, had the tribunal concluded that the dismissal was unfair, there clearly culpable conduct on the part of the claimant and the tribunal would have applied a contributory fault reduction at 100%.

240. Given that above, the unfair dismissal claim does not succeed and is dismissed.

Conclusions on wrongful dismissal

241. The tribunal reminds itself that it is a different test when considering wrongful dismissal claim. However, this claim in this case falls largely with that discovered during the investigation.

242. The tribunal concludes, based on its findings above that the respondent had sufficient evidence to reach a conclusion that there had been a fundamental breach of contract by the claimant. The tribunal was satisfied that the evidence supported such a fundamental breach. Particularly, the findings in the CC report, the details of the Tomlin Order and the subsequent press coverage. And this was against a lack of any evidence that suggested otherwise. In short, the respondent has satisfied the burden that rests on it in these circumstances.

243. And even if the tribunal is wrong on that, in the alternative, it concludes that the evidence that has come to light since then does justify the summary dismissal of the claimant. Specifically, the setting up of companies around the time the Charity had considerable funds. The no conflict clause being removed by the claimant and her husband when establishing charity status. The funds going from DBA to companies connected to the claimant. There being a lack of explanation as why she was receiving such large sums of money from those connected companies, which is in circumstances where the claimant was saying that she did not do any development management or other work. And the lack of any explanation as to why the charity was being charged for work done by companies that had the same directors as the trustees of the charity. These would amount to a fundamental breach of the claimant's contract in that it would be breach of trust and confidence between the claimant and the respondent, especially given the high level of trust required for a teacher. These are all improper behaviour, which the claimant accepts would breach the Teachers Standards.

244. Given that above, the wrongful dismissal claim does not succeed and is dismissed.

Case No: 2402199/2023

Approved by:

Employment Judge M Butler

Date: 24 March 2025

JUDGMENT SENT TO THE PARTIES ON

10 April 2025

FOR THE TRIBUNAL OFFICE

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

IN THE MANCHESTER EMPLOYMENT TRIBUNAL **CASE NO: 2402199/2023**

B E T W E E N:

MRS E DIMBYLOW

Claimant

- and -

CREATE LEARNING TRUST

Respondent

LIST OF ISSUES

1. Unfair Dismissal

1.1 What was the reason for the Claimant's dismissal?

1.2 Was this for a fair reason under s98(2)(b) Employment Rights Act 1996, namely conduct?

1.3 If so, was the decision to dismiss the Claimant fair and reasonable in all the circumstances taking into account the Respondent's size and administrative resources?

1.4 Did the Respondent have a genuine belief in Claimant's guilt?

1.5 Did the Respondent have reasonable grounds for that belief?

1.6 Did the Respondent undertake a reasonable investigation within the circumstances of the case to sustain that belief?

1.7 Did the Respondent follow a fair procedure when dismissing the Claimant? In particular, did the Respondent:

(a) give the Claimant sufficient warning before dismissing?
(b) carry out an investigation to an appropriate standard before dismissing the Claimant?
(c) allocate inappropriate individuals to hear the disciplinary hearing allocate inappropriate individuals to hear appeal against dismissal?
(d) fail to properly deal with the Claimant's appeal against dismissal by declining to consider the representations which related the impartiality of the appeal panel?

1.8 If the Tribunal finds that the dismissal was procedurally unfair, would the Claimant have been dismissed in any event?

2. Public Interest Disclosure detriment

2.1 Did the Claimant make the disclosures she has pleaded she made? Specifically:

(a) in a meeting with Mr. Priddey on or around mid-February 2022, the Claimant raised concerns that she had always been advised that Teaching Assistant salaries were paid through the Special Education Needs budget but these were not shown on the budget she had been sent by Jenni Goodwin, Chief Finance Officer. The Claimant informed Mr. Priddey

that pupil funding was greater than expenditure and she believed this was a misallocation of public funding;

(b) in the same meeting with Mr. Priddey, the Claimant raised a concern in connection with SEN funding, namely that after a child receives funding staff are simply moved or taken away from supporting other children with no new members of staff being appointed for those children and nor were hours of existing members of staff increased to add to the support;

(c) on 21 April 2022, the Claimant attended a meeting with Kathryn Harvey, Deputy Head Teacher. They discussed a new arrangement for a call on Fridays whereby a teacher had left and the class was being covered by a HLTA/unqualified teacher. The Claimant disclosed that staffing was not adequate to cover the children's needs and that the Head Teacher had advised her that even if funding were approved for two new SEN children the School would not employ additional staff in spite of the additional funding. The Claimant considered this amounted to a misallocation of funding. They discussed the need for a further meeting with the Head Teacher to discuss the funding allocated to children within that class and the level of support/staffing needed"; and

(d) on 6 September 2022, the Claimant expressed concerns to Mrs. Harvey, now acting headteacher, that the timetable proposed at the staff meeting "involved pulling Tas away from supporting other children and classes" and, on reviewing the student's Education, Health and Care Plan ("EHCP"), the Claimant disclosed to Mrs. Harvey "that what was proposed was not appropriate or the correct use of his funding" as the funding attached to his EHCP should have provided a single member of staff for the student.

2.2 If she did make those disclosures, were they protected? In particular, in respect ofeach disclosure:

2.2.1 did the Claimant disclose information?

