EMPLOYMENT TRIBUNALS

Claimant: **A**

Respondent: **Nottinghamshire County Council**

Record of an Attended Hearing at the Employment Tribunal

Heard at: **Nottingham**

Heard on: **3 March 2025 (Tribunal Reading Day)**

4, 5, 6, 7, 10 March 2025 (Hearing Days)

13, 14 March and 9 May 2025 – Tribunal Deliberation Days.

Before: **Employment Judge McTigue**

Members: **Mrs Bonser**
Ms J Dean

Appearances:

Claimant: **Mr P Stroilov (Solicitor)**

Respondents: **Mr E Beever (Counsel)**

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The complaint of being subjected to detriment for making a protected disclosure is not well-founded and is dismissed.
2. The complaint of automatic unfair dismissal is not well founded and is dismissed.

3. The complaint of ordinary unfair dismissal is not well founded and is dismissed.
4. The complaint of wrongful dismissal is not well founded and is dismissed.
5. The complaint of direct religion or belief discrimination is not well-founded and is dismissed.
6. The complaint of harassment related to religion or belief is not well-founded and is dismissed.

REASONS

Introduction

1. The Claimant was employed by the Respondent as a Teacher. Her employment started on 4 January 2017 and continued until she was dismissed on 21 September 2022. Early Conciliation started on 13 December 2022 and ended on 24 January 2023. The Claimant presented her claim form to the Tribunal on 21 February 2023.

2. At the outset of these reasons, the Tribunal should stress that this case is not about the rights and wrongs of the what the parties called the 'gender identity debate'. It is not the role of this Tribunal to express any view as to the merits of either side of that debate. Our reasons should not therefore be read as providing support for or diminishing the views of either side in that debate.

Claims and Issues

3. The Claimant was dismissed and brought claims for detriments suffered as a consequence of making a protected disclosure, automatic unfair dismissal on the grounds that she made a protected disclosure, ordinary unfair dismissal, wrongful dismissal, direct discrimination on the grounds of religious or philosophical beliefs, harassment related to religious or philosophical beliefs. There was a List of Issues which had been agreed between the parties and which appeared in the bundle of documents at page 2182 to 2187. That List of Issues is attached as an annexe to these reasons.

Procedure, Documents and Evidence Heard

4. This was an in-person hearing. The first day was set aside for the Tribunal to read into the case. Originally, Mr Tansley had been assigned to this case as the employee member of the Tribunal. On the reading day Mr Tansley, quite rightly, raised with me a matter that he thought could give rise to a perception of bias. He informed me that he had until recently been employed by the Respondent, albeit he had been on full time release from them to the Unison Trade Union.

5. In terms of his employment history, Mr Tansley had worked for the Respondent as an unqualified Social Worker between 1975 to 1978. He then left and worked for another organisation. He then worked for the Respondent between 1982 to 2003. In that period he worked between 1982 to 1995 as a Social Worker, however, he was not involved in education matters. Then between 1995 to 2023 Mr Tansley was on full time release to the Trade Union, Unison. During that period of time he was based in the London office of Unison. The Tribunal raised this matter with the parties at the

start of Day 2. After giving them time to reflect upon their respective positions, the Claimant made an application for Mr Tansley to recuse himself from the Tribunal. That application was granted and Mr Tansley was replaced by Ms Dean. The Tribunal's reasons for granting that application, in short, were that Mr Tansley's previous periods of employment with the Respondent could give rise to a perception of apparent bias.

6. In order to make the most of Day 2, the parties agreed that they were content to continue the case at that point in time with a Judge and only one Tribunal Member present. Taking into account section 4(9) of the Employment Tribunals Act 1996 the Tribunal proceeded on that basis for the remainder of Day 2. The remainder of Day 2 therefore dealt with the Claimant's application to vary the restricted reporting and anonymisation orders that had been made in respect of this matter. In addition, a timetable for the hearing was agreed and the List of Issues reviewed and finalised. In relation to the List of Issues the Claimant conceded that issue 5(c) should be deleted as the complaint in relation to whistleblowing could not proceed as both a detriment and an automatically unfair dismissal.

7. On Day 3 the Claimant representative, Mr Stroilov, made a further application to vary the terms of the Restricted Reporting Order and Anonymisation Order. The Tribunal refused that application as, taking into account ***Serco v Wells [2016] ICR 768*** , Mr Stroilov was unable to identify that there had been any material change of circumstances which would necessitate the Tribunal varying the terms of either the Restricted Reporting or Anonymisation Orders that had been made the previous day.

8. On Day 5 of the hearing, just before the luncheon break, the Claimant's representative indicated that he was running behind time and would not be able to complete his cross examination of the Respondent's witnesses as had previously been agreed. Conscious of the need to ensure fairness between the parties, the Tribunal agreed that Mr Stroilov could have until midday on Day 6 to complete his cross examination. Mr Stroilov indicated that he was content with that arrangement. In the event, Mr Stroilov was able to complete his cross examination at approximately 3.20pm on Day 5 and so no additional time was required.

9. The case attracted significant public interest. Members of the public attended in person. In addition, a number of members of the public had requested permission to observe the Tribunal proceedings remotely. Permission was granted for such individuals to observe remotely although they were made aware of the applicable Anonymisation and Restricted Reporting Orders. Members of the Press also attended the hearing and a copy of the witness statement bundle was made available for inspection by members of the public and Press. Permission was also granted for the organisation, Tribunal Tweets, to live 'Tweet' these proceedings. The Tribunal was acutely aware of the need to ensure open justice.

10. There was a Tribunal bundle of approximately 2961 pages. The Tribunal also received a witness bundle of 95 pages. We were also provided with an authorities bundle which ran to 680 pages. In addition to the authorities appearing in that bundle, the parties also supplied the Tribunal with the following cases during the course of the hearing:

- ***Re 'S' (a Child) (Identification: Restrictions on Publication) [2004] UKHL 47, [2005] 1AC.***

- ***X v Dartford and Gravesham NHS Trust (Personal Injury Bar Association and Another Intervening) [2015] 1WLR 3647, [2015] EWCA Civ 96.***

- **Higgs v Farmor's School and Others [2025] EWCA Civ 109.**

11. In addition, the Tribunal was also supplied with an agreed reading list, an opening note from the Respondent and a Skeleton Argument on behalf of the Claimant. Both parties also provided written closing submissions which were supplemented by oral submissions.

12. The Tribunal was also supplied with copies of the orders made by The Court of Appeal on 28 February 2025 and 4 March 2025. Those related to Anonymity and Restricted Reporting Orders that had been made by Warby LJ.

13. The Claimant gave evidence. For the Respondent, the following individuals gave evidence:

    - the Head Teacher of the School at the material time.

    - the Parent Governor of the School who chaired the panel which heard the Claimant's appeal against her dismissal.[1]

    - Tracey Christian, a Human Resource Officer employed by the Respondent[2].

14. All witnesses gave evidence either under Oath or Affirmation and were cross examined.

15. The Tribunal should also note that the Claimant had provided 4 witness statements but was in effect seeking to rely solely on 2 of them. Those were a clean updated version of her witness statement which appeared in the witness statement bundle behind Tab 2 and the witness statement that she had prepared in respect of her Judicial Review proceedings which appeared in the witness statement bundle behind Tab 4.

16. We found the Respondent's witnesses to be credible and reliable. We accepted their evidence in its entirety. We accept the Claimant honestly holds the belief in question that she seeks to rely on but we had specific concerns regarding her credibility in respect of two matters:

    16.1. Despite referring to extensive materials and academic reports in her grievance letter of 5 October 2021 the Claimant accepted, under cross examination, that at the time of submitting that letter she had not read all the

[1] We do not use the name of certain individuals throughout this judgment due to such persons being covered by the terms of the Tribunal's Restricted Reporting and Anonymisation Orders.
[2] Tracey Christian does not fall within the class of individuals who cannot be identified due to the Restricted Reporting Order and Anonymisation Orders. Other individuals named in these reasons also do not fall within the class of individuals who cannot be identified due to the Restricted Reporting Order and Anonymisation Orders.

accompanying enclosures. The Tribunal finds that this undermines her credibility as she was prepared to put forward to the Board of Governors that the grievance and the attached enclosures represented her views, despite not having read all of the relevant information.

16.2. The Claimant's case was that she uncovered "red flag information" regarding Child X (page 1257 of the bundle) it would appear sometime around November 2021. Despite that, the Claimant did nothing with that information. She did not create an entry on CPOMS or approach any of the Safeguarding Leads. Instead she proceeded to access and collect more of Child X's data. Under cross-examination, the Claimant said the reason she did not act upon the red flag information was because the Head also had access to CPOMS. That is an inadequate explanation and run counter to the Respondent's policies which we discuss below.

17. This was a case where, given the passage of time since the events in question and the significant amount of contemporaneous documentation, the Tribunal had regard to the principles enunciated in ***Gestmin SGPS S.A. v Credit Suisse [2013] EWCA 3560***. At paragraphs 15 to 22. Leggatt J, as he then was, stated *" …the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."*

18. Finally, the Tribunal should also record that this was the second attempt at a Final Hearing. The first Final Hearing which took place between 18 to 25 March 2024 was abandoned as the panel recused themselves from the case following a successful recusal application by Mr Stroilov. The reasons in respect of that are set out in the Case Management Summary and Orders of Employment Judge V Butler which appear in the bundle between pages 2191 to 2197.

Findings of Fact

19. The Tribunal has not sought to set out every detail of the evidence which we heard, nor to resolve every difference between the parties, but only those which appear to us to be material. Our material findings are set out below in a way that is proportionate to the complexity and importance of the relevant issues before the Tribunal. References to page numbers are to the main hearing bundle.

20. The Claimant commenced employment as a Teacher at the School in 2017. Her terms of employment were in substantially the same terms as the earlier contract of employment issued to her which appears in the bundle between pages 1179 to 1185. Of note is clause 16 of that document which states as follows:

"***The Data Protection Act, the General Data Protection Regulations 2018 (GDPR) and Information Technology Security***

The use of computers and other forms of information technology is subject to legal requirements and to the policies and procedures of the school and where applicable the County Council. Certain actions may render the individual employee or the County Council liable to criminal prosecution. It is important that all employees are aware of their responsibilities within the Data Protection Act, the General Data Protection Regulations (GDPR) 2018 and other relevant Legislation and Codes of Practice. It is important that you are familiar with the requirements on you as set out in the County Council and Schools Information Governance Framework. In particular you should read and understand the schools Information and Governance Policy, the Data Protection Rules and the schools acceptable use of IT Policy. Please also refer to the schools published Privacy Notice. All of these documents are available in your place of employment."

21. The Tribunal also finds that the following policies were in force and applicable to the Claimant at the material time. These are as follows:

- The Nottinghamshire School Confidential Reporting/Whistleblowing Procedure, which was in effect from Autumn 2017 until 2021, which appeared in the bundle at page 51.

- The School Confidential Reporting/Whistleblowing Procedure, which was in force from October 2021, which appeared in the bundle at page 151.

- The Single Equality Policy, which appeared in the bundle at page 60.

- The Keeping Children Safe in Education 2021 - Statutory Guidance for Schools and Colleges, which appeared in the bundle at page 2400 ("KCSIE").

- The Data Handling Security Policy, which appeared in the bundle at page 1263.

- The Acceptable Personal Use of Resources and Assets Policy, which appeared in the bundle at page 1268.

- The Data Protection Policy, which appeared in the bundle at page 1271.

- The Nottinghamshire School Employee Code of Conduct, effective from September 2020, which appeared in the bundle at page 1212.

- The Nottinghamshire School Disciplinary Procedure, effective from September 2020, which appeared in the bundle at page 2636.

- The Whole School Child Protection Policy, effective from September 2021, at page 87.

22. With regard to the above policies, the following specific sections should be noted. Paragraph 5.3 of the Nottinghamshire School Employee Code of Conduct reads:

"5.3 Staff including supply staff must have proper and professional regard for the ethos, policies and practices of the school, and maintain high standards in their own conduct, performance, attendance and punctuality. Staff should ensure that personal beliefs are not expressed in ways which exploit pupils' vulnerability or might lead them to act inappropriately or to break the law or the policies and procedures of the school. Staff should always show respect for the rights of others. "

23. The relevant sections of KCSIE to which we were taken by the parties, read as follows:

*"**A child centred and coordinated approach to safeguarding***

1. Schools and colleges and their staff are an important part of the wider safeguarding system for children. This system is described in the statutory guidance Working Together to Safeguard Children.

2. Safeguarding and promoting the welfare of children is everyone's responsibility. Everyone who comes into contact with children and their families has a role to play. In order to fulfil this responsibility effectively, all practitioners should make sure their approach is child-centred. This means that they should consider, at all times, what is in the best interests of the child.

3. No single practitioner can have a full picture of a child's needs and circumstances. If children and families are to receive the right help at the right time, everyone who comes into contact with them has a role to play in identifying concerns, sharing information and taking prompt action.

4. Safeguarding and promoting the welfare of children is defined for the purposes of this guidance as:

• protecting children from maltreatment;

• preventing the impairment of children's mental and physical health or

development;

• ensuring that children grow up in circumstances consistent with the provision of

safe and effective care; and

• taking action to enable all children to have the best outcomes.

5. Children includes everyone under the age of 18.

The role of school and college staff

6. School and college staff are particularly important, as they are in a position to identify concerns early, provide help for children, promote children's welfare and prevent concerns from escalating.

7. All staff have a responsibility to provide a safe environment in which children

can learn.

*8. **All** staff should be prepared to identify children who may benefit from early help.4 Early help means providing support as soon as a problem emerges at any point in a child's life, from the foundation years through to the teenage years.*

*9. **Any staff member** who has **any** concerns about a child's welfare should follow the processes set out in paragraphs 55-70. Staff should expect to support social workers and other agencies following any referral.*

10. Every school and college should have a designated safeguarding lead who will provide support to staff to carry out their safeguarding duties and who will liaise closely with other services such as children's social care.

11. The designated safeguarding lead (and any deputies) are most likely to have a complete safeguarding picture and be the most appropriate person to advise on the response to safeguarding concerns.

12. The Teachers' Standards 2012 state that teachers (which includes headteachers) should safeguard children's wellbeing and maintain public trust in the teaching profession as part of their professional duties.

What school and college staff need to know

*13. **All** staff should be aware of systems within their school or college which support safeguarding and these should be explained to them as part of staff induction. This should include the:*

• child protection policy, which should amongst other things also include the policy and procedures to deal with peer on peer abuse;

• behaviour policy (which should include measures to prevent bullying, including cyberbullying, prejudice-based and discriminatory bullying);

• staff behaviour policy (sometimes called a code of conduct);

• safeguarding response to children who go missing from education; and

• role of the designated safeguarding lead (including the identity of the designated safeguarding lead and any deputies)."

24. In terms of the procedure staff members were expected to follow if they had any concerns about a child's welfare, KCSIE states:

"What school and college staff should do if they have concerns about a child

*55. Staff working with children are advised to maintain an attitude of '**it could happen here**' where safeguarding is concerned. When concerned about the welfare of a child, staff should always act in the best interests of the child.*

*56. If staff have **any concerns** about a child's welfare, they should act on them*

> ***immediately***. *See page 23 for a flow chart setting out the process for staff when they have concerns about a child.*
>
> *57. If staff have a concern, they should follow their own organisation's child protection policy and speak to the designated safeguarding lead (or deputy)."*

25. The Claimant accepted under cross examination that she was familiar with all relevant policies.

26. From July 2021 onwards the Designated Safeguarding Lead for the purposes of the KCSIE Policy was the Head Teacher. The Deputy Head Teacher and Assistant Head Teacher were Deputy Safeguarding Leads (page 88). In July 2021 the Claimant became aware that Child 'Y', a Child in Year 5, was transitioning from being a boy to identifying as a girl. She became aware of this via a letter that was sent to parents and carers of pupils at the school on 22 July 2021 (page 75). That letter was circulated by way of an email to the Claimant on 22 July 2021 (page 76).

The Claimant's first knowledge of Child X

27. On 26 July 2021 the Claimant was informed that Child 'X' would be allocated to her class in the forthcoming academic year. Child 'X' was a Year 4 pupil who wished to transition from female to male. Around this time a letter was sent to parents and carers of children at the school informing them about Child 'X'. The substance of that letter was the same as the correspondence which appears at page 75 of the bundle, although both parties agreed that page 75 was the letter sent out in relation to Child 'Y'. Child 'X' had been socially transitioning at her previous school but had experienced difficulties, moved schools and now wished to continue transitioning in a new environment where other pupils were unaware of their past history.

28. On 29 July 2021 the Claimant wrote to the Head Teacher in the following terms,

> *"Hi… thanks for the update. I have a bit of time to reflect on this and I am concerned about what may be required of me as the child's new Class Teacher. I would really appreciate an opportunity to talk to you before the new term begins. Meanwhile thanks for all you support this year. Have a great break. You deserve it!...."* (page 80)

29. On 27 August 2021 the Claimant sent an email which copied in the Head regarding her concerns about Child 'X'. She said,

> *"… I hate to send thoughts by email about what is expected of me as the Class Teacher but feel at this late stage I have to.*
>
> *Firstly, I recognise that gender dysphoria is real. However, when I heard we were going to have a child in our class who is biologically a girl that wants to identify as a boy, I was concerned about what is the best way to care for them and others in the class. I am concerned that I am required to give "affirmative care" to somebody who may regret it later. I am convinced that blanket affirmative care would be very damaging, potentially leading to irreversible physical and mental harm.*

I am personally glad that the law in Britain prevents a child from receiving puberty blockers prior to age 16 (ref: The Keira Bell Ruling). The High Court ruled that a child under 16 is unlikely to be competent to consent to puberty blockers and understand the long term consequences. I think this gives young people a measure of safety.

I don't have a problem with calling a reassigned adult by their chosen name/pronoun but in a child as young as 8/9 I cannot in good conscience affirm a new gender identity as if they had already been reassigned. I think children should be given support to explore why they feel this way before eventually affirming them at a much later stage. I believe children cannot appreciate how the consistent outside affirmation from trusted adults or powerfully influence their feelings and thoughts around their gender identity. Becoming entrenched in an identity that is not accurate may lead to deep regret. The internet is awash with the tragic testimonies of de-transitioners, especially girls, who regret the irreversible treatments that they underwent." (page 81)

30. On 31 August 2021 there was a meeting regarding the Claimant's concerns regarding Child 'X'. The Claimant attended that meeting together with her husband and also present were the Head Teacher and Deputy Head Teacher. The Claimant's notes of that meeting appear at pages 82 to 85. The Respondent's notes are at page 86. In that meeting the Claimant stated that she had concerns with, what she described as, a blanket approach to affirmation. By this she meant affirmation of any individual's new gender identity, including Child 'X'. Specifically, the Claimant had a belief that the Headteacher, School and Respondent would without question accept any child's chosen gender identity without question without further consideration of their welfare.

31. At the meeting on 31 August 2021 it was made clear to the Claimant by the Head Teacher that she was fully entitled to her beliefs but that the School had to respect the family's choice in this matter. The Head Teacher requested that the Claimant not attend School whilst Human Resources were consulted in order to try and find a way forward in respect of this matter and also ascertain what the position was with regard to any potential code of conduct issues. The Tribunal finds that this meeting was conducted in a respectful manner, indeed the Claimant accepted the same when this was put to her during cross examination.

32. Around September 2021 the Claimant started to use the services of the Christian Legal Centre and their representatives. That is apparent from paragraph 33 of her witness statement.

33. On 2 September 2021 the Claimant emailed the Head Teacher. In that email, she stated,

"… having reflected further on all that has been said and what I submitted to you, I can see that my prepared statement could have come across as demanding and campaigning for my rights. That was not my intention. Trying to make it clear and helpful points for Tuesday's meeting, I wanted to present something.

It's true that I am a person of faith and have been for over 30 years. This isn't going to change and I can't prevent it from informing my world view. However, as

a professional, I know that I cannot compose this and those under my care.

Since our meeting, I have had chance to focus on what is the main thing that is causing me distress.

I believe the DFE Guidance (in regard to Gender Reassignment in the Equality Act 2010) is to be applied from age 6 and we should respect a child's chosen name and gender.

This causes me to ask, are we doing them harm?

I can't lose thought that by affirming 'X' in this gender transition at the age of 8, that I may be participating in doing harm. I have shared some of my deep concerns about this particular treatment called "Affirmative Care".

The bottom line is, I have a real dilemma. I don't want this child or another child like them to suffer any harm in this situation. Neither do I want them to be upset by me or in any way made to feel degraded, humiliated or be unhappy at school.

I can only hope that a way around this can be found.

Thank you for your consideration."

34. The Claimant sent that email as she was concerned about what effect her pre-prepared statement which she read out at the meeting of 31 August 2021 might have upon the Head Teacher and Deputy Head Teacher. The pre-prepared statement appears at pages 82 to 85.

35. On 3 September 2021 the Head Teacher replied to the Claimant's letter of the previous day. The Head Teacher stated,

"Thank you for your most recent email dated 2 September 2021. We have added this information to your statement and forwarded it on to Tracy Christian our HR Business Partner and Sarah Lee the Team Manager for tackling emerging threats to children at the Local Authority. We have spent the last few days working together and consulting with Stonewall, HR, Eva Callaghan, the Local Authority Designated Officer (LADO) and the Legal Department at the LA. The LA have sought guidance with the diocese Stonewall, and I wish to assure you that no names of individuals or the school have been provided to them. The diocese have provided us with the attached document for information. We have taken advice and discussed the morals and principles and the legalities and risk factors and concluded that the best course of action is to manage this situation before we consider a disciplinary route. We are all clear that your expressed intentions, if acted upon could constitute direct discrimination and breach of GDPR. However, at this point in time you have only expressed your views and not acted upon them. This is a clear distinction and your actions are what we will consider in this letter.

You are entitled to hold your own personal beliefs and we fully support you in your right to hold those beliefs, however, as those beliefs if acted on could be a direct breach of GDPR and an act of direct discrimination you must not act on them. Nottinghamshire Schools are inclusive and there may be other children in school

who are transgender, may during our school or transition during a school year. We have a duty of care to safeguard all the children. With this in mind, this letter may be specifically about one child but may equally apply to other children presently or in the future.

We have already moved the child into another class to safeguard him from any potential harm not because you have said that you will not teach him. The child does continue to be a member of your year group and so we need to plan and manage this situation carefully as you have expressed actions you may take. In order to make things clear we have identified steps you need to take in order to protect the child and yourself from any potential incident. These are bullet pointed for clarity:

- *When interacting with the child, you must use the name and pronouns the family have requested.*
- *You need to act professionally and within the Schools Code of Conduct and Equalities Policy.*
- *You may choose to avoid contact or interaction with the child as much as possible, which may require you to use names or pronouns.*
- *We respect your own views, however, these must not be discussed with children or staff.*
- *When answering questions that pupils may have, you must not breach confidentially.*
- *When talking to parents, you must not talk about any other pupil and your response should be that it is not appropriate for you to discuss other pupils.*

We are keen to resolve this situation as soon as possible. Therefore, I would like to invite you to a meeting on Monday 6 September at 2.00pm. At the meeting we will go over your statements and share the advice we have had in more detail. We will make clear what our expectations are around your behaviour in school and we will need the reassurance that we can have the trust and confidence that you will adhere to this. Any breaches could result in suspension and disciplinary proceedings and this would be based on you conduct and not your beliefs. We ask you to remain at home until this matter is resolved.

The meeting will be held in the house at…and will be with myself and [the Deputy Head]. You can bring your Trade Union representative or a work colleague with you for support."

36. By this point in time the Headteacher had agreed to move Child 'X' out of the Claimant's class. This was in order to assist the Claimant return to work in the future. The Claimant also accepted during cross examination that the request by the Head Teacher in her correspondence of the 3 September 2021 for her to remain at home was sensible. The letter of 3 September 2021 did not contain any accusations and/or threats.

37. On 6 September 2021 a meeting took place between the Claimant and the Head Teacher. The Deputy Head Teacher and Assistant Head Teacher were present. A friend of the Claimant was also present. The notes of that meeting appear in the bundle between pages 120 to 123. At this meeting the Claimant was informed that a multi-agency approach was being taken to supporting Child 'X'. In particular, 'X' was being supported by her GP, Mermaids, Child and Adolescent Mental Health Services, a Paediatrician and the Tavistock Clinic. The Claimant was informed at this meeting by the Head Teacher that more advice would be needed to be obtained from HR and that the next possible step could be her suspension. The Claimant accepted during cross examination that the Head Teacher was actively trying to manage the situation at this point in time.

38. On 7 September 2021 the Claimant emailed the Head Teacher a letter from her then representative, Mr Roger Kiska. The letter started,

> *"I write to you today at the request of [the Claimant]. You are well aware that [the Claimant] respects the School's desire to build children up in who they are and her belief that all people should be treated with equal dignity. Because of her Christian faith and her concerns about the unintended consequences of affirming a young child in their gender dysphoria, she has expressed her desire to be removed as best as is practicable, from any situations where she may be compelled to go against her conscience on this issue."*
>
> The remainder of this letter contained general concerns about what Mr Kiska termed transgender affirming policies rather than specific concerns about Child 'X'. (page 125)

39. On 8 September 2021 Sarah Lee of the Respondent delivered formal training to all staff of the School. The Claimant attended that training and her notes in respect of the same appear at pages 128 to 132. The specific slides employed by Sarah Lee at that session appear at pages 2070 to 2096.

40. That same day, the 8 September 2021, the Head Teacher replied to the Claimant's representative's letter of 7 September 2021. The Head Teacher stated that the School would require more time to look at the details contained within the letter and, therefore, wanted the Claimant to remain at home for a further 5 days (page 133). The Claimant acknowledged the Head Teacher's letter by means of an email dated 13 September 2021 (page 134).

41. On 13 September 2021 the Head Teacher wrote to the Claimant. This letter stated,

> *"Thank you for agreeing to remain at home whilst I consider your position and the advice that you have provided. I appreciate this is difficult for everybody.*
>
> *Further to our recent meeting and the detailed advice that you have kindly provided I have taken further advice and remain of the view that the position that the School as sought to adopt in its letter of 3 September and the meeting of the 6 September is not an unreasonable one. It is also a position which I continue to emphasise as an appropriate way forward.*
>
> *I am also advised the way forward that has been suggested by the School is*

correct and lawful. Irrespective of the views that both you and I may have about individual and/or parental choice, what lies at the heart of this is a child for whom they and those with parental responsibility, have elected to make a particular choice. What the School is seeking to do is focus on the importance of that choice by safeguarding a vulnerable child and avoid breaching their right not to be discriminated against and have their personal data protected.

Whilst we absolutely respect your view and your entitlement to hold it, which we have tried to accommodate, I wish to make clear it is not in your gift or your right to use those views in a way or manner which questions or seeks to undermine that election or cause further damage to a child who has already had to relocate schools.

I note in the letter from Mr Kiska, it states that you ready to seek a compromising order that formal action could be avoided. I sincerely hope that we are able to reach an accommodation by where you agree and undertake that under no circumstances will you speak of or cause this situation to be disclosed or undermined.

If it would help to meet again I will be more than willing to do so to resolve this. If after further thoughts and reflection you are still of the view that as per the meeting of 6 September that you are unable to provide this commitment then I would be grateful if you could let me know."

42. On 16 September 2021 the Respondent's representative at the time, Mr Roger Kiska, wrote to the Head Teacher. He stated that the Claimant was not able to comply with the requirements set out in the letter of 3 September 2021. The letter was uncompromising in tone and in stark contrast to the constructive dialogue that had previously taken place. The letter stated,

"I am writing to you on behalf of [the Claimant] in response to your letter of 13 September 2021. In your letter you assert that having taken further advice you take the view that the position the school has taken in this matter is not an unreasonable one, and further you say that you continue to assert it as the way forward.

As you are aware, [the Claimant's] concern is for the child concerned and the harm that may potentially be caused by the school's policy. It would go against her conscience, informed by her Christian faith, to affirm a young child in their gender dysphoria. I have pointed out the very real concerns that exist in relation to this in my previous letter.

[The Claimant] is not able to comply with your requirements as set out in your letter to her of 3 September 2021. Her position is as follows:

1. She remains unconvinced that an 8-year-old child has the capacity to understand the implications of gender re-assignment. Trusted adults placed in a position to care for the child should not be providing affirmation without question. There is growing disquiet in the fields of Psychiatry, Paediatrics and also in Psychotherapy itself regarding the lack of clear evidence about any positive or desirable results of this approach, and indeed evidence of harm.

2. Experts with long experience in the field of mental health and psychotherapy (Marcus and Sue Evans; Melissa Midgen) believe this model of support to be experimental. In the circumstances it is cavalier to steer or point a child towards it. This makes it very difficult for [the Claimant] to meet the school's requirements that she report to the Senior Leadership Team should any other pupil speak to her about gender confusion.

3. The training that has been provided to staff has been biased, represented the views of campaigners and been informed by a political agenda. It discouraged enquiry or debate.

4. [The Claimant] is uncomfortable about being required to keep confidentiality involving withholding information from other parents which may be important to them in deciding how this may affect their own child or deciding how to respond to the situation. It also potentially represents a safeguarding risk.

5. The requirements will compel her to withhold the truth from others, or even share any information that may help them in their own enquiry. She believes that the requirements would be harmful to the child in question, misleading to staff, to other children and their families. Fundamentally, they would require her to go against her conscience.

As you are aware from our previous letter, by requiring a teacher to be an active participant in the school's transgender affirming approach to a child, you are acting ultra vires to the law and potentially in breach of both the Equality Act 2010 and the Human Rights Act 1998 relating to religion or belief.

I would commend the materials below to the school for consideration. These resources represent a balanced and considered approach to the issue of gender dysphoria in children.

https://www.transgendertrend.com/schools-resources/
https://www.transgendertrend.com/product/school-resource-pack-3rd-edition-digital-download/

[The Claimant] is ready and willing to return to work and would be grateful if you would now confirm that this will be possible on Tuesday 21st September." (page 136 to 137)

The Claimant's formal suspension in September 2021

43. On 20 September 2021 the Chair of Governors of the School wrote to the Claimant informing her that she was suspended from her post as a Teacher. The letter stated,

"Further to the preliminary meeting held on Tuesday 31 August and the following meeting held on 6 September, the School as sought further advice and guidance and I confirm that in view of your ongoing refusal to follow a reasonable management instruction to refer to a pupil within your year group my they/their parents preferred name and pronoun which is contrary to the School's Code of Conduct and School's Equality Policy you are suspended from your post as Teacher at this School, with immediate effect. As suspension is not a disciplinary

measure you have no right of appeal against this decision. However, you will remain on full pay pending the outcome of the investigation into the alleged incidents and outlined above.

Whilst I cannot confirm at this stage when the investigation will be completed, I can assure you that I am aware of how difficult this situation must be for you and the investigation will take place without delay. However, I consider by the nature of your employment, i.e. supervision of children/seriousness of the allegations, your continued presence at work maybe prejudicial to the situation. I must advise you that during your period of your suspension you should refrain from entering the School premises. Nor should you communicate directly or indirectly with anyone about the facts and circumstances of the case other than any appointed legal representative.

You are reminded that this matter must be treated with complete confidentiality and we will expect you as an employee of the School to do the same. This also extends to the publication of material digitally or otherwise. The disclosure of any such material relating to the above by you directly or indirectly which identifies the pupil or family concerned and/or their circumstances or allows the jigsaw identification of the pupil, parent, circumstances will be treated as a separate disciplinary offence.

If you should wish to contact the School for any reason, you can do so through several channels…

If, at any point, you wish to speak to me personally about your situation or the procedures then please do not hesitate to contact me. Further support can also be obtained from your trade union or colleague.

The School will continue to support you during your suspension and if you wish to access the Counselling Service please let me know and I will ensure a referral is made for you." (pages 138 to 139)

44. On 21 September 2021 Mr Geoff Russell the Litigation Team Manager for the Respondent wrote to the Claimant's representative, Mr Kiska, expressing sadness at the fact that the matter had not been resolved informally and also explaining that the School remained open to finding an amicable solution. That letter is at page 142 to 143. On 22 September 2021 the Claimant wrote to the Head Teacher. The effect of this letter was to resolve the impasse that had recently formed between the parties following Mr Kiska's letter of 16 September 2021. It stated,

"Further to our meeting on 6 September and your letter of 20 September, I have carefully considered my position in relation to complying with the demands of the management. To re-iterate, my position is based on my Christian beliefs, in particular:

1. I believe in the truth of the Bible, and in particular, the truth of Genesis 1:27: "So God created man in His own image; in the image of God He created him; male and female He created them." It follows that every person is created by God as either male or female. Sex is a God-given reality which should not be conflated with 'gender identity'. Being male or female is an immutable biological fact

mandated by God, not a person's own feeling or an identity.

2. I do not believe that it is possible for a child to change their sex, and I believe that any attempt at doing so is harmful and self-destructive.

3. I believe that it would be irresponsible for the School, or for me as a teacher, to accommodate or encourage a young child of 8 or 9 years to follow that course.

4. Finally, I believe that it would be irresponsible and harmful for the School or for me as a teacher, to require other young children to believe that a boy is a girl, or a girl is a boy and to consequently be labelled as unkind or phobic if they do not. I am concerned about the long-lasting effect this may have on their lives.

I am not asking to impose my religious beliefs on the School, however I believe that my beliefs should be respected and therefore I should not be compelled to act in a manner that is contrary to my beliefs and conscience. Further, I am concerned that the proposed 'affirming' of the child's gender dysphoria is likely to harm the child. Since I have a genuine concern about the safeguarding of this child as well as other children at the School, I reserve the right to take such action as is appropriate under the law in relation to safeguarding concerns.

Further, the School has no right to compel me to act contrary to my conscience, as that would be a violation of my rights under Article 9 of the ECHR. I may not be compelled to refer to the child by using the name and pronouns which do not correspond to the child's biological sex, or otherwise to encourage the child along the self-destructive path of 'transition'.

Subject to the above, I propose the following practical way forward:

1. I will agree to make every effort to avoid unnecessary contact with the child in question.

2. In the event that communication with that child is necessary or inevitable, I will make every effort to avoid using any name or any gender-specific pronouns. The English language is flexible enough to make that possible in most contexts.

3. I will act professionally at all times, in particular, I will comply with the Code of Conduct and Practice for Registered Teachers, GDPR and the relevant duty of confidentiality. As you are aware, I am fortunately in a position to obtain pro bono legal advice in the event there is any doubt about the legal position.

4. I acknowledge that information concerning the private life of the child in question has been disclosed to me on a confidential basis, and that I have a legal duty of confidentiality. I will fully comply with that duty.

I believe this goes an extra mile in order to address any reasonable concerns the School may have about my beliefs on this issue.

However, I reiterate that it is unlawful for the School either to compel me to act contrary to my beliefs and/or conscience and/or to ban me from sharing my beliefs with others. The action taken by the School against me was taken because of my

religious beliefs, which are protected both by the Human Rights Act 1998 and the Equality Act 2010. My suspension, and the unreasonable demands that I act contrary to my conscience and may not share my beliefs with others, amount to discrimination or harassment on the grounds of my religious beliefs, contrary to the Equality Act.

I urge you to take this opportunity to resolve this issue amicably in accordance with the law." (page 140 to 141)

45. Due to the proposals contained in the Claimant's letter of 22 September 2021, the Head Teacher was reassured that a workable solution for both parties could be found which would enable the Claimant to return to teaching. The consequence of that was that on 27 September 2021 the Head Teacher wrote to the Claimant. That letter appears at page 144 and states the following,

"Many thanks for your letter of the 22nd September which I found very constructive and helpful.

I wish to make clear from the outset that at no point has the school sought or compromised your Christian beliefs or subjected you to any differential treatment because of any such belief.

The school's concern related to the possibility of the risk of disclosure by you of data relating to this child and their family whether directly or indirectly. That concern was based on correspondence from you, correspondence from your legal representative and from our meeting of the 6th September.

It remains the school's view that irrespective of your religious views, it is not in your gift either directly, indirectly, deliberately, or inadvertently, to reveal any of the information of which you are currently aware of this pupil or their family.

I am heartened that you now formally acknowledge this and given the content of your last letter hopeful that we can reach an agreed way forward. You fully accept your duty of confidentiality and your professional duties in this regard which is a positive step.

I appreciate that you have stated that you will make every effort to avoid unnecessary contact with the child and where communication is inevitable - will make every effort to avoid using any name or gender specific pronouns.

You have also stated that the English language is "flexible enough to make that possible in most contexts". We certainly agree but would go one stage further and suggest that the use of language is such that you will not use language which discloses directly, indirectly deliberately or inadvertently any of the above.

To be clear we are not requiring you to use any language which would compromise your beliefs. In return the school is asking that you refrain from using language which results in any form of disclosure as described above.

In addition, this would equally apply to any other child who is gender questioning and who is socially transitioning within the school community. To be clear, we

expect you to avoid using any name or gender specific pronouns which would be in direct conflict with the expressed wishes of the child and parent.

Given that you have expressly referred to your duty of confidentiality and your professional obligations then you must appreciate that "making every effort" would fall short of those obligations. I need to make it clear that where there is such a disclosure it will be treated as serious professional breach and a conduct issue.

If we are able to agree on the above, I think we would have a working solution for a return to school. We would like to discuss this further at a meeting in school on Monday 4th October at 1.30pm or Tuesday 5th October at 10am.

The meeting will be held with myself and Tracey Christian from HR. You can bring a work colleague or a Trade Union representative with you should you so wish."

46. Although that letter makes reference to a return-to-work meeting scheduled for either the 4 or 5 October 2021, that return-to-work meeting actually took place on 6 October 2021.

47. On 28 September 2021 the Claimant emailed the Head Teacher, the Tribunal has not been supplied with a copy of that email but finds that in that email the Claimant requested that she be accompanied to the return-to-work meeting by her legal representative. That is apparent to the Tribunal as the Head Teacher's reply of the same day is contained at page 146.

48. On 30 September 2021 the Claimant wrote to the Head Teacher again. Her correspondence of that date appears at pages 148 to 149 of the bundle and states,

"Thank you for your email of 29 September. I am disappointed by your refusal to allow my legal advisor to accompany me to the meeting. More fundamentally, I am troubled by your statement that: "the question we need answering is, are you able to comply with what is asked of you or not". If the School accepts that, as an experienced teacher, I should be trusted to comply with my professional obligations, and my Christian beliefs do not compromise my ability to do so, then I am happy to attend a meeting to discuss the timetable and other practicalities of returning to work. However, if you feel there are still outstanding issues arising out of my beliefs about 'transgenderism', such a meeting would be premature. Nor am I comfortable discussing my beliefs with you at a meeting without being permitted to be accompanied by a lawyer.

In the discussions we have had this month, the School has repeatedly "asked of me" to:

(a) Refer to the pupil by masculine pronouns and name, despite my conscientious objection to doing so; and

(b) Not to share my beliefs about 'transgenderism' with anybody within the school environment.

For the reasons I have already explained, both those demands are discriminatory

against my Christian beliefs, in breach of my Convention rights, and accordingly unlawful.

I have offered you a reassurance that I will comply with my professional duties, including, confidentiality/GDPR duties. I have been a teacher for 6 years and have never faced a complaint that I failed to comply with any of those duties. The School has not identified any reason, other than my Christian beliefs, why I should not be trusted to comply with my duties.

To be clear about this, confidentiality and data protection are straightforward matters. Put succinctly, confidentiality/GDPR duties are simply about one's ability to keep a secret. I have been told in confidence that (1) the biological sex of Pupil X is female, Pupil X has reasons to dress as, and wish to be known as, a boy and (2) Pupil X and Pupil X's family believe that Pupil X is 'transgender'. This is not materially different from any other piece of confidential information, and I should be trusted to treat this information as confidential in the usual way. My Christian beliefs have nothing to do with this.

I am concerned by what appears to be a very wide re-interpretation of confidentiality/GDPR duties by the School. The duty of confidentiality has its limits. In particular:

Firstly, the duty of confidentiality does not include a duty to tell an untruth to cover up confidential information. If I am asked a question about Pupil X's sex, or Pupil X's

reasons for dressing as a boy, I am not obliged to say that Pupil X is a boy. I am entitled, and intend, to refuse to discuss the matter further because it is confidential.

Secondly, there are other rights and duties which may override confidentiality in certain circumstances. Thus, if I learn in confidence that Pupil X is self-harming, or that the School's actions are harming Pupil X, I am entitled to use that information to raise a safeguarding concern under the appropriate procedure.

If this leaves us in any disagreement about those issues, I reiterate that any such disagreements should be discussed with participation of lawyers. Both you and I are taking legal advice and neither party would be disadvantaged by the presence of a lawyer. Alternatively, I am happy to discuss, and hopefully resolve, any disagreements in correspondence. However, you have previously taken the view that any such disagreements must be resolved prior to my return to work, and without achieving that, I would not be comfortable attending a return-to-work meeting."

49. On 1 October 2021 the Head Teacher replied to the Claimant's letter of 30 September. The Head Teacher's letter stated,

"Thank you for your letter of the 30th September

Firstly, we do not accept that the school has repeatedly asked of you to:

"(a) Refer to the pupil by masculine pronouns and name, despite my conscientious objection to doing so; and

(b) Not to share my beliefs about "transgenderism" with anybody with the school environment ".

What we have repeatedly sought assurance about is the non-disclosure of data for which you have been ambiguous i.e., agreeing to your professional obligations, confidentiality but then effectively seeking to "reserve your rights"

Secondly, whilst we do not accept the use of names and pronouns gives rise to any religious conflict because there is no gender property in a name other than societal perception, we have not sought or required you to use them. Again, we note your position; that is ours and it does not need further discussion in the presence of lawyers. All that what we have asked is that such terms are simply avoided.

Thirdly we note again your position with regards to "reservation of rights" but wish to stress if in the event that such disclosure or inappropriate language is used that will be examined in accordance with policies and practice for which action if appropriate will be taken. However, we sincerely hope neither party gets to that position.

Given the position of both parties we need to organise a return to work meeting. This meeting will be held with myself and Tracey Christian from HR. As previously stated, I am happy for you to be accompanied by either a work colleague or union representative for support.

At this meeting, we will go over our expectations and try to come to an agreement as we wish to enable a return to work for you. I wish to reiterate that at no point are we dismissing your beliefs or asking you to change how you feel. We simply need to talk through the return to school to ensure that we are all clear about what that looks like in practice.

I hope that we can come to some agreement. Please let me know which meeting time you can attend at … either 1.30pm on Monday 4th October or 10am on Tuesday 5th October." (pages 148 to 149)

<u>The Claimant's Grievance of 5 October 2021</u>

50. On 5 October 2021 the Claimant submitted a complaint via email to the Board of Governors of the School. She stated,

> *"This is due to my concerns about safeguarding children at the School. Please see the attached documents which include the reasons for my complaint and some relevant material to support it. Thank you for reading them. This is a very current issue which I believe could affect many children attending the … Primary School. The link below will take you to a source document from an article published in today's Daily Mail."* (page 165)

The grievance attached to that email appears in the bundle at pages 167 to 175. It makes extensive reference to the law and was clearly written with the input of legal representatives. It was accompanied by approximately 387 pages of enclosures.

These enclosures consisted of 3 expert statements drafted in anticipation of litigation entirely unrelated to Child X or indeed the School. The letter was also accompanied by a number of academic journal articles. The complaint primarily related to the Claimant's assertion that the School's Governing Body had failed to comply with its safeguarding duty pursuant to section 175(2) of the Education Act 2002.

51. Under cross examination, the Claimant accepted that at the time of submitting her letter of complaint she had not fully read all the accompanying enclosures. The Tribunal finds that this undermines her credibility as she was prepared to put forward to the Board of Governors that the grievance and its extensive enclosures, represented her views despite not having read all documents prior to them being sent. In addition, the fact was that the Claimant submitted such a lengthy document was primarily in order to daunt the Board of Governors by engulfing them with documentation. Despite being presented with such an extensive grievance the School acted quite reasonably and continued to progress the Claimant's return to work in a sensible and considered manner.

The Return to Work

52. The day after submitting her lengthy grievance, 6 October 2021, the Claimant met with the Head Teacher and Tracey Christian from the Respondent's HR Department. The Claimant was accompanied to that meeting by a companion. The meeting was intended to facilitate the Claimant's return to teaching activities. It was an amicable meeting and all present managed to move the matter forward significantly and agree terms upon which the Claimant could return.

53. During the meeting it was agreed that the Claimant would return to work on 13 October 2021 and that her suspension would be lifted. It was also agreed in that meeting that the Claimant would not have any teaching or pastoral care towards Child X. On that point we accept the evidence of the Head Teacher. During this meeting, the Claimant agreed to a number of conditions. She agreed,

- *To avoid unnecessary contact with the child.*
- *In the event that communication is inevitable she will avoid using any specific names/gender pronouns.*
- *She has no intention to use the child's birth name or gender pronoun.*
- *She has no intention to cause distress to the child and understands this information must be kept confidential.*
- *She agree to act professionally in line with the Code of Conduct and to fully comply with confidentiality and not to disclose any information that is not common knowledge.*

That is apparent from the notes of this meeting which appears at page 566 to 567 which the Claimant did not dispute the accuracy of before the Tribunal.

54. On 8 October the Claimant received a letter from the Chair of Governors of the

School informing her that she would return to work as agreed on Wednesday 13 October 2021 (page 568). The Claimant then returned to work as agreed on that day.

55. A Governor was appointed by the Chair of Governors to investigate the Claimant's complaint that she submitted on 5 October 2021. That Governor informed the Claimant on the outcome of her complaints on 28 October 2021. He provided a reasoned and detailed response to the Claimant's complaint which ultimately dismissed that complaint and also what she termed a safeguarding concern. His response appears at pages 572 to 583.

CPOMS

56. CPOMS was a computer system used by the School for staff to report incidents of welfare or safeguarding concerns. All teachers at the School were provided with access to the CPOMS system. If a teacher had welfare or safeguarding concerns about any child, they could report those concerns either through creating a report on CPOMS, or directly contacting the School's Safeguarding Lead or Deputy Safeguarding Leads. Incidents reported via the CPOMS system were monitored, reviewed, and co-ordinated by the School's Safeguarding lead and any other agency which may be required.

57. Each member of staff has their own username and log-on details for CPOMS. All staff, including the Claimant, were also provided with training on the use of CPOMS. All staff were made aware that the purpose of CPOMS was that safeguarding concerns could be logged and that unauthorised use of CPOMS could lead to disciplinary action.

58. On 18 November 2021 the Claimant accessed the Schools CPOMS system and viewed the data held on the system in relation to Child X (page 1228). She created no report on the CPOMS system regarding any welfare concerns she might have about Child X either on this occasion or any other later occasion. She was fully aware that her use of CPOMS in this manner was unauthorised and indeed, she accepted during cross examination that her access of the CPOMS system was wrong not only on this occasion but on all subsequent occasions.

59. On 25 November 2021 the Claimant accessed the CPOMS system again in order to view the data held on that system in relation to Child 'X'. She then did so again on:

    59.1. 30 November 2021;

    59.2. 17 December 2021.

60. Sometime around 5 January 2022, after children had returned following the Christmas break, Child X revealed their biological sex to some of their classmates. The School sought advice from Sarah Lee on how to proceed (pages 585 to 586).

61. On 7 January 2022 the Claimant again accessed the CPOMS system in order to review the data held in relation to Child 'X'. She then did so again on:

    61.1. 10 January 2022;

61.2. 11 January 2022;

61.3. 12 January 2022.

62. Around early January 2022 Claimant started to transcribe the data held in relation to Child X onto her own personal computer and then transfer that data to a memory stick. Her reason for doing so was because she was "professionally curious".

63. On 14 January 2022 the Claimant wrote to the Head Teacher seeking to appeal the dismissal of her earlier safeguarding concerns. The Claimant's letter appears between pages 594 to 597. Although her letter makes reference to the grievance she raised on 5 October 2021, this was not an appeal against the outcome of her grievance but as the subject matter of the letter makes clear a "*referral under the … School's Confidential Reporting and Whistleblowing Policy".*

64. The following day, the 15 January 2022, the Claimant again accessed CPOMS in order to view data relating to Child 'X'. She did so again on

64.1. 16 January 2022;

64.2. 20 January 2022.

65. On 21 January 2022 the School's Chair of Governors replied to the Claimant's letter of 14 January 2022. He stated,

> *"Many thanks for your letter of 14 January 2022. This letter has been passed to me as Chair of Governors.*
>
> *I have examined your complaint dated 5 October 2021 raised under the School's Whistleblowing Policy. I have also referred to that policy as well as the School's response dated 28 October 2021 which clearly addresses the issue of breach of Section 175 of the Education Act 2002. I have also consulted with the Local Authority HR and Legal Department.*
>
> *I can confirm that there is no right of appeal under the Whistleblowing Policy, and whilst I appreciate the conclusion of that complaint may not be what you had hoped for, I must, therefore, consider the matter to be closed.*
>
> *Therefore, any further correspondence in relation to the same matter or issues with either the School or the Governors will not be responded to going forward as I consider this matter is now concluded.*
>
> *I sincerely hope that all parties can now move on."*

66. On 24 January 2022 the Claimant again accessed the CPOMS system and viewed the data in relation to Child 'X'. She did so again on 2 February 2022.

67. On 3 February 2022 the Claimant wrote to the Chair of Governors. That letter which appears at page 599 of the bundle states,

> *"Thank you for your letter dated 21st January 2022,*

In that letter, you dismissed the contents of my letter dated 14th January, in which I pointed out that you had failed to consider properly the whistleblowing concerns set out in my letter of 5th October 2021. I find this unacceptable. You simply stated that I had no right of appeal under the school's whistleblowing policy and that, although I may be disappointed with the conclusion of the complaint, you hoped we would "move on" from any more communications about my complaint.

I am writing to let you know that, in light of further information which has come to my attention, I remain convinced the school is disregarding its duty of care with respect to Child N.[3] Based on the information I have seen and heard, Child N is clearly suffering from serious mental health problems. From the evidence I presented to you in support of my complaint, it is likely that the child's desire to transition is a consequence of these mental health problems. However, while you refuse to consider that evidence, the. child continues. to be 'affirmed' and encouraged to transition as a means of addressing the problem when it is in fact causing or contributing to the problem.

Although the affirmative approach to the problem may be well intentioned, it is not well informed; and .the school and local authority are therefore failing to care for the child. Instead, the approach being taken is likely to make the underlying problems worse and lead to harm. The bitter fruit of the· policy you are-adopting is already becoming clear in the case of this child. As a result, I fear for the long-term mental health, physical health, and well-being of child N.

You have stated in your letter of 21st January that you will not respond to any further correspondence from me on the matter and consider it to be concluded. Consequently, it is clear to me that I can say nothing more to persuade you to address my concerns.

Therefore, I feel it is only fair to inform you of my intention that, having sought advice, I must now consider external remedies under the Public Interest Disclosure provisions of the Employment Rights Act."

68. On 10 February 2022 the School's Chair of Governors replied. His response can be found at page 600 and states,

"*Thank you for your letter of 3 February 2022.*

In the circumstances I can only reiterate that you have previously raised this issue as a matter of health and safety. At face value it could constitute as a qualifying and protected disclosure under the Employment Rights Act 1996 although we are not aware that you have suffered any detriment as a result. Indeed the School have taken considerable steps to allow you to air and accommodate your views. The issues that you raised were examined and a reply given. Whilst you continue to disagree with the conclusion reached, this isn't a matter in respect of which there is a right of appeal. Essentially you raised an issue as a matter of health and safety, it was examined and the matter concluded.

Despite the fact that you are not involved with the child directly, the child's parents

[3] Although the letter makes reference to Child N, the Claimant is in fact referring to Child X.

or family, nor are you medically qualified or responsible for providing professional help/guidance on the matter of mental health to the family and child concerned, you continued to raise this as a safeguarding issue. You are also stating that as a consequence of the School response that you are going to consider "External remedies under the Public Disclosure Provisions of the Employment Rights Act". We wish to point out that we have already had to remind you of your professional obligations with regard to confidentiality and wish to advise you that if any such disclosures do not amount to a qualifying/protected disclosure and/or breach of data protection and/or professional obligations we will have no option but to take any action deemed necessary."

69. From the contents of that letter, the Tribunal finds that the School was acting entirely reasonably in the manner it approached the Claimant's concerns but was becoming increasingly concerned that the Claimant might breach Child X's confidentiality and disclose their biological sex. At this point in time, the School had no knowledge that the Claimant was accessing CPOMS to view and record data about Child X.

70. That same day, 10 February 2022, the Claimant again accessed the CPOMS system to view data about Child X.

The Claimant's letter to the Local Authority Designated Officer ("LADO")

71. On 11 February 2022 the Claimant wrote to the LADO. That letter was intended as a complaint and stated,

"The nature of the complaint relates to the transgender affirming approach the School has taken with an 8 year old pupil of the School, and which it would in all likelihood use again in the future should it be approach about any other gender dysphoric pupil." (pages 601).

In that letter, the Claimant stated that her complaint related to the Governing Body's/Local Authority's safeguarding duties under Section 175(2) of the Education Act 2002. In addition to the 9 page letter, a significant number of enclosures were included running to approximately 387 pages. As with the grievance she had previously raised to the Board of Governors, the Claimant included a number of academic journal articles and expert reports which had been drafted in connection with litigation that was unrelated to Child 'X'.

72. On 14 February 2022 the Claimant again accessed the CPOMS data system and viewed data relating to Child 'X'.

73. On 15 February 2022 the LADO acknowledged receipt of the Claimant's letter of 11 February 2022. The Claimant was informed that the LADO and the Managing Allegation Service only deals with allegations of harm to children made against adults who work or volunteer with children and, as the Claimant's complaints related to policies and procedures, the LADO was unable to address the Claimant's concerns. The LADO forwarded the Claimant's letter to their colleagues in Education who it was felt were best placed to address the concerns raised (page 997).

74. On 24 February 2022 the Claimant once again emailed the LADO asking that her concerns be investigated and stating that in her opinion, *"The safeguarding*

allegations I have made are concrete and I believe them to be serious." (page 998). That same day, a Service Director of the Education, Learning and Skills Department at Nottinghamshire County Council, wrote to the Claimant. Their letter is found at page 999 and states,

> *"Further to your letter of the 11th February addressed to Eva Callaghan, LADO for Nottinghamshire County Council, this matter has been passed to me to respond. In accordance with NCC policy, please note that if you are employed in, working with, or assisting in a Nottinghamshire School, there is a specific whistleblowing code which applies rather than the NCC policy. We understand that this matter has already been raised by you as a health and safety issue. in accordance with the school's policy. Those concerns have since been addressed by the school's governing body. although I understand that may not be to your satisfaction.*
>
> *Ordinarily that would conclude the matter but given the nature of the matters raised, together with our overarching obligation towards children and the comments that you have made with regard to departmental working, we have examined the circumstances and wish to make the following comments:*
>
> *i. There is no blanket policy covering the circumstances described.*
>
> *ii. Each case has its own and often difficult circumstances for those involved.*
>
> *iii. It is for each school to make a determination based on applicable legislative frameworks, parental and child's wishes, prevalent behaviours as well as input from external agencies I professional advisers.*
>
> *iv. The work undertaken by Nottinghamshire County Council supports the above approach.*
>
> *Having taken the above into account, we are satisfied that not only is the school taking appropriate action in the circumstances but that the work undertaken by NCC is wholly supportive of the above and appropriate.*
>
> *In the circumstances we cannot assist you further."*

75. On 28 February 2022 the Claimant again accessed the CPOMS system and accessed confidential and sensitive information regarding Child 'X'. She did so again on:

    75.1. 2 March 2022;

    75.2. 20 March 2022.

76. On 8 April 2022 the Claimant's legal representatives sent the Respondent a pre-action letter in respect of their proposal to apply for Judicial Review. In respect of that proposed Judicial Review (pages 1001 to 1009). The proposed challenge was against "*(a) Defendants' failure to address the safeguarding concerns raised by the Claimant in relation to an 8-year-old pupil at the School, Child X; and (b) the failure of the Defendants to review in the light of evidence presented by the Claimant*

whether their 'trans affirming' policies presented a safeguarding risk to children."

77. In summary, the grounds for judicial review were cited as,

(1) A breach of the Respondents statutory duties under Sections 175 subsection 1 and section 175 subsection 2 of the Education Act 2002.

(2) A breach of the Tameside duty and/or failure to take account of the relevant considerations.

(3) A breach of the Local Authority's duty under Section 47 of the Children Act 1989 to investigate safeguarding concerns.

(4) A failure contrary to Section 407(1) of the Education 1996 Act to equip the school staff to take a "balanced" approach to political issues.

(5) Irrelevant considerations.

(6) Error of law in the interpretation of the Equality Act 2010.

The Judicial Review proceedings

78. On 14 April 2022 the Claimant's legal representatives commenced Judicial Review proceedings in The High Court. As part of those proceedings the Claimant produced a witness statement which ran to 21 paragraphs. Paragraphs 12 and 13 of that statement state,

> *"12. Because of my concerns about the instruction to "affirm" Child 'X's alleged gender identity, the School has decided to allocate Child 'X' to a different class so as to avoid direct contact between me and Child 'X'. I, therefore, do not work with Child 'X' directly. However, from talking to colleagues at the School, and from accessing the School's internal software system for staff for monitoring safeguarding issues (CPOMS), I am aware of a number of facts which indicate that "affirming" Child 'X' is not helping Child 'X', but rather, I believe, serves to make matters worse for Child 'X'.*
>
> *13. I am aware from CPOMS records that Child 'X' has already suffered past trauma which may be linked to his/her gender confusion. Child 'X' is recorded as saying that he or she "doesn't have a father", that Child 'X's father slapped Child 'X' in the face as a baby, was always drunk and used to take drugs, that Child 'X' saw him physically hurt her mother and that "all my problems are my dad's fault." Child 'X' has reportedly sought attention saying everyone needs to listen about his/her dad, that he/she wants to "punch him" despite this, Child 'X' misses him but doesn't want his/her mum to know this as it upsets her. I am surprised that this is not being considered as a potential treatable cause of Child 'X's difficulties before going down the radical path of transition."*

79. On 28 April 2022 the Claimant again accessed the CPOMS system to view material relating to Child 'X'.

80. Despite the judicial review being filed on 14 April 2022, it was not until 4 May 2022 that the School became aware that the Claimant had been accessing the CPOMS system and obtaining information regarding Child X. The Tribunal makes that finding based upon the contents of the report that the School made to the Information Commission Office, contained in the bundle between pages 1914 to 1923. The report clearly indicates at page 1916 that the School first discovered the breach on 4 May 2022. The Claimant did not dispute that date.

The Report to the ICO

81. On 6 May 2022 the School submitted a report of a potential data breach to the Information Commissioners Office ("ICO"). This related to the Claimant's use of the CPOMS system in order to obtain and disclose information regarding Child X. In that document, the data breaches which occurred are described in the following terms,

> *"**Please describe how the incident occurred***
>
> *Pupil data is stored on a system called Child Protection Online management System (CPOMS). A member of teaching staff accessed the information system in the school specifically to obtain information about a child who is not in their class, and subsequently gave this to a 3rd party as part of a request for a judicial review.*
>
> ***How did the organisation discover the breach?***
>
> *On serving of papers requesting a judicial review, it became clear that information used in the papers had come directly from the school's internal system (CPOMS) Upon further investigation we can see that the member of staff has accessed the child's data through the CPOMS system numerous times. The member of staff has then copied the text from some of the entries which have then been entered into their statement for the Judicial review.*
>
> *…*
>
> ***Please give additional details to help us understand the nature of the personal data included in the breach:***
>
> *A child, biologically female, is identifying as a male. The staff member had been warned previously about the absolute need to keep any information about this child confidential. They have been suspended previously around this issue and as part of their return to work arrangements they were reminded about this need for confidentiality and agreed that they would not share any information about the child. They were also reminded of the staff code of conduct and agreed to adhere to it. The information and personal data that was shared related to the child's home life and background."*

The Claimant's suspension on 9 May 2022

82. On 9 May 2022 a letter was sent to the Claimant informing her that she was being suspended and that an investigation would be commenced. That letter appears at page 1151.

83. On 11 May 2022 the ICO wrote to the Head Teacher informing them that they had considered the matter and felt that they did not need to take further action although they would review that decision if new information were received (pages 1148 to 1150).

84. On 19 May 2022 a Data Protection Officer employed by the Respondent prepared a statement that would be used for the investigation procedure against the Claimant. That statement appears at pages 1198 to 1199 of the bundle.

The Disciplinary Investigation

85. In order to investigate the allegations against the Respondents, the Local Authority appointed Ellen Cottee to be the Investigating Officer. On 8 June 2022 Ellen Cottee held a formal investigation meeting with the Head Teacher via Microsoft Teams. The notes of the meeting are at pages 1203 to 1211.

86. On 24 June 2022 Ellen Cottee held an investigation meeting with a colleague of the Claimant who was also a Year 4 Teacher. The notes in respect of that meeting appear at pages 1231 to 1235.

87. On 28 June 2022 Ellen Cottee held an investigation meeting with the Claimant. The Claimant was accompanied by her Pastor. An HR Assistant of the Respondent was present to take notes. The notes of the meeting appear at pages 1250 to 1262. Those notes incorporate amendments made by the Claimant to the Respondent's original draft of the notes and the Tribunal finds them to be an accurate representation of the meeting.

88. In the meeting the Claimant stated,

> *"It raised a reg flag when I saw the allegations about her father that she had made, and this was up to the Christmas Holidays when I looked at these, post the Christmas Holidays she told the class her biological sex and then the chat about to handle it began, that is when I sent the email to Head with my concerns."* (page 1257)

In that section, it was apparent that the Claimant was discussing Child 'X'. The Claimant was also asked a number of questions by the Investigating Officer. We do not intend to set all of those out but of most relevance are set out below. 'EC' represents Ellen Cottee and 'CL' shows the Claimant's response,

"*EC - Would this be standard practice for teaching staff, to look at CPOMS for information on a child that wasn't in their class?*

CL - Under normal circumstances I wouldn't normally be looking. This is not a normal situation, would be a rare occasion to ever look at another child's profile, but this is not the usual situation.

EC - Did you seek permission to access CPOMS about Child 'X' as they weren't in your class?

CL - What would be the point as I know what the answer would have been."

(page 1258).

In addition,

"EC - Would you do the same again if you believe there was a situation similar to this, or if not, what would you do differently?

CL - I wouldn't do anything differently.

EC - Do you understand why these allegations have been raised?

CL - My understanding is the allegations have been raised from seeing the witness statement. In someways I don't know why they have been made if you consider 11.4 of the Code of Conduct. I think they have seen a witness statement for Judicial Review and moved on from there. You get to the point where, having done all you can and failed to persuade people to seriously consider whether the affirmative approach is harmful or harmless, you end up debating it in Court." (page 1260)

89. Following completion of the investigation interview Ellen Cottee prepared an investigation report. The report appears at pages 1163 to 1175. The recommendation in that report was that the matter should proceed to a formal hearing under the School's disciplinary procedure.

90. On 14 September 2022 a formal disciplinary hearing was heard in respect of this matter. The Claimant attended together with her Pastor for support. Ellen Cottee attended as the Investigating Officer. Also present was the Head Teacher, 3 Governors of the School, a HR Business Partner of the Respondent and a Notetaker. The notes of that meeting appear between pages 1802 to1823. The Tribunal finds that the notes represent accurately and fairly what was said at the meeting as again they incorporate the Claimant's amendments. The Head Teacher was called as a witness and asked a number of questions. Her responses to some of those are set out by us below. Again 'EC' represents Ellen Cottee, whilst 'HT' represents the Head Teacher's response,

"EC - What was your expectation of (the Claimant) following the meeting held on 6 October 2021 prior to her return to work?

HT - I expected that (the Claimant) would come back to work in the Year 4 team and teach her class. I recognised how difficult she may find this but I was clear that she needed to adhere to the Code of Conduct and Confidentiality, GDPR Policies. I was clear that this was a confidential process and that it should not be openly discussed with staff. I did not expect or need her to interact directly with Child 'X' but to show them respect.

EC - If you have any concerns over (the Claimant's) return to School, can you explain to the panel what they may be and why?

HT - I feel that I have lost trust when (the Claimant) returned to School I checked in with her regularly. She was treated exactly the same as ever even though I knew she had put in a whistleblowing complaint against the School. Then to

receive notification of a Judicial Review on a Saturday in the Easter Holidays was difficult. I feel that while she was working in School she was actively looking for information about Child 'X' to support her views/case. She accessed CPOMS to look for information on Child 'X' and another child and without coming to talk to me and without knowing the whole picture she then shared this information with her legal team. The information is hugely private to the family and is a snapshot – she cannot access all CPOMS so she has not seen all the work being done by School – and she did not ask. I feel that if she comes back it will be difficult to trust that she is not going to do something like this again." (pages 1810 to 1811)

At this meeting the Claimant stated,

"*I think that when it comes to issues of trust and with the child, I need to be extremely upfront and honest with HR. My position would be in the interests of child, if something significant came to my attention any further information, I would disclose it in the interests of the child. I do not regret what I have done. I would disclose information and generally there is a lot of things I could say, I believe what I have done is both lawful and protects child's identity, I don't believe I would do anything differently as I said to Ellen. I just feel the child needs protecting, I would do whatever I can to ensure that."* (page 1819)

The Claimant's Dismissal on 21 September 2022

91. On 21 September 2022 the Claimant was informed by the Chair of the Disciplinary Panel that she had been dismissed with effect from 14 September 2022, i.e. the date of the disciplinary hearing (pages 1825 to 1828).

92. On 6 October 2022 the Claimant appealed her dismissal. There were 3 grounds of appeal advanced. Those were:

"Ground 1

The panel was in manifest error by failing to give the appropriate weight to the defence I put forward in relation to Data Protection.

Ground 2

The outcome letter of 21 September 2022 improperly and incorrectly attributed an implied admission from me regarding my relationship with Child 'X'.

Ground 3

The disciplinary process, and reliance on the same County Council, which is a party to my Judicial Review, creates an objective appearance of bias which irrevocable taints the entire procedure."

A copy of the Claimant's appeal letter is at pages 1865 to 1869.

The Claimant's Appeal against dismissal

93. The Claimant's appeal was heard on 9 November 2022. The notes of that meeting

appear at pages 1876 to 1902 and we find that those notes represent accurately and fairly what was said at the meeting. We make that finding as they incorporate the Claimant's amendments and she did not seek to dispute the accuracy of those notes before us.

94. Although described as an appeal this was a full rehearing of the Claimant's case. We reach that finding for a number of reasons. First, the Chair of the Panel made clear this was a rehearing at the outset of the meeting. In addition the Chair of the Panel states, "We are impartial Governors. We have no access to what happened in the first hearing"; and "The Panel are asking these questions because this is a rehearing, this is a Panel that hasn't been involved previously" (pages 1897 and 1898). The notes also demonstrate that witnesses were called and that the appeal panel did not have access to what happened at the first hearing. In addition there are several references throughout the notes to participants referring to rehearing and complaining that it was asking the same questions as the first hearing, for example at pages 1897 and 1898.

95. The Claimant attended and was accompanied by her Pastor for support. Ellen Cottee the Investigating Officer also attended. The Head Teacher attended as did 3 Governors of the School, one of whom was appointed to chair the panel. An HR Business Partner of the Respondent attended as did a Notetaker. During the meeting, the Head Teacher was asked by the Investigating Officer,

> *"If you have any concerns over Debbie returning to School, can you explain to the Panel what they may be and why?"*

The Head Teacher's response was,

> *"This is a tricky one, I feel that I have no trust in what may happen. When (the Claimant) returned to work I checked in with her regularly. I have never treated her any differently to previously, even though I knew she had put in a whistleblowing complaint against the School. Then to receive notification of a Judicial Review on a Saturday in the Easter Holidays was difficult. I feel that while she was working in School she was actively looking for information about Child 'X' to support her views/case. She accessed CPOMS to look for information on Child 'X' and another child and without coming to talk to me and without knowing the whole picture she then shared this information with her legal team. The worry is that the family need support, care and using this for a personal use is not morally right. The information is hugely private to the family and is a snapshot – she cannot access all of CPOMS so she has not seen all the work being done by the School – and she did not ask so therefore couldn't see all of the information. The Judicial Review has also been going on, my concern is what then? I feel that if she comes back it will be difficult to trust that she is not going to do something like this again. --- She is appealing the Judicial Review still and I worry about her being in School potentially to find more information. The fact that she shared confidential information about a child and a family I find to be morally wrong as well against our policies. The child and the family are part of our School community. Our role is to support and not to judge. Lost trust and confidence that she could comply with agreement we might come to."*

96. On 15 November 2022 a letter was sent to the Claimant by the Chair of the

Disciplinary Appeal Panel informing her that a decision of the Panel was to ask the Local Authority to dismiss her from her post of Teacher with immediate effect on the grounds of gross misconduct. The letter in informing the Claimant of the confirmation of her dismissal appears in the bundle between pages 1903 to 1905. It states,

"*I wish to confirm the outcome of your appeal hearing with the Disciplinary Appeal Panel of the Governing Body on Wednesday 9 November 2022 who were advised by Emma McGeown, HR Business Partner. Ellen Cottee, Investigating Officer, attended to present the investigation report findings. You had been made aware of your right to bring a Trade Union representative or work colleague, and was permitted to attend with your support person, Pastor…. The meeting was arranged within the framework of the school's disciplinary procedure.*

The panel carefully considered all the evidence made available which included the investigation report and appendices, as well as the documentation you submitted in advance of the hearing which took place on 14 September 2022. Due to late submission, the panel did not take into account the additional evidence you submitted in the evening of 7 November 2022, for reasons previously confirmed via correspondence dated 10 November 2022. The panel also carefully listened to the verbal evidence given by all parties during the hearing.

At the hearing, reference was made to the allegations within the investigation report, and these will be addressed in turn. The panel felt that the substance of allegations one and two were part of the same concern, and as such have addressed these together.

1. Accessed information regarding a pupil that you had no professional or pastoral involvement with, and 2. copied and shared the information regarding the pupil, which you had no professional or pastoral involvement with, to a 3rd party.

The panel took into account that you do not deny the allegation that you accessed, copied and shared the information, however you argued that you had reasonable cause to do so, on the basis of safeguarding concerns. The panel considered evidence provided by the school that, at that time, the CPOMS reporting system was accessible to all staff to varying levels, however in line with GDPR and the school's Data Protection Policy, it is not normal or reasonable usage for staff to view records of pupils with which they have no direct professional or pastoral involvement. We understand that within the ethos of the school, the direct pastoral care and professional responsibility of pupils is the remit of the class teacher, and at that time you were not Child X's class teacher.

Furthermore, you were unable to identify to the panel any specific safeguarding concern which prompted you to access CPOMS and access Child X's record, and at the material time you had already raised your concerns on multiple occasions which were addressed by multiple parties (Head Teacher, Governors, LADO, LA), as such the panel felt satisfied that appropriate parties were in place to address safeguarding concerns should they exist, who would have had the holistic view of Child X which you did not have.

The panel also heard evidence, which you did not dispute, that you had been advised following you raising your concerns with the Head Teacher in October 2021 of the open channels to you to raise concerns if you had them, and despite accessing multiple records on CPOMS in respect of Child X on several occasions over a period of around 3 months, at no point did you raise any further safeguarding concerns which this gave rise to. Instead the panel felt the motivation for accessing the information was with a view to gather evidence toward the judicial review submission in order to support an outcome which was consistent with your own views.

3. The actions of accessing, copying, and sharing the information regarding the pupil which you had no professional or pastoral involvement in has resulted in the trust and confidence in you to be severely damaged.

The panel heard clear evidence from [the] Headteacher, that she has lost trust and confidence in you based on your actions of accessing, copying and sharing the information discussed in (1) and (2) above, against reasonable management instructions as issued to you in the return-to-work meeting in October 2021. Furthermore, you reiterated during the investigation that you would do the same thing in the same situation should it arise, even though this course of action would clearly go against school policies. The panel felt that you demonstrated a lack of understanding of the harm your actions have caused to your professional relationship with the Headteacher and equally demonstrated no remorse in respect of the breakdown of this fundamental relationship. Your actions have the potential to harm the integrity of the school. These observations make it difficult to see how you would be able to rebuild the trust required for a professional working relationship within the school.

4. In doing so you have breached the Schools' Code of Conduct.

In the return-to-work meeting on 6 October 2021 you made an agreement with the Headteacher to abide by the code of conduct and GDPR. However you have not upheld your part in this agreement by accessing records which you were not entitled to and as stated above, the panel find the motivation for doing so was with a view to gather evidence to support the seeking of an outcome from the judicial review which was consistent with your own views. The panel find this in breach of 5.3 of the code of conduct which states "staff should ensure that personal beliefs are not expressed in ways which might lead the employee to act inappropriately or breach the policies and procedures of the school" and further at 11.1 which references that the storing and processing of personal information is governed by GDPR and the Data Protection Act 2018 and that personal data about pupils and their families must always be kept confidential, which includes not only sharing information but also not accessing information which you have no legitimate reason to access. This is cited further within the school's Data Protection Policy which at point 14 states "you must not access personal data which you have no right to view".

In considering mitigation, the panel listened to your argument that you had accessed the information out of safeguarding concern, however as stated above felt that the motivation for accessing the information was with a view to gather

evidence toward the judicial review submission in order to support an outcome which was consistent with your own views. The panel also took into account that there have been no previous concerns put before them in respect of your conduct. However having fully considered the evidence, the panel concluded that your actions in accessing the information against the reasonable instruction of the Headteacher to comply with GDPR and the code of conduct and misusing the school's systems to access this information was an act of gross misconduct. The panel also found in addition to this that your indication that you would effectively repeat the same behaviour in future in similar circumstances has the effect of irrevocably damaging the trust and confidence in you as an employee.

The decision of the panel was therefore to ask that the Local Authority dismiss you from your post of Teacher at the …School with immediate effect on the grounds of gross misconduct. As you were dismissed from your post at your disciplinary hearing on 14 September 2022, the school have previously notified the Strategic Director for Children, Families and Cultural Services of the decision of this panel and the Strategic Director has written to you to formally terminate your contract of employment with Nottinghamshire County Council. The school will now inform them that the Appeal Panel have not decided to re-instate your contract with Nottinghamshire County Council."

The Report to the TRA

97. On 30 January 2023 the Respondent reported the Claimant to the Teaching Regulation Agency. That is standard protocol where any Teacher is dismissed for gross misconduct. A copy of the referral form appears at pages 2216 to 2231.

The Report to the DBS

98. In or around January 2023 the Claimant was also referred by the Respondent to the Disclosure and Barring service ("DBS").

99. On 4 March 2023 the DBS informed the Claimant that no legal restrictions were being placed on her ability to take part in a regulated activity (pages 2118 to 2120).

100. On 25 April 2023 the Claimant was informed by the DBS that they had decided not to include her name in the barred list at that point in time (pages 2376 to 2377).

101. On 3 March 2023 the Claimant was informed by Solicitors acting on behalf of the Teaching Regulation Authority ("TRA") that she had been referred to the TRA. She was also informed by those Solicitors that they were instructed to carry out an investigation into her on behalf of the TRA (pages 2212 to 2215). A significant number of documents were provided to the Claimant alongside that letter as is apparent from pages 2214 and 2215.

102. On 16 January 2024 the Claimant was informed by the TRA that, as of that point in time, her case had been placed into abeyance (page 2351).

Law

The relevant Convention Rights

103. Article 6 is titled “Right to a fair trial”. Article 6(1) reads:

> *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

104. Article 9 is titled “Freedom of thought, conscience and religion”. It reads:

> *1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
>
> *2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

105. The question of whether an employee’s conduct is actually a manifestation of belief is to be answered by applying the test laid down in ***Eweida v UK [2013] 57 EHRR 8***. Paragraph 82 states:

> *“…In order to count as a “manifestation” within the meaning of art.9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question…”*

106. Article 10 is entitled “Freedom of expression”. It reads:

> *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The Equality Act 2010

107. Section 10 of the Equality Act 2010 (EqA 2010) reads:

(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

108. Section 136(2) and 136(3) EqA 2010 provide that the tribunal must take the following approach to the 'shifting burden of proof'. The initial burden is on the claimant to prove facts from which the tribunal could decide, in the absence of any other explanation, that the respondent contravened the provision concerned (i.e. a 'prima facie case'). The burden then shifts to the respondent to prove that it did not contravene the provision concerned. If the respondent is unable to do so, the Tribunal is obliged to uphold the claim.

109. Section 13(1) EqA 2010 reads:

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

110. In ***Page v NHS Trust Development Authority [2021] EWCA Civ 255, CA***, Underhill LJ decided that adverse treatment in response to an employee's manifestation of their belief was not to be treated as having occurred "because of" that manifestation if it constituted an objectively justifiable response to something "objectionable" in the way in which the belief was manifested. Underhill LJ set out the legal approach to cases involving the manifestation of religion or belief as follows:

"68. I start with a point which is central to the analysis on this issue. In a direct discrimination claim the essential question is whether the act complained of was done because of the protected characteristic, or, to put the same thing another way, whether the protected characteristic was the reason for it: see para. 29 above. It is thus necessary in every case properly to characterise the putative discriminator's reason for acting. In the context of the protected characteristic of religion or belief the EAT case-law has recognised a distinction between (1) the case where the reason is the fact that the claimant holds and/or manifests the protected belief, and (2) the case where the reason is that the claimant had

manifested that belief in some particular way to which objection could justifiably be taken. In the latter case it is the objectionable manifestation of the belief, and not the belief itself, which is treated as the reason for the act complained of. Of course, if the consequences are not such as to justify the act complained of, they cannot sensibly be treated as separate from an objection to the belief itself.

*69. The distinction is apparent from three decisions in cases where an employee was disciplined for inappropriate Christian proselytisation at work – **Chondol v Liverpool City Council [2009] UKEAT 0298/08, Grace v Places for Children [2013] UKEAT 0217/13** and **Wasteney v East London NHS Foundation Trust [2016] UKEAT 0157/15, [2016] ICR 643**. In essence, the reasoning in all three cases is that the reason why the employer disciplined the claimant was not that they held or expressed their Christian beliefs but that they had manifested them inappropriately. In **Wasteney** HH Judge Eady QC referred to the distinction as being between the manifestation of the religion or belief and the "inappropriate manner" of its manifestation: see para. 55 of her judgment. That is an acceptable shorthand, as long as it is understood that the word "manner" is not limited to things like intemperate or offensive language."*

111. Underhill LJ went on to endorse the distinction at paragraph 74 as follows:

*"So far as I am aware the distinction applied by the Tribunal has not been endorsed in this Court, but it is in my view plainly correct. It conforms to the orthodox analysis deriving from **Nagarajan**: in such a case the "mental processes" which cause the respondent to act do not involve the belief but only its objectionable manifestation. An analogous distinction can be found in other areas of employment law – see paras. 19-21 of my judgment in **Morris v Case Number: 1601578/2021 12 Metrolink RATP DEV Ltd [2018] EWCA Civ 1358, [2019] ICR 90**. Also, and importantly, although it gets there by a different route (because the provisions in question are drafted in very different ways), the recognition of that distinction in the application of section 13 achieves substantially the same result as the distinction in article 9 of the Convention between the absolute right to hold a religious or other belief and the qualified right to manifest it. It is obviously highly desirable that the domestic and Convention jurisprudence should correspond."*

112. Thus if the reason for the treatment arose from the manifestation of the Claimant's beliefs, a Tribunal is required to ask itself whether the manifestation was the reason for the treatment or whether it was the particular way in which that individual manifested them which was the reason for the treatment complained of.

113. If it was the way in which the Claimant manifested their beliefs which was the reason for the treatment, a Tribunal must ask whether the response to that manifestation was objectively justified.

114. The question of whether the employer's response is objectively justifiable is to be answered by reference to the Eady J's guidance at the Employment Appeal stage of ***Higgs v Farmor's School [2023] EAT 89***. She states:

> *"93. For my part, I consider that a danger can arise from any attempt to lay down general guidelines in cases such as this. Experience suggests that issues arising from the exercise of rights to freedom of religion and belief, and to freedom of expression, are invariably fact specific. Although the public debate around these issues tends to be conducted through the prism of categories and labels, that is not an approach that can properly inform the decisions taken in individual cases. The values that underpin the right to freedom of religion and belief and of freedom of expression – pluralism, tolerance and broadmindedness (per **Sahin v Turkey (2007) 44 EHRR 5; Handyside v UK 1 EHRR 737**) – require nuanced decision-making; there is no 'one size fits all' approach.*
>
> *94. All that said, I can see that, within the employment context, it may be helpful for there to be at least be some mutual understanding of the basic principles that will underpin the approach adopted when assessing the proportionality of any interference with rights to freedom of religion and belief and of freedom of expression.*
>
> *(1) First, the foundational nature of the rights must be recognised: the freedom to manifest belief (religious or otherwise) and to express views relating to that belief are essential rights in any democracy, whether or not the belief in question is popular or mainstream and even if its expression may offend.*
>
> *(2) Second, those rights are, however, qualified. The manifestation of belief, and free expression, will be protected but not where the law permits the limitation or restriction of such manifestation or expression to the extent necessary for the protection of the rights and freedoms of others. Where such limitation or restriction is objectively justified given the manner of the manifestation or expression, that is not, properly understood, action taken because of, or relating to, the exercise of the rights in question but is by reason of the objectionable manner of the manifestation or expression.*
>
> *(3) Whether a limitation or restriction is objectively justified will always be context-specific. The fact that the issue arises within a relationship of employment will be relevant, but different considerations will inevitably arise, depending on the nature of that employment.*
>
> *(4) It will always be necessary to ask (per **Bank Mellat**): (i) whether the objective the employer seeks to achieve is sufficiently important to justify the limitation of the right in question; (ii) whether the limitation is rationally connected to that objective; (iii) whether a less intrusive limitation might be imposed without undermining the achievement of the objective in question; and (iv) whether, balancing the severity of the limitation on the rights of the worker concerned against the importance of the objective, the former outweighs the latter.*

(5) In answering those questions, within the context of a relationship of employment, the considerations identified by [the Archbishops' Council] are likely to be relevant, such that regard should be had to: (i) the content of the manifestation; (ii) the tone used; (iii) the extent of the manifestation; (iv) the worker's understanding of the likely audience; (v) the extent and nature of the intrusion on the rights of others, and any consequential impact on the employer's ability to run its business; (vi) whether the worker has made clear that the views expressed are personal, or whether they might be seen as representing the views of the employer, and whether that might present a reputational risk; (vii) whether there is a potential power imbalance given the nature of the worker's position or role and that of those whose rights are intruded upon; (viii) the nature of the employer's business, in particular where there is a potential impact on vulnerable service users or clients; (ix) whether the limitation imposed is the least intrusive measure open to the employer."

115. That guidance was endorsed by Underhill LJ, at paragraph 113, in the Court of Appeal stage of the proceedings - **[2025] EWCA Civ 109**. Underhill LJ also made clear that the burden is on the employer to prove that its response – i.e. its interference with the employee's qualified right to express their belief or to freedom of expression – is proportionate (paragraph 77).

116. In relation to harassment, section 26(1) EqA 2010 provides that:

(1) A person (A) harasses another (B) if—

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

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

(i) violating B's dignity, or

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

117. Section 26(4) EqA 2010 provides:

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

(a) the perception of B;

(b) the other circumstances of the case;

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

Discrimination – Time Limits

118. Section 123 EqA 2010 provides:

(1) Subject to sections 140A and 104B proceedings on a complaint within section 120 may not be brought after the end of—

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

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

119. The 3-month period allowed by section 123(1)(a) is extended by the legislation governing the effect of Early Conciliation (see section 140B of EqA 2010). The period from the day after "Day A" (the day early conciliation commences) until "Day B" (the day the Early Conciliation certificate is received or deemed to be received by the claimant) does not count towards the 3-month period, and the claimant always has at least one month after Day B to make a claim.

120. There is no presumption that time will be extended. In respect of this, we note the following passages from the Court of Appeal judgment in the case of ***Robertson v Bexley Community Centre [2003] IRLR 434***:-

"If the claim is out of time there is no jurisdiction to consider it unless the tribunal considers it is just and equitable in the circumstances to do so." (para 23)

"…the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time, so the exercise of discretion is the exception rather than the rule." (para 25).

121. These comments have been supported in ***Department of Constitutional Affairs v Jones [2008] IRLR 128 EAT*** and ***Chief Constable of Lincolnshire Police v Caston [2010] IRLR 327 CA***.

122. The words "just and equitable" give the Tribunal a broad discretion in deciding whether to extend the time allowed for making a claim. A summary of the case law was given by the EAT in ***Rathakrishnan v Pizza Express (Restaurants) Ltd [2016] ICR 283*** at paragraphs 11 to 14 (per HHJ Peter Clark).

123. The Court of Appeal considered the discretion afforded to Tribunals in ***Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640*** at paragraphs 18 and 19, per Leggatt LJ:

"18. First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in

*these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (**see British Coal Corporation v Keeble [1997] IRLR 336**), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see **Southwark London Borough Council v Afolabi [2003] EWCA Civ 15; [2003] ICR 800**, para 33…*

19. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

124. Underhill LJ commented in ***Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23***, that a rigid adherence to any checklist of factors (such as the list in section 33 of the Limitation Act 1980) can lead to a mechanistic approach to what is meant to be a very broad general discretion. He observed in paragraph 37:

"The best approach for a tribunal in considering the exercise of the "discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time including in particular…"The length of, and the reasons for, the delay".

125. A lack of evidence from the Claimant about any delay is a relevant factor to consider in deciding whether or not to exercise discretion, but a not necessarily decisive one as seen in the case of ***Owen v Network Rail Infrastructure Ltd [2023] EAT 106***.

Protected Disclosures

126. Section 43A of the Employment Rights Act 1996 ("ERA 1996") defines a protected disclosure as "a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

127. Section 43B of the ERA 1996 ("Disclosures qualifying for protection") provides as follows:

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following –
(a) That a criminal offence has been committed, is being committed or is likely to be committed,

(b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
(c) That a miscarriage of justice has occurred, is occurring or is likely to occur,
(d) that the health or safety of any individual, has been, is being or is likely to be endangered;
(e) That the environment has been, is being or is likely to be damaged, or
(f) That information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed…

128. Under section 43C of the ERA 1996 ("Disclosure to employer or other responsible person"):

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

129. In ***Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325*** the EAT considered what amounts to a 'disclosure of information' and held that there is a distinction between disclosing information, which means 'conveying facts' and making allegations or expressing dissatisfaction. It gave, as an example of disclosure of information, a hospital employee saying 'wards have not been cleaned for two weeks' or 'sharps were left lying around'. In contrast, the EAT held, a statement that 'you are not complying with health and safety obligations' is a mere allegation.

130. The Court of Appeal, in ***Kilraine v London Borough of Wandsworth [2018] ICR 1850***, established that 'information' and 'allegation' are not mutually exclusive. There must be sufficient factual content tending to show one of the matters in subsection 43B(1) of the ERA 1996 in order for there to be a qualifying disclosure.

131. The information disclosed by the worker does not have to be true, but rather, the worker must reasonably believe that it tends to show one of the matters falling within section 43(B)(1) ERA 1996. The employee must also reasonably believe that the disclosure is in the public interest. When deciding whether the worker had the relevant 'reasonable belief' the test to be applied is both subjective (i.e. did the individual worker have the reasonable belief) and objective (i.e. was it objectively reasonable for the worker to hold that belief). ***Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4***, which was endorsed in ***Phoenix House Ltd v Stockman [2017] ICR 84***, in which the EAT held that, on the facts believed to exist by an employee, a judgment must be made, first, as to whether the worker held the belief and, secondly, as to whether objectively, on the basis of the facts, there was a reasonable belief in the truth of the complaints.

132. When considering whether a disclosure is in the public interest, the Tribunal must decide what the worker considered to be in the public interest, whether the worker believed that the disclosure served that interest and whether that belief was held reasonably.

133. In ***Chesterton Global Ltd (t/a Chestertons) and another v Nurmohamed [2018] ICR 731*** the EAT held that it is not for the Tribunal to consider for itself whether a disclosure was in the public interest, but rather the questions are (1) whether the worker making the disclosure in fact believes it to be in the public interest and (2) whether that belief was reasonable. Tribunals should be careful not to substitute their views of whether disclosures are in the public interest for that of the worker.

134. A qualifying disclosure is only protected if made in accordance with sections 43C to 43H of the Employment Rights Act 1996. The relevant sections in relation to this matter read:

> ***43C.— Disclosure to employer or other responsible person.***
>
> *(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure [...]—*
>
> *(a) to his employer, or*
>
> *(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—*
>
> *(i) the conduct of a person other than his employer, or*
>
> *(ii) any other matter for which a person other than his employer has legal responsibility, to that other person.*
>
> *(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.*
>
> ***43D. Disclosure to legal adviser.***
>
> *A qualifying disclosure is made in accordance with this section if it is made in the course of obtaining legal advice.*
>
> ***43G.— Disclosure in other cases.***
>
> *(1) A qualifying disclosure is made in accordance with this section if—*
>
> *(b) the worker reasonably believes that the information disclosed, and*

any allegation contained in it, are substantially true,

(c) he does not make the disclosure for purposes of personal gain,

(d) any of the conditions in subsection (2) is met, and

(e) in all the circumstances of the case, it is reasonable for him to make the disclosure.

(2) The conditions referred to in subsection (1)(d) are—

(a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with section 43F,

(b) that, in a case where no person is prescribed for the purposes of section 43F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or

(c) that the worker has previously made a disclosure of substantially the same information—

(i) to his employer, or

(ii) in accordance with section 43F.

(3) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to—

(a) the identity of the person to whom the disclosure is made,

(b) the seriousness of the relevant failure,

(c) whether the relevant failure is continuing or is likely to occur in the future,

(d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,

(e) in a case falling within subsection (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with section 43F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and

(f) in a case falling within subsection (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer.

(4) For the purposes of this section a subsequent disclosure may be

regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in subsection (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.

43H.— Disclosure of exceptionally serious failure.

(1) A qualifying disclosure is made in accordance with this section if—

(b) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

(c) he does not make the disclosure for purposes of personal gain,

(d) the relevant failure is of an exceptionally serious nature, and

(e) in all the circumstances of the case, it is reasonable for him to make the disclosure.

(2) In determining for the purposes of subsection (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to the identity of the person to whom the disclosure is made.

135. In ***Blackbay Ventures Ltd (t/a Chemistree) v Gahir 2014 ICR 747, EAT*** the Employment Appeal Tribunal gave guidance about the correct approach to be adopted by Employment Tribunals when considering claims by employees that they had been victimised following the making of protected disclosures. Paragraph 98 reads:

"It may be helpful if we suggest the approach that should be taken by Employment Tribunals considering claims by employees for victimisation for having made protected disclosures.

1. Each disclosure should be identified by reference to date and content
2. The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered or as the case may be should be identified.

3. The basis upon which the disclosure is said to be protected and qualifying should be addressed.

4. Each failure or likely failure should be separately identified.

5. 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. It is not sufficient as here for the Employment Tribunal to simply lump together a number of

complaints, some of which may be culpable, but others of which may simply have been references to a check list of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the Employment Tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the Employment Tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest of act or deliberate failure to act relied upon and it will not be possible for the Appeal Tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an Employment Tribunal to have regard to the cumulative effect of a number of complaints providing always they have been identified as protected disclosures.

6. The Employment Tribunal should then determine whether or not the Claimant had the reasonable belief referred to in S43B1 and under the 'old law' whether each disclosure was made in good faith; and under the 'new' law whether it was made in the public interest.

7. Where it is alleged that the Claimant has suffered a detriment, short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied upon by the Claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the Respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act.

8. The Employment Tribunal under the 'old law' should then determine whether or not the Claimant acted in good faith and under the 'new' law whether the disclosure was made in the public interest."

Separability

136. With regard to the separability principle, in ***Higgs v Farmor's School [2025] EWCA Civ 109*** Underhill LJ states:

"57. In a case where the 2010 Act (or its predecessors), and other analogous legislation, affords protection to particular kinds of conduct by an employee – for example, in victimisation or whistleblowing cases, for making complaints of discrimination or making protected disclosures – the case-law recognises that it may be necessary to decide whether the real cause of the treatment is the conduct itself or is some properly separable feature of it. This is sometimes referred to as "the separability principle". This line of authority is potentially applicable in a (true) manifestation case, since in such a case the court is concerned (untypically for a direct

discrimination claim) with a motivation based not on the possession of the protected characteristic but on particular conduct on the part of the employee.

*58. The most recent discussion of the separability principle can be found in the judgment of Simler LJ in **Kong v Gulf International Bank (UK) Ltd [2022] EWCA Civ 941, [2022] ICR 1513**. The case concerned an alleged dismissal for making a protected disclosure. At paras. 47-55 of her judgment Simler LJ considered a number of authorities concerned with protected conduct of various kinds and quotes various passages from them which I need not identify. At paras. 56-57 she says:*

> *"56. I would endorse and gratefully adopt the passages I have cited as correct statements of law. They recognise that there may in principle be a distinction between the protected disclosure of information and conduct associated with or consequent on the making of the disclosure. For example, a decision-maker might legitimately distinguish between the protected disclosure itself, and the offensive or abusive manner in which it was made, or the fact that it involved irresponsible conduct such as hacking into the employer's computer system to demonstrate its validity. In a case which depends on identifying, as a matter of fact, the real reason that operated in the mind of a relevant decision-maker in deciding to dismiss (or in relation to other detrimental treatment), common sense and fairness dictate that tribunals should be able to recognise such a distinction and separate out a feature (or features) of the conduct relied on by the decision-maker that is genuinely separate from the making of the protected disclosure itself. In such cases, as Underhill LJ observed in **Page**, the protected disclosure is the context for the impugned treatment, but it is not the reason itself.*
>
> *57. Thus the 'separability principle' is not a rule of law or a basis for deeming an employer's reason to be anything other than the facts disclose it to be. It is simply a label that identifies what may in a particular case be a necessary step in the process of determining as a matter of fact was the real reason for impugned treatment. Once the reasons for particular treatment have been identified by the fact-finding tribunal, it must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn. Were this exercise not permissible, the effect would be that whistleblowers would have immunity for behaviour or conduct related to the making of a protected disclosure no matter how bad, and employers would be obliged to ensure that they are not adversely treated, again no matter how bad the associated behaviour or conduct."*

*59. Simler LJ went on at para. 58 to refer to the decision of the EAT in **Martin v Devonshires Solicitors UKEAT/86/10, [2011] ICR 352**, in which I had said:*

> *"Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to 'ordinary' unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases."*

The statement in that passage that the employer who purports to object to "ordinary" unreasonable behaviour "should be treated as objecting to the complaint itself" might suggest some kind of rule of law, but Simler LJ emphasised that that was not the case. The significance of the disproportionality of an employer's response was evidential only: that is, as evidence that their motivation was in fact the protected disclosure itself and not to the manner in which it was made (see para. 60).

60. Elisabeth Laing LJ in her concurring judgment in ***Kong*** *expressed some hesitation about references to "the separability principle", given that, as Simler LJ had herself said, it did not connote a rule of law."*

Automatic Unfair Dismissal - Section 103A ERA 1996

137. Section 103A ERA 1996 reads:

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

138. The principal reason is the reason that operated on the employer's mind at the time of the dismissal. The question of whether the principal reason for dismissal was a protected disclosure is a question of fact.

Ordinary Unfair Dismissal

139. Where the dismissal is admitted, the respondent has the burden of establishing that it dismissed the claimant for an admissible reason in accordance with section 98 (1) of the ERA 1996. Misconduct is an admissible reason.

140. In a misconduct dismissal the Tribunal in determining the fairness of the dismissal considers the following factors in accordance with ***BHS v Burchell (1978) IRLR 379*** namely whether (a) the employer believed that the employee was guilty of misconduct; (b)the employer had reasonable grounds for believing

that the employee was guilty of misconduct; and (c) at the time it held that belief it had carried out a reasonable investigation.

141. In terms of investigations into possible misconduct, there is no set rule as to the level of inquiry the employer should conduct into the employee's (suspected) misconduct in order to satisfy the test in ***BHS v Burchell (1978) IRLR 379***. Thus, in ***Miller v William Hill Organisation Ltd EAT 0336/12*** the EAT acknowledged that there is a limit to the steps an employer should be expected to take to investigate an employee's alleged misconduct. How far an employer should go will depend on the circumstances of the case, including the amount of time involved, the expense and the consequences for the employee being dismissed

142. In terms of the decision to dismiss, the Tribunal must consider whether the employer's decision to dismiss fell within the band of reasonable responses that a reasonable employer in those circumstances might have adopted. In ***Iceland Frozen Foods Limited v Jones (1982) IRLR 439*** Mr Justice Browne-Wilkinson summarised as follows:

> *"We consider that the authorities establish that in law the correct approach for the… tribunal to adopt in answering the question posed by s.98(4) is as follows:*
>
> *(1) the starting point should always be the words of s.98(4) themselves;*
>
> *(2) in applying the section [a] tribunal must consider the reasonableness of the*
>
> *employer's conduct, not simply whether they (the members of the… tribunal) consider the dismissal to be fair;*
>
> *(3) in judging the reasonableness of the employer's conduct [a] tribunal must not substitute its decision as to what was the right course to adopt for that of 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… 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."*

143. The range of reasonable responses test applies not only to the decision to dismiss but also to the investigation, meaning that the Tribunal must decide whether the investigation was reasonable and not whether it would have investigated things differently (***Sainsbury's Supermarket Limited v Hitt (2003) IRLR 23***).

144. In ***Turner v East Midlands Trains Ltd [2012] EWCA Civ 1470, CA*** Elias LJ considered that section 98(4) of the ERA 1996 was compatible with Article 8 in that there was no "material distinction" between the procedural safeguards afforded by the two. He accepted that, where Article 8 interests are engaged, matters bearing on the potentially adverse consequences to the employee have to be taken into account when determining the fairness of the dismissal. But, in his view, the range of reasonable responses test already allowed for a heightened standard to be adopted in circumstances where the dismissal's consequences were particularly grave.

Wrongful Dismissal

145. In ***Briscoe v Lubrizol Ltd 2002 IRLR 607, CA***, the Court of Appeal approved the test set out in ***Neary and anor v Dean of Westminster 1999 IRLR 288***, where Lord Jauncey asserted that the conduct 'must so undermine the trust and confidence which is inherent in the particular contract of employment that the [employer] should no longer be required to retain the [employee] in his employment'.

Legal Submissions

138. We were provided with written skeleton arguments from both parties. We were also provided with written submissions. We incorporate those documents by reference. Both parties also made oral submissions which addressed the points outlined in their written skeletons and/or submissions.

139. We were also referred to the following cases by the parties:

Aspinall v MSI Forget Ltd [2002] UKET/0891/01 3

X v Y [2004] EWCA Civ 662, [2004] ICR 1634 8

Bolton School v Evans [2006] EWCA Civ 1653, [2007] ICR 641 34

Babula v Waltham Forest College [2007] EWCA Civ 174 [2007] ICR 1026 47

Guja v Moldova (Application no. 14277/04, Judgment of 12th February 2008, GC) 68

Fecitt v NHS Manchester [2011] EWCA Civ 1190 [2012] ICR 372 99

Turner v East Midlands Trains [2012] EWCA Civ 1470 116

Abercrombie v Aga Rangemaster Ltd [2014] EWCA Civ 1148, [2014] ICR 209 136

Norbrook Laboratories (GB) Ltd v Shaw [2014] UKEAT/150/13, [2014] ICR 540 166

Blackbay Ventures Ltd v Gahir [2014] UKEAT/449/12, [2014] ICR 747, 176

Panayiotou v Kernaghan [2014] UKEAT/0436/13 202

Barton v RB Greenwich [2015] UKEAT/0041/14 234

Croydon Health Services NHS Trust v Beatt [2017] EWCA Civ 401, [2017] ICR 1240 278

Kilraine v Wandsworth London Borough Council [2018] EWCA Civ 1436, [2018] ICR 1850 312

Timis v Osipov [2018] EWCA Civ 2321, [2019] ICR 655 327

Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73, [2020] ICR 1226 359

Forstater v Centre for Global Development Europe [2021] UK EAT 0105/20, [2022] ICR 1 390

Gawlik v Liechtenstein (Application no. 23922/19, Judgment of 16th February 2021) 438

Page v NHS Trust Development Authority [2021] EWCA Civ 255, [2021] IRLR 391 461

Higgs v Farmor's School (Practice and Procedure - application for recusal of lay member - fair hearing - appearance of bias) [2022] EAT 101, [2022] ICR 1489 477

Kong v Gulf International Bank (UK) Ltd [2022] EWCA Civ 941, [2022] ICR 1513 501

Higgs v Farmor's School (Practice and Procedure - application for recusal of lay member - fair hearing - appearance of bias) [2023] EAT 45, [2023] ICR 875 536

Higgs v Farmor's School [2023] EAT 89 549

Wicked Vision Limited v Rice [2024] EAT 29 595

Omooba v Global Artists [2024] EAT 30

Re 'S' (a Child) (Identification: Restrictions on Publication) [2004] UKHL 47, [2005] 1AC.

X v Dartford and Gravesham NHS Trust (Personal Injury Bar Association and Another Intervening) [2015] 1WLR 3647, [2015] EWCA Civ 96.

Higgs v Farmor's School and Others [2025] EWCA Civ 109.

140. We carefully considered the relevant law, skeleton arguments and submissions

before reaching our decision.

Conclusions

141. To reach our conclusions, we return to the list of issues. These were the pertinent issues that the Tribunal had to determine.

142. Issue 1 sets out the disclosures that the Claimant relies on as qualifying disclosures within the meaning of section 43B ERA 1996. There are six disclosures set out at issues 1(a) to 1(f). We turn to those now.

143. In relation to issue 1(a) it is agreed by the parties that all information provided by the Claimant in and under the cover of her letter to the School's Governors dated 5 October 2021was a protected disclosure.

Issue 1(b) All information provided by the Claimant in and under the cover of her letter to the School's Governors dated 14 October 2021

144. In order to determine whether this is a qualifying disclosure, the Tribunal also needs to determine issues 2(a) to 2(d) for not only this issue but also issues 1(b), 1(c), 1(d) and 1(e).

145. Those are:

Issue 2 (a) Whether the Claimant believed the disclosure to be in the public interest;

Issue 2 (b) Whether the Claimant believed that the disclosure tended to show that the Respondent and/or the School had failed, was failing and/or was likely to fail to comply with legal obligations to which they were subject;

Issue 2 (c) Whether the Claimant believed that the disclosure tended to show that the health and safety of Child X had been, was being and/or was likely to be damaged.

Issue 2 (d) If the Claimant had beliefs in subparas (a), (b) or (c) above, whether those beliefs were reasonable.

146. In respect of Issue 1(b) the Tribunal first notes that there was no letter sent by the Claimant dated 14 October 2021. This is not something that was addressed by the Claimant's representative in either their skeleton argument or during written or oral submissions. However, the Tribunal notes that a letter was instead sent by the Claimant on 14 January 2022. In order to ensure fairness to the Claimant, we proceed on the basis that is the letter relied on. That letter appears in the bundle at page 594 to 597. In order to comprehend that letter and place it in context, it must be read in conjunction with:

a. the letter that had been circulated to Parents and Carers of children at the school on 22 July 2021. That appears at page 75.

b. The detailed letter that the Claimant had received from a Governor dated

28 October 2021 (pages 572 to 583).

The reason for that is that both of those letters are explicitly referred to in bold heading line of the Claimant's letter of 14 January 2022.

147. The Tribunal accepts that there was a disclosure of information in the Claimant's letter of 14 January 2022. In regard to issue 2(a) we also accept that the claimant believed the disclosure to be in the public interest.

148. With regard to issue 2(b), the Tribunal accepts that the letter of 14 January 2022 disclosed information that demonstrated that the Claimant had a belief that there was a failure to comply with legal obligations. We reach that conclusion as the Claimant makes clear that she considers the School is failing to comply with its duty under section 175 Education Act 2002.

149. We do not however accept that the letter disclosed information that tended to show that the health and safety of Child X had been, was being and/or was likely to be damaged (issue 2(c)). Our reason for reaching that conclusion is that the letter makes no specific reference to individual children or indeed Child X. This letter is about arrangements in general and is effectively a disclosure of general scientific evidence. We reach that conclusion even after reading the letter in the context of the information referred to above i.e. the letter to Parents and Carers of children at the school on 22 July 2021 and the letter that the Claimant had received from the Governor dated 28 October 2021.

We also do not accept that the Claimant's beliefs were reasonable at this point in time (issue 2(d)). We remind ourselves of the comments of Wall LJ in ***Babula v Waltham Forest College [2007] EWCA Civ 174 [2007] ICR 1026 47***. At paragraph 75 of that case he states:

> *"Provided his belief (which inevitably is subjective) is held by the Tribunal to be objectively reasonable, neither (1) the fact that the belief turns out to be wrong - nor, (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence - is, in my judgment, sufficient, of itself, to render the belief unreasonable and thus deprive the whistle blower of the protection afforded by the statute".*

The Claimant's belief, which is subjective, must be held by the Tribunal to be objectively reasonable. Here, although the Claimant subjectively believed that the disclosure was in the public interest, that belief was not objectively reasonable. We make that conclusion as, by the point she wrote that letter, she had received a detailed and considered response from the Governor appointed to deal with her grievance dated 28 October 2021. The response provided the Claimant with a meaningful assessment of why there could not be said to be a statutory breach of section 175 of the Education Act 2002. Even taking into account the ***Babula*** approach, the Claimant's stance in this letter was unjustified and unreasonable. She turned a blind eye to the considered response that she had received and instead maintained that the School needed to make a decision on the merits of her argument, as demonstrated by the 5 questions she posed the Headteacher at the end of her letter. In short, the Claimant thought that her opinion was correct and that the approach adopted by the School and by Child X and their parents was incorrect. That

was clearly unreasonable as the Claimant was not in possession of all relevant information regarding Child X at any point in time including, for example, Child X's medical information.

Issue 1(c) All information provided by the Claimant in and under the cover of her letter to LADO dated 11 February 2022

150. This letter appears at pages 601 to 996 of the bundle. The Tribunal accepts that there was a disclosure of information in this letter. In regard to issue 2(a) we also accept that, subjectively, the claimant believed the disclosure to be in the public interest.

151. With regard to issue 2(a) we accept that letter disclosed information that demonstrated that the Claimant had a belief that there was a failure to comply with legal obligations as the Claimant raises that she considers the School is failing to comply with its duty under section 175 Education Act 2002 in paragraph 3.

152. We also accept that the letter disclosed information that tended to show that the health and safety of Child X had been, was being and/or was likely to be damaged (issue 2(c)). We reach that conclusion as, although not specifically referred to, Child X is alluded to in paragraphs 1, 4 and 27.

153. We do not accept that the Claimant's beliefs were reasonable at that point in time. Although she subjectively believed that the disclosure was in the public interest, that belief was not objectively reasonable. Again we make that conclusion as, by the point she wrote that letter, she had received a detailed and considered response from a Governor dated 28 October 2021. The Governor's response provided the Claimant with a meaningful assessment of why there could not be said to be a statutory breach of section 175 of the Education Act 2002.

154. Again, even taking into account the ***Babula*** approach, it was not objectively reasonable for the Claimant to hold that belief. We reach that conclusion as the Claimant failed to take into account that she had no knowledge of Child X's particular circumstances. By that we mean Child X's expressed wishes, their parent's wishes and the opinions of their medical professionals e.g. their GP and CAMHS. The Claimant was primarily motivated by her mistaken belief that the School had what she termed a "blanket affirmation approach" to children who might question their gender identity. That was a misguided concern and we have not been presented with evidence to persuade us that such an approach was ever taken by the School. Instead, the School carefully considered the interests of each child, on an individual basis, if matters of gender identity arose.

155. The Tribunal also concludes that providing the LADO with expert reports drafted for litigation which was unrelated to this complaint serves to demonstrate that the claimant's beliefs were not reasonable at this point in time. We reach that conclusion as the Claimant admitted during cross-examination that she had not fully read the reports she submitted to the Respondent when this letter was sent. In addition the experts who wrote the reports in question had no knowledge of Child X's personal circumstances. These were reports drafted for cases entirely unrelated to this complaint and so of little to no value when considering the health and safety of Child X.

Issue 1(d) All information provided by the Claimant to her solicitors as part of preparing the judicial review claim, and subsequently disclosed to the High Court and to the Respondents by the Claimant's solicitors

156. The Tribunal concludes that issue 1(d) is not a protected disclosure. Our reason for reaching that conclusion is that the Claimant has failed to provide sufficient evidence to the Tribunal what information she provided to her solicitors that would enable the Tribunal to satisfy itself that there was a disclosure of information let alone a protected disclosure. We reach that conclusion after having regard to guidance provided by the Employment Appeal Tribunal in ***Blackaby Ventures Ltd (t/a Chemistree) v Gahir 2014 ICR 747, EAT*** regarding the approach that should be taken by Employment Tribunals considering claims by employees for victimisation for having made protected disclosures.

157. After having regard to ***Blackaby***, and in particular paragraph 98, we conclude that the Claimant has failed to establish that she made a disclosure of information. Nowhere does the Claimant state what she information disclosed to her solicitor or indeed when. Her witness statement for the purposes of these Tribunal proceedings, which deals the matter at paragraphs 75 to 77, does not provide sufficient detail. The Claimant merely states that she "*informed my lawyers about the information I had obtained from CPOMS I sought advice about what I should do with it*". This does not identify the sequence of events or the disclosure made. Consequently, the Tribunal is not in a position to safely identify what it was that amounts to a qualifying disclosure of information or when it was disclosed.

Issue 1(e) Accessing the information via CPOMS system and conversations with colleagues, and then sharing that information with the Claimant's solicitors and/or with the High Court

Issue 1(f) Whether the actions referred to in subpara 1(e) above were an integral part of the protected disclosure identified in subpara 1(d) above.

158. Due to the manner in which the list of issues has been drafted, the Tribunal shall consider Issues (e) and (f) together. The Tribunal acknowledges that the Claimant has stated that the information disclosed to the Respondent comprised two parts. Those being "Part 1: general scientific evidence" and "Part 2: specific sensitive information about child X".[4] The Claimant asserts that "Part 2" of the information was readily accessible by her employer, hence it is part of the "context", as in ***Kilraine,*** and should be regarded as part of disclosure. We conclude that such an approach is misconceived. ***Kilraine*** demonstrates that where a verbal allegation is made, then the position at the time and the context in which it was made might provide relevant facts to establish sufficient factual content in order to meet the objective requirement in section 43B(1) for a "disclosure of information". That is apparent from paragraph 41 of ***Kilraine***. Here, the Claimant is arguing that the Respondent had the opportunity to investigate whether Child X might be affected by the matters raised in the general scientific evidence and also had the ability to access child specific information. We conclude that such an approach attempts to unnaturally stretch the meaning of a "protected disclosure".

[4] Paragraphs 23 and 24 of the Claimant's Skeleton argument.

159. We accept that correct approach is to be seen in ***Bolton School v Evans [2006] EWCA Civ 710, CA*** where it was held that "disclosure" has no special meaning. In that case the hacking into the system was a separate act which was not protected by whistleblowing legislation. By analogy, the Tribunal finds that the Claimant's accessing of information via CPOMS was not a "disclosure" and accessing Child X's information was a separate act and so not protected by whistleblowing legislation. That conclusion is further reinforced by the comments of Underhill LJ regarding separability at paragraphs 57 to 59 of ***Higgs v Farmor's School [2025] EWCA Civ 109***.

160. We now deal with the issue of separability in greater detail and why we have decided that the accessing of information by the Claimant should be separated out. It is apt to deal with it at this point as it permeates through a number of later stages of the Claimant's claim. The Claimant's case is simply that her conduct should be treated as a whole and not separated out from her alleged protected disclosures, the enjoyment of her Convention rights, and the manifestation of her religious or philosophical beliefs. We conclude that it is appropriate to separate out the accessing of information because:

c. The Claimant stated under cross examination that she accessed information about Child X because she was "professionally curious". This a fundamentally weak basis to justify her actions and also demonstrates that she did not have specific information about Child X that showed that Child X was at risk of harm. Indeed at no point did the Claimant log any concerns about Child X's welfare onto the CPOMS systems despite her extensive use of CPOMS throughout the relevant period. It is clear to us that the Claimant was accessing CPOMS merely to view, access and externally record information about Child X and such use of CPOMS was unauthorised. Despite that, and knowing that what she was doing was unauthorised, the Claimant accessed CPOMS on multiple occasions over a period of more than five months.

d. The Tribunal accepts that the Respondent's submission that this amounts to deliberate surveillance of Child X especially given the fact that at some point, the Claimant started copying information that she discovered from CPOMS. The Claimant freely admitted during cross examination that she transferred the data regarding Child X to her personal computer and then onto a memory stick. This was an obvious breach of Child X's confidential information.

e. We also find that the Claimant's actions and alleged motivation for accessing Child X's data are not credible. In November 2021, the Claimant apparently uncovered "red flag information" regarding Child X. (page 1257 of the bundle). Despite that, the Claimant did nothing with that information. She did not create an entry on CPOMS or approach any of the Safeguarding Leads. Instead she proceeded to access and collect more of Child X's data. Under cross-examination, the Claimant said the reason she did not act upon the red flag information was because the Head also had access to CPOMS. That is an inadequate explanation and we accept the Respondent's submission that it cannot be a discharge of the

Claimant's professional obligations to assume that someone else was aware in respect of welfare issues. To do so would run counter to the KCISE policy.

161. The effect of the above is that all actions mentioned in issues 1(e)-(f) are not qualifying disclosures. The Claimant's accessing of information via CPOMS was not a "disclosure" and accessing Child X's information was a separate act not protected by whistleblowing legislation. The Tribunal also concludes that, in relation to issue 1(e) it has insufficient evidence from the Claimant that she had conversations with colleagues that caused her to have concerns about Child X. We reach that conclusion as there is simply insufficient evidence in the witness statement that the Claimant prepared for the benefit of her Tribunal claim to support that assertion.

Issue 3. In relation to 1(e) above:

a. Whether the disclosure was "made in the course of obtaining legal advice" within the meaning of s. 43D ERA 1996. If not:

b. Whether the Claimant believed that the information disclosed, and any allegation contained in it, were substantially true;

c. If so, whether that belief was reasonable;

162. We now move to issues 3(a), (b) and (c) which we shall deal with together. To satisfy the requirements of section 43D ERA 1996 the disclosure of information must be made to a legal adviser. As issue 1(e) reads, "*Accessing the information via CPOMS system and conversations with colleagues, and then sharing that information with the Claimant's solicitors and/or with the High Court*", it can only be the sharing of information with the Claimant's solicitors that is in issue here as they are the only legal advisers mentioned in issue 1(e). We have also already concluded that the Claimant's accessing of information via CPOMS was not a "disclosure" and so accessing Child X's information was a separate act not protected by whistleblowing legislation.

163. For the reasons previously given, we are unable to conclude what disclosure of information took place to the Claimant's legal advisers and so cannot proceed to conclude that there was a protected disclosure. Quite simply, the Claimant has failed to provide sufficient evidence in relation to what information she provided to her solicitors, that would enable the Tribunal to satisfy itself that there was a disclosure of information.

Issue 3. In relation to 1(e) above:

d. Whether the disclosure was of "substantially the same information", within the meaning of s. 43G(2)(c) ERA 1996, as that previously disclosed to the Respondent;

164. We first consider whether the position in respect of the information provided to the Claimant's solicitors. In short, we are again unable to conclude what disclosure of information took place between the Claimant and her solicitors and so cannot proceed to conclude that there was a protected disclosure. The Tribunal it is not in a

position to safely identify what it was that amounts to a qualifying disclosure of information or equally importantly, when it was disclosed.

165. We next consider the information disclosed to the High Court. Although not expressly touched on in her evidence or submissions, it appears to the Tribunal that the information conveyed to the High Court was the information contained in her witness statement for judicial review purposes. We had no evidence to suggest it was otherwise nor did Mr Stroilov seek to suggest otherwise. With that in mind, it is clear to Tribunal that disclosure of information to the High Court was not "substantially the same information", within the meaning of s. 43G(2)(c) ERA 1996 as that previously disclosed to the Respondent. On the Claimant's own case, it was "prima facie different"[5].

166. If we are wrong on that, we note that section 43G(1)(b) requires the Claimant to have a reasonable belief that the information disclosed, and any allegation contained in it, are "substantially true". We do not accept that at the time the information was disclosed to the High Court in April 2022 the Claimant reasonably believed that the allegations were substantially true. By April 2022 she was motivated by her mistaken belief that the School had what she termed a "blanket affirmation approach" to children who might question their gender identity. She had by now failed to take on board the considered response of 28 October 2021 that was sent to her regarding her grievance, or consider that she was not privy to information regarding Child X that might justify the School's approach. Instead, she unreasonably came to the view that the school had adopted a "blanket affirmation approach."

167. If the Claimant had a reasonable belief that the information was substantially true, the Claimant should have approached the one of the Designated Safeguarding Leads about her concerns as soon as she possible after discovering what she described as "red flag information" in November 2021. Instead the Claimant covertly monitored Child X using the CPOMS systems in order to build her case against the school. She then launched judicial review proceedings in April 2022. Those actions undermine her credibility.

168. We also conclude that the Claimant has failed to provide sufficient evidence that the conditions required by section 43G(2) are satisfied. The Claimant has not provided sufficient evidence of this and we were not assisted on this issue by her submissions or skeleton argument.

169. As we are not satisfied that the disclosure was "of substantially the same information", we do not go on to consider the specific part of issue 3(f) which deals with section 43G(3) ERA 1996.

Issue 3. In relation to 1(e) above:

e. Whether the relevant failure was "of an exceptionally serious nature" within the meaning of s. 43H ERA 1996.

170. Section 43H(1)(b) ERA 1996 requires the Claimant to have a reasonable belief that the information disclosed, and any allegation contained in it, are "substantially

[5] Claimant's skeleton argument, paragraph 38.

true", For the reasons already given above, it is patently clear to us that the Claimant did not have a reasonable belief. It is thus not necessary for us to consider Issue 3(f).

171. If we are wrong in relation to our conclusions above regarding Issues 1(b) to 1(f) and also Issues 3(a), (d) and (e), we now consider whether the Claimant's dismissal or any of the alleged detriments occurred on the ground that she had made a protected disclosure. We also remind ourselves that Respondent accepts the Claimant had made a protected disclosure by means of writing to the School Governors on 5 October 2021.

Issue 4. Automatically unfair dismissal: whether the reason (or the principal reason) for the Claimant's dismissal was that she made protected disclosure(s).

172. The reason for the Claimant's dismissal was her misconduct. She was dismissed by letter dated 21 September 2022 (page 1825) following a disciplinary hearing which took place on 14 September 2022. A further hearing then took place on 9 November 2022 and we are satisfied that hearing was a full rehearing of the Claimant's case rather than merely an appeal. The effect of this is that the appeal panel who conducted the hearing of 9 November 2022 collectively made the decision to dismiss the Claimant and communicated the decision via its Chair.

173. In terms of the decision-makers, we had the benefit of evidence from the Chair of the disciplinary Appeal Panel. We found him to be a credible and reliable witness. We accept his evidence in its entirety and in particular his evidence that the reason for dismissal was misconduct and particularly the Claimant's unauthorised use of CPOMS. It was clear to us that the panel was influenced by the evidence that the Head Teacher provided regarding the Claimant's use of CPOMS. It was also clear to the appeal panel that the Claimant provided no guarantee that she would not use CPOMS in an unauthorised manner if she were allowed to return to work in the future.

174. We have also already concluded that access of CPOMS is not a Protected Disclosure and is conduct properly separable from any alleged Protected Disclosure that the Claimant seeks to rely on.

175. The claim of automatic unfair dismissal is not well founded and is dismissed.

Issue 5. Whether the Respondent subjected the Claimant to the following detriments on the ground that she made protected disclosure(s):

(a) Suspension on 9 May 2022 (PoC para 28);

176. The Claimant's suspension on 9 May 2022 was a detriment but it was not because she had made any protected disclosure. As the letter of suspension dated 9 May 2022 demonstrates the Claimant was suspended because she "*accessed, copied and shared with a third party confidential information regarding a pupil at the school which you had no professional involvement with and no right to do so*" (page 1151). That was the reason for the Claimant's suspension. Indeed, the Claimant's actions went directly against the assurance that the Claimant had given to the Head Teacher prior to her return to work in October 2021. Specifically, on 22 September

2021 the Claimant wrote to the Head Teacher and stated *"I acknowledge that information concerning the private life of the child in question has been disclosed to me on a confidential basis, and that I have a legal duty of confidentiality. I will fully comply with that duty*."

177. We accept the Head Teacher's evidence on this point, specifically paragraph 32 of her witness statement. We found her to be a credible and reliable witness. To emphasise, we find that the reason for the Claimant's suspension was because of her deliberate misuse of CPOMS. The Respondent has shown the act was done for that reason.

Issue 5 (b) Disciplinary investigation between 9 May and 21 September 2022

178. The commencement of the disciplinary investigation was a detriment but it was not because the Claimant had made a protected disclosure. It was because of the Claimant's deliberate misuse of CPOMS which the School found out about on 4 May 2022 and then promptly reported to the ICO. The Respondent has shown the act was done for that reason. We also conclude that such action was fully in line with the Nottingham School Disciplinary Procedure (pages 2636 to 2693).

Issue 5(d) Reporting allegations of a criminal offence by the Claimant to the Information Commissioner

179. The report to the ICO is at pages 1914 to 1923. It does not allege that the Claimant has committed a criminal offence. Instead, the reason for the report is, the incident "*meets the threshold to report*" (page 1914).

180. We do not accept the Respondent's submission that the School reporting itself to the ICO was not a detriment to the Claimant. This is because we have a list of issues which has been agreed by the parties where Issue 5(d) is clearly agreed as being a detriment. This was a detriment.

181. However, the reporting of the data breach to the ICO was not because the claimant had made a protected disclosure(s). The reason for the report to the ICO was because the Claimant had misused CPOMS and, in the Head Teacher's reasonable opinion, committed a data breach. The Respondent has shown the act was done for that reason. Such an opinion was reasonable as by the time the ICO report was made, the Head Teacher was faced with a situation where information regarding Child X which had been securely stored on the Respondent's CPOMS system now formed part of the Claimant's witness statement for her judicial review proceedings.

182. It is clear to us that CPOMS is a data recording system which is primarily used by staff to record concerns about children. During the period November 2021 to April 2022 the Claimant accessed CPOMS on 15 separate days and never logged one piece of data about any concerns she had regarding Child X. Instead she effectively covertly monitored Child X. She also transferred data regarding Child X from the School IT system onto her personal computer, then onto a memory stick. She then proceeded to share Child X's data with her Solicitor.

Issue 5 (e) Reporting the Claimant to TRA

183. The Claimant was reported to the TRA on 30 January 2023 by Tracey Christian (page 2216 to 2231). This was a detriment. However, such report was not because the claimant had made a protected disclosure but because she had been dismissed for reasons of misconduct. The Respondent has shown the act was done for that reason. On that point, we fully accept the evidence of Tracey Christian at paragraph 4 of her witness statement that, "*In terms of the TRA referral it is standard practice for a referral to be made where a teacher has been dismissed for misconduct. The Claimant was dismissed and so a referral was made.*" We found Tracey Christian to be a credible and reliable witness and we accept her evidence in full.

Issue 5(f) Reporting the Claimant to DBS

184. The Claimant was reported to the DBS at the start of 2023 by Tracey Christian (pages 2352 to 2361). This was a detriment. The report to the DBS was made not because the claimant had made a protected disclosure but because Tracey Christian considered that the conditions had been satisfied whereby she had a legal duty to refer. The Respondent has shown the act was done for that reason. On that point, we fully accept the evidence of Tracey Christian at paragraphs 5 to 7 of her witness statement.

Issue 5(g) Dismissing the Claimant's appeal

185. We accept this was a detriment but we are unable to conclude that the reason for dismissing the Claimant's appeal was because she had made a protected disclosure(s). The appeal outcome letter dated 15 November 2022, which appears in the bundle at pages 1903 to 1905, makes it entirely clear that the reason for the outcome was the Claimant's inappropriate use of CPOMS in order to access information regarding Child X. The Respondent has shown the act was done for that reason.

186. We had the benefit of evidence from the Chair of the disciplinary Appeal Panel. We found him to be a credible and reliable witness. We accept his evidence in its entirety. It was clear to the appeal panel that the Claimant provided no guarantee that she would not use CPOMS in an unauthorised manner if she were allowed to return to work in the future.

187. By way of example, the appeal outcome letter states:

> *"Furthermore, you reiterated during the investigation that you would do the same thing in the same situation should it arise, even though this course of action would clearly go against school policies. The panel felt that you demonstrated a lack of understanding of the harm your actions have caused to your professional relationship with the Headteacher and equally demonstrated no remorse in respect of the breakdown of this fundamental relationship. Your actions have the potential to harm the integrity of the school. These observations make it difficult to see how you would be able to rebuild the trust required for a professional working relationship within the school."*

188. Given this and other admissions by the Claimant which were accurately recorded in the letter of 15 November 2022, and from which she has not sought to resile, it is simply not plausible to conclude that the dismissal of the Claimant's appeal was for

any other reason apart from her earlier misuse of the CPOMS system and her expressed intention to continue to act in the same manner in the future.

189. The effect of the above is that the entirety of the whistleblowing detriment claim is not well founded and is dismissed. We now turn to the Claimant's complaint of ordinary unfair dismissal.

Unfair Dismissal

Issue 6. If the reason (or the principal reason) for dismissing the Claimant was not that she made protected disclosure, do the circumstances of the dismissal fall within the ambit of (a) Article 9 ECHR and/or (b) Article 10 ECHR?

190. The Tribunal concludes that the reason for the Claimant's dismissal was misconduct specifically her inappropriate and unauthorised use of CPOMS. The Claimant's inappropriate and unauthorised use of CPOMS was a separate act which does not engage her Article 10 rights. On that, we refer to the reasons already given at paragraph 160 Our conclusion on that point is further reinforced by the comments of Underhill LJ at [57-59] in ***Higgs v Farmor's School and Others [2025] EWCA Civ 109.*** The circumstances of her dismissal do not fall within the ambit of Article 10.

191. We also conclude that her dismissal does not fall within the ambit of Article 9. The reason for her dismissal was her inappropriate use of CPOMS. This was a separate act which does not engage her Article 9 rights and we again refer to the reasons already given at paragraph 160 In addition, applying **Eweida,** there was not a sufficiently close and direct nexus between the Claimant accessing CPOMS and her religious or philosophical beliefs. It was not necessary for the Claimant to repeatedly access the confidential data of a vulnerable, young child over a period of more than 5 months in order to manifest her religious or philosophical beliefs. To suggest otherwise, flies in the face of logic.

192. As we have answered Issue 6 negatively, we move to Issues 9, 10 and 11.

Issue 9. What was the reason for dismissal? The Respondent relies on conduct:

a. Whether the Respondent believed the Claimant to be guilty of misconduct;

b. Whether the Respondent had reasonable grounds upon which to sustain that belief;

c. Whether the Respondent had carried out as much investigation into the matter as was reasonable in the circumstances.

10. Whether the Respondent acted reasonably or unreasonably in treating the Claimant's conduct as a sufficient reason for dismissing her.

11. Whether the dismissal of the Claimant was fair or unfair in accordance with equity and the substantial merits of the case.

193. It was clear to us that the Respondent had an honest belief based on reasonable grounds that the Claimant had committed misconduct. To form that honest belief, a

reasonable investigation had been carried out. This included the appointment of Helen Cottee as the Investigating Officer and formal investigation meetings on:

f. 8 June 2022 with the Head Teacher (pages 1203 to 1211);

g. 24 June 2022 with a colleague of the Claimant who was a fellow Year 4 Teacher (pages 1231 to 1235);

h. 28 June 2022 with the Claimant who was accompanied by her Pastor (pages 1250 to 1262).

194. There was an Investigation report produced (pages 1163 to 1175) which recommended that the matter proceed to a formal hearing under the School's disciplinary procedure. A formal disciplinary hearing was then heard on 14 September 2022. The Claimant attended together with her Pastor for support (pages 1802 to 1823). She was then dismissed with effect from 14 September 2022 and informed of such fact by the Chair of the Disciplinary Panel (pages 1825 to 1828). An appeal, which was in fact a rehearing, took place on 9 November 2022. Following that the Claimant's dismissal was confirmed by means of a letter 15 November 2022 (pages 1903 to 1905). The Appeal Panel took into account that the Claimant did not dispute the allegations against her and that she stated she would not act differently in the future.

195. We bear in mind that the Court of Appeal in ***Taylor v OCS Group Ltd [2006] IRLR 613*** observed, "*the distinction between a review and a rehearing is hard to define in the abstract and even harder to apply in practice ... 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."* (Smith LJ at paragraph 46.) Taking into account that guidance and all relevant law, we conclude the disciplinary process as a whole was fair.

196. The Respondent acted reasonably in treating the Claimant's conduct as sufficient reason for dismissing her and such dismissal was fair in accordance with equity and the merits of the case. That is clear as It was found by the Appeal Panel that the Claimant repeatedly accessed CPOMS over a period of more than 5 months and was unable to identify any specific safeguarding concern about Child X (page 1903). The Panel also concluded that "*despite accessing multiple records on CPOMS in respect of Child X on several occasions over of a period of around 3 months, at no point did you raise any further safeguarding concerns which this gave rise to. Instead…the motivation for accessing the information was with a view to gather evidence…..*" (page 1903).

197. It is also plain to the Tribunal that the Appeal Panel felt that trust and confidence in the employment relationship was irreparably damaged due to statement that:

> *"The panel heard clear evidence from [the] Headteacher, that she has lost trust and confidence in you based on your actions of accessing, copying and sharing the information discussed in (1) and (2) above, against reasonable management instructions as issued to you in the return-to-work meeting in October 2021. Furthermore, you reiterated during the investigation that you would do the same thing in the same situation should it arise, even though this course of action would*

clearly go against school policies. The panel felt that you demonstrated a lack of understanding of the harm your actions have caused to your professional relationship with the Headteacher and equally demonstrated no remorse in respect of the breakdown of this fundamental relationship. Your actions have the potential to harm the integrity of the school. These observations make it difficult to see how you would be able to rebuild the trust required for a professional working relationship within the school." (page 1904).

198. Given the above, it is plain the Respondent had reasonable grounds for believing that the Claimant was guilty of misconduct. This was an act which the Appeal Panel was entitled to conclude fell within the definition of gross misconduct as set out at paragraph 4 of the Disciplinary Procedure (page 2685). It cannot be said that it was outside the range of reasonable responses for an employer to dismiss in those circumstances.

199. The claim of unfair dismissal is not well founded and is dismissed.

Wrongful Dismissal

Issue 12. Whether the Claimant's conduct amounted to gross misconduct such that the Respondent was entitled to terminate the employment contract without notice.

200. The Claimant's actions in accessing information on CPOMS in an unauthorised manner breached the implied term of mutual trust and confidence. This was a repudiatory breach of contract which entitled the Respondent to terminate the contract without notice.

Direct discrimination on the grounds of beliefs

201. Issue 13 of the list of issues is narrative and sets out the Claimants religious or philosophical beliefs. We move to issue 14.

Issue 14. Whether the Respondent treated the Claimant less favourably because of her actual or perceived beliefs by subjecting her to any of the following detriments:

a. Accusations and/or threats allegedly made against the Claimant in the letter of 3 September 2021.

202. The Headteacher's letter of 3 September 2021, which appears in the bundle at page 118, is part of the attempt by the Headteacher to work with the Claimant towards obtaining a workable solution for both parties. Indeed, when giving evidence the Claimant accepted that both parties were seeking to navigate a difficult situation. The less favourable treatment has been described in the list of issues as accusations and/or threats against the Claimant. We are unable to read the letter as containing accusations and/or threats. The allegation is not made out on the facts and the letter certainly does not amount to a detriment.

Issue 14(b). Suspension on 20 September 2021

203. We do not conclude that the suspension of the Claimant on 20 September 2021 was a detriment. It cannot therefore amount to less favourable treatment. We reach that conclusion for the following reasons.

204. In general terms, detriment is to be understood as explained by Lord Hope in ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** [2003] ICR 337 at paragraphs 34 and 35:

> *"… the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.*
>
> *35 But once this requirement is satisfied, the only other limitation that can be read into the word is that indicated by Brightman LJ. As he put it in Ministry of Defence v Jeremiah [1980] ICR 13, 30, one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment": Barclays Bank plc v Kapur (No 2) [1995] IRLR 87..."*

205. That is reflected in the judgment of Elias LJ with whom Floyd and Sullivan LJJ agreed in ***Deer v University of Oxford*** [2015] IRLR 481 at paragraph 25 where Elias LJ said this:

> *"The concept of detriment is determined from the point of view of the claimant: a detriment exists if a reasonable person would or might take the view that the employer's conduct had in all the circumstances been to her detriment; but an unjustified sense of grievance cannot amount to a detriment: see Derbyshire v St Helens MBC [2007] UKHL 16; [2007] ICR 841, para. 37 per Baroness Hale reciting earlier authorities."*

206. The Claimant's evidence with regard to this issue was contained at paragraph 37 of her witness statement. She stated:

> *"On 20 September 2021, I was formally suspended by the School pending a disciplinary investigation for failure to comply with a "reasonable request." I was shocked at this outcome. The School's approach deeply concerned me; it appeared that they were questioning my behaviour as a teacher and presented me as untrustworthy, by being asked to remain at home. At this point the relationship between myself and [the Head] began to break down. I felt that they had not listened to me, overlooked my attempts to navigate this matter (e.g. by offering to use a gender-neutral name), and had taken a draconian response to me raising safeguarding concerns when those concerns questioned the approach the School had decided to take."*

207. To put this into context, after raising her concerns about Child X, the Claimant did not attend at the School at the start of the 2021-2022 academic year. Instead she was asked by the Headteacher to remain at home whilst her concerns were addressed. The Claimant accepted under cross-examination that the Headteacher's request that she remain at home, contained in the Headteacher's letter of 3 September 2021 (page 118), was a sensible approach and that the ensuing meeting

between her and the Headteacher on 6 September 2021 was courteous. She also accepted that both parties were seeking to manage the situation. This was, in effect, a period of informal suspension for the Claimant. The Claimant was then formally suspended via a letter written on 20 September 2022 (page 138).

208. The context for the suspension was that on 16 September 2022 the Claimant's then lawyer had sent an uncompromising letter to the Headteacher (page 136). Paragraphs 4 and 5 of that letter stated, "*4. [The Claimant] is uncomfortable about being required to keep confidentiality involving withholding information from other parents which may be important to them in deciding how this may affect their own child or deciding how to respond to the situation. It also potentially represents a safeguarding risk. 5. The requirements will compel her to withhold the truth from others, or even share any information that may help them in their own enquiry. She believes that the requirements would be harmful to the child in question, misleading to staff, to other children and their families. Fundamentally, they would require her to go against her conscience.*"

209. We accept the Respondent's submission that a reader of that letter could conclude that the Claimant was about to disclose confidential information about Child X. In light of that, the Respondent's actions on 20 September 2021 merely sought to formalise the Claimant staying at home whilst an amicable solution to a complex issue was reached between the parties. That was felt necessary given the wording of the Claimant's lawyer's recent letter and the possibility of the Claimant disclosing confidential information about Child X.

210. During the entire period of suspension the Claimant was paid her full salary and treated with courtesy and respect by the Headteacher and Respondent. The period of suspension was not unnecessarily protracted and ended on 6 October 2021. It should also be borne in mind that the suspension ended despite the Claimant raising an extremely lengthy and detailed grievance the day before her scheduled return to work meeting.

211. At this point in time, the Claimant had an unjustified grievance that the Headteacher was not simply not prepared to accede to her demands which, as demonstrated by her lawyer's letter, indicated that there was a live possibility she was prepared to breach Child X's confidentiality. The Tribunal concludes that, taking all matters into account, this was an unjustified sense of grievance and not a detriment.

212. **Issue 14(c). Commencing disciplinary investigation on 20 September 2021**

213. The Claimant has not proven facts that demonstrate that any disciplinary investigation commenced on 20 September 2021. We find no disciplinary investigation commenced on that date.

Issue 14(d). Suspension on 9 May 2022

214. The Claimant's suspension on 9 May 2022 was a detriment. However it was not less favourable treatment because of her actual or perceived beliefs. For reasons already given, at paragraph 160, it was because she accessed, copied and shared confidential information regarding Child X. This went directly against the assurance

that she had given to the Headteacher prior to her return to work in October 2021. The Claimant's conduct should be separated out from the manifestation of her religious and philosophical beliefs.

Issue 14(e). Disciplinary investigation between 9 May and 21 September 2022

215. The Tribunal accepts the commencement of a disciplinary investigation was a detriment. We do not accept it was less favourable treatment because of her actual or perceived beliefs.

216. The commencement of the disciplinary investigation was because of the Claimant's suspected deliberate misuse of CPOMS. We refer to the reasons previously given above at paragraph 160. In short the Claimant's conduct should be separated out from the manifestation of her religious and philosophical beliefs. We also conclude that such action was fully in line with the Nottingham School Disciplinary Procedure (pages 2636 to 2693).

Issue 14(f) Reporting allegations of a criminal offence by the Claimant to the Information Commissioner

217. As previously stated, the report to the ICO does not allege that the Claimant has committed a criminal offence. Instead, the reason for the report is, the incident "*meets the threshold to report*" (page 1914). We do however accept that the report to the ICO (pages 1914 to 1923) is a detriment.

218. We do not accept the Claimant was reported to the ICO was less favourable treatment because of her actual or perceived beliefs. The reason for the report to the ICO was because the Claimant had misused CPOMS and committed a data breach. During the period November 2021 to April 2022 the Claimant accessed CPOMS on 15 separate days and never logged one piece of data about any concerns she had regarding Child X. Instead she covertly monitored Child X and used their data inappropriately. She transferred data regarding Child X from her school computer onto her personal computer, then onto a memory stick, and then shared Child X's data with her Solicitor. Any teacher at the School who acted in the same manner would have been treated in the same manner. In addition, the Claimant's conduct should be separated out from the manifestation of her religious and philosophical beliefs. Our reasons in paragraph 160 apply equally here.

Issue 14(g) Dismissing the Claimant for alleged gross misconduct on 21 September 2022

219. We accept this was a detriment. We do not accept the Claimant was less favourably treatment because of her actual or perceived beliefs. The Tribunal concludes, for reasons already given, that the reason for the Claimant's dismissal was misconduct specifically her inappropriate use of CPOMS. Any teacher at the School who accessed multiple records on CPOMS over a period of more than 5 months for evidence gathering purposes, and who indicated they would do the same thing in the same situation should it arise, would have dismissed. The Claimant's conduct should be separated out from the manifestation of her religious and philosophical beliefs. We refer again to the principle of separability and our reasons previously given at paragraph 160.

Issue 14(h) Reporting the Claimant to TRA

220. We accept this was a detriment. We do not accept this was less favourable treatment because of the Claimant's actual or perceived beliefs. Tracey Christian reported the Claimant to the TRA because she had been dismissed for reasons of misconduct. On that point, we fully accept the evidence of Tracey Christian. Any teacher employed by the Respondent who was dismissed for misconduct would have been reported to the TRA.

Issue 14(i) Reporting the Claimant to DBS

221. The Claimant was reported to the DBS at the start of 2023 by Tracey Christian (pages 2352 to 2361). We accept that was a detriment. We do not conclude it was less favourable treatment because of the Claimant's actual or perceived beliefs. The report to the DBS was made because Tracey Christian considered that the conditions had been satisfied whereby she had a legal duty to refer. On that point, we fully accept the evidence of Tracey Christian at paragraphs 5 to 7 of her witness statement. Any individual who in Tracey Christian's opinion satisfied the criteria for a referral to the DBS would have been treated in exactly the same manner. We are satisfied that Tracey Christian was not motivated in any manner by the Claimant's actual or perceived beliefs when the report to the DBS was made.

Issue 14(j) Dismissing the Claimant's appeal

222. We accept this was a detriment. We do not accept dismissing the Claimant's appeal was less favourable treatment because of her actual or perceived beliefs. Given the admissions by the Claimant, which were accurately recorded in the letter of 15 November 2022 and from which she has not sought to resile, it is simply not plausible to conclude that the dismissal of the Claimant's appeal was for any other reason apart from her earlier misuse of the CPOMS system and her expressed intention to continue to act in the same manner in the future. Any teacher at the School who accessed multiple records on CPOMS over a period of more than 5 months for evidence gathering purposes, and who indicated they would do the same thing in the same situation should it arise, would have had their appeal dismissed. The Claimant's conduct should be separated out from the manifestation of her religious and philosophical beliefs. We refer again to the principle of separability and our reasons previously given at paragraph 160.

Issue 15. Whether the Claimant's conduct had sufficiently close and direct nexus with her beliefs to be a manifestation of her beliefs within the meaning of Article 9 ECHR.

223. Applying ***Eweida*****,** there was not a sufficiently close and direct nexus between the Claimant's conduct and her religious or philosophical beliefs. It was not simply not necessary for the Claimant to repeatedly access the confidential data of a vulnerable, young child over a period of more than 5 months in order to manifest her religious or philosophical beliefs.

224. We now move to consider the harassment complaint. This is expressed in the list of issues as follows:

Issue 17. Alternatively, the Claimant relies on matters in paras 14(a)-(j) above as unwanted conduct.

Issue 18. Whether the conduct was related to any of the following:
a. Claimant's actual or perceived beliefs;
b. sex of Child X;
c. actual or perceived gender reassignment of Child X,
d. a philosophical beliefs in 'gender identity' being distinct from, and/or superseding, biological sex.

Issue 19. If so, whether the conduct had the purpose or effect of:
a. violating the Claimant's dignity, and/or
b. creating an intimidating, hostile, degrading, humiliating and/or offensive environment for the Claimant.

225. We were not assisted by the Claimant's skeleton argument, evidence, written submissions or indeed oral submissions in respect of the majority of these issues. By way of example, paragraph 96 and 97 of the Claimant's skeleton argument merely states:

> *"96. Alternatively, if causation does not satisfy the strict 'because of test' in s. 13 EA 2020, it may still satisfy the looser 'related to' test in s.26.*
>
> *97. C's witness statement, paras 37, 46, 51-57, 63, 84-88, 92, 96-98, 102-103, 105-109, sets out the evidence of prohibited environment and/or violation of dignity."*

The Claimant's written submissions or her oral submissions also did not substantially address the harassment claim.

226. We have reviewed the relevant parts of the Claimant's witness statement cited in her skeleton argument. Indeed, we have considered the totality of her evidence before reaching our conclusion. In relation to issue 14(a), we are unable to read the letter of 3 September 2021 as containing accusations and/or threats. We do not find there was unwanted conduct which had the required effect on the Claimant.

227. We do not conclude that the matter contained in issue 14(b) was unwanted conduct. On balance, we find in September 2021 the Claimant was content to remain at home on full pay whilst a solution acceptable to both parties was found. Issue 14(b) is not therefore unwanted conduct. In any event, there is insufficient evidence it had the required effect on the Claimant.

228. In relation to issue 14(c) we find that no disciplinary investigation was commenced against the Claimant on 20 September 2021. That did not happen.

229. Whilst we accept, that matters contained in Issues 14 (d) to (j), amount to unwanted conduct, we do not conclude that they related to any of the matters set out in Issue 18 (a) to (d) i.e. the Claimant's religious or philosophical beliefs. Even taking into account the "related to" test and its less stringent requirements, we are not persuaded. Bearing in mind, the principle of separability, the unwanted conduct was related to the Claimant misusing the CPOMs system and repeatedly accessing the

data of Child X.

230. If we are wrong in relation to the above, and the unwanted conduct did relate to any matter contained in Issue 18 (a) to (d), we do not conclude that the unwanted conduct had the requisite effect on the Claimant. We had insufficient evidence that the unwanted conduct could meet the ***Dhaliwal*** threshold of harassment.

231. In summary, the entirety of the claim is not well founded and is dismissed.

Time limits

20. Whether the alleged detriments in September 2021 (letter of 3 September, suspension on 20 September and investigation commenced on 20 September 2021) were part of the Respondent's conduct extending over a period.

21. If not, whether the Tribunal should extend the time.

232. We now consider the issue of time as requested to do so by the parties. This is somewhat academic as we have decided the claim on its merits but we record our conclusions should this matter later become relevant.

233. The alleged detriments in September 2021 did not form part of a course of conduct extending over a period. We accept the Respondent's submission that the matters in September 2021 relate to the point in time when Child X was arriving in School and there was a need to set down the terms of the Claimant's relationship and interaction with Child X. Those interactions in September 2021 were between the Claimant, the Headteacher and the Deputy Headteacher. The matter was to all intents and purposes resolved by 6 October 2021 when the Claimant returned to work and nothing arose between the Claimant and those individuals for another 7 months. When it did, the focus was on a different situation entirely namely the Claimant's accessing of CPOMS data. In addition, the actors involved at that later stage were primarily the Governors and employees of the Respondent Local Authority.

234. In this case, early conciliation started on 13 December 2022 and ended on 24 January 2023. The Claimant presented her claim form to the Tribunal on 21 February 2023. The effect of this is that any events occurring before 14 September 2022 are out of time unless they form part of a course of conduct or time is extended. There is no course of conduct here and in relation to any possible extension of time, the Claimant provided no evidence to the Tribunal as to why she did not issue a claim at an earlier stage. We also observe that even prior to the commencement of Tribunal proceedings the Claimant had lawyers working for her who were plainly fully aware of the legal framework. For example, the Claimant gave evidence at paragraph 33 of her witness statement that, *"Starting from September 2021, I regularly received legal advice from the solicitors and/or CLC, and at a later stage, also from a barrister instructed by my solicitors*." The Claimant has given no evidence at all as to her reasons for delay. It is for the Claimant to show that it is just and equitable to extend time. She has failed to do so and so this would not be a case where it would be appropriate to extend time on a just and equitable basis for any matter which relates to the period before 14 September 2022.

Anonymity

235. We now also record our reasons for the making of our orders in respect of restricted reporting in respect of this matter. We were asked by the Claimant to provide such reasons at the conclusion of the hearing.

236. Ath the outset, it should be noted that in her claim form at the very start of these proceedings the Claimant stated:

> *The claimant respectfully invites the Tribunal to make an anonymity order under ET Rules r. 50 to protect the identities of the children referred in the Particulars of Claim as (1) Child X and (2) Child Y. Further, to prevent jigsaw identification, the Tribunal is respectfully invited to anonymise (3) the School the Claimant worked at. (4) the Claimant and (5) the Respondent.*
>
> *The order is necessary to protect the Convention rights of Child X and Child Y. under Article 8 ECHR.*
>
> *The High Court has made a similar order in the judicial review proceedings referenced In the Particulars of Claim.*

237. By way of clarification, the Rules referred to above are the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Rule 49 is now, subject to minor amendments, Rule 50 in the Employment Tribunal Procedure Rules 2024. As a consequence of the Claimant's application, at the initial preliminary hearing on 24 July 2023 Employment Judge Clark made a restricted reporting order that the following individuals were not to be identified: -

a. The Claimant

b. The child referred to in the claim as Child X

c. The child referred to in the claim as Child Y (page 42).

238. An anonymisation order was made in similar terms (page 41).

239. The restricted reporting order was to remain in force until 27 March 2024 unless revoked earlier. The reason for choosing that date was that the final hearing in respect of liability was originally scheduled to take place from 18 March to 27 March 2024. At the initial liability hearing on 25 March 2024, Mr Stroilov made an application that the Tribunal panel recuse themselves from hearing the case. That application was granted and the reasons in respect of that are set out in the Case Management Summary and Orders of Employment