2.2.2 Did the Claimant subjectively believe the information she disclosed tended to show that a person had failed, was failing, or was likely to fail to comply with a legal obligation to which that person was subject, namely the misallocation of funding obtained for SEN children and/or the appropriate utilization of that funding as required?

2.2.3 did the Claimant subjectively believe her disclosure was in the public interest?

2.2.4 were the Claimant's subjective beliefs objectively reasonable?

2.2.5 did the Claimant disclose the information either to her employer or to a person in respect of whom it was reasonable for the Claimant to make the disclosure, having regard to:

(i) the identity of the person to whom the disclosure was made;
(ii) the seriousness of the relevant failure;
(iii) whether the relevant failure was continuing or likely to occur in future;
(iv) whether the disclosure was made in breach of a duty of confidentiality the employer owed to another person

2.3 Did the Respondent subject the Claimant to the detriments she has pleaded, specifically:

2.3.1 Chris Priddey, Headteacher failed to raise the Claimant's request made around 9 February 2022 that she be allocated a greater amount of time to carry out her role as Special Educational Needs and Disabilities Co-Ordinator ("SENDCO") at the next local Academy Board ("LAB") meeting within a timely manner (namely by 9 March 2022 i.e. a period of one calendar month);

2.3.2 on 28 April 2022, Mr. Priddey failed to attend a meeting the Claimant had arranged to

discuss the SEN budget and then refused to attend this when confronted about this after he had left the Claimant waiting for 30 minutes;

2.3.3 on 7 July 2022, the Claimant was marginalised at the SEN Review by a newly appointed Trust Director of Special Educational Needs and Disabilities ("SEND") who did not permit the Claimant to spend any significant amount of time with the reviewer despite having raised concerns over the misappropriation of funds and assistance given to SEN children in February 2022 and on 21 April 2022;

2.3.4 in September 2022, the Claimant was marginalised in that the Senior Leadership Team ("SLT") did not discuss a complex SEN child who started at the School that term with the Claimant until 2 September 2022 and did not include her in the discussion concerning his timetable prior to openly discussing this at a staff meeting on 6 September 2022 or provide her with a copy of his EHCP;

2.3.5 on 8 September 2022, the Claimant was again marginalised in that the Director of SEND would be attending the School on 12 September 2022 to assess personal profile targets and support staff in writing them, which was a task normally carried out by the Claimant;

2.4 If and to the extent that it did, was the Respondent's rationale for subjecting the Claimant to those detriments materially influenced by the fact the Claimant had made one or more of the pleaded protected disclosures?

The Claimant relies on each of the protected disclosures which pre-date the detriment in question.

2.5 Did the Claimant bring the above detriment claims within 3 months of the same allegedly occurring pursuant to ss48(1A) and 48(3) of the ERA?

2.6 Can the Claimant rely on s48(3)(a) in that the act or failure to act to which the complaint relates, or where that act or failure to act is part of a series of similar acts or failures, was brought within the statutory time limit?

2.7 If so, in respect of which alleged detriments so as to make the same a claim or claims in time?

2.8 If not, should the Tribunal exercise its discretion to consider the complaint pursuant to s.48(3)(b) of the ERA?

3. Notice Pay

3.1 What period of notice was the Claimant entitled to?

3.2 Did the Claimant commit an act of gross misconduct such as to justify summary dismissal?

3.3 If not, what sum is the Claimant entitled to in respect of her notice?

4. Remedy

4.1 If the Claimant was unfairly dismissed, what compensation if any should she be awarded?

4.2 Is the Claimant entitled to a basic award? If so, how much is this?

4.3 Is the Claimant entitled to a compensatory award? If so, what amount would be just and equitable in the circumstances taking into account:

(a) What losses are occasioned as a consequence of the dismissal?
(b) Are those losses attributable to the Respondent's conduct?

(c) If so, is it just and equitable to award compensation?

4.4 If the Respondent failed to follow a fair procedure, can the Respondent show that following a fair procedure would have made no difference to the decision to dismiss? If so, by how much would it be just and equitable to reduce the compensatory award?

4.5 Did the Respondent unreasonably fail to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures? In particular did the Respondent:

4.5.1 give the Claimant sufficient warning before dismissing;

4.5.2 carry out an investigation to an appropriate standard before dismissing the Claimant;

4.5.3 allocate inappropriate individuals to hear the disciplinary hearing

4.5.4 allocate inappropriate individuals to hear appeal against dismissal;

4.5.5 fail to properly deal with the Claimant's appeal against dismissal by declining to consider the representations which related the impartiality of the appeal panel;

4.5.6 If so, would it be just and equitable to increase the award of compensation, and by what percentage

4.6 If so, was that failure reasonable?

4.7 If not, is it just and equitable to increase any award made to the Claimant? If so, by how much should the award be increased?

4.8 Did the Claimant's conduct cause or substantially contribute to her dismissal? If so, was that conduct culpable and blameworthy? If so, by what proportion would it be just and equitable to reduce the awards made to the Claimant?

4.9 Has the Claimant taken reasonable steps to mitigate her losses taking into account her particular circumstances?

4.10 If the detriment claim succeeds, should the Claimant be awarded compensation in respect of injury to feelings? If so, what band does level of compensation fall into? What amount would be just and equitable to award in these circumstances taking into account the impact the unlawful treatment has had on the Claimant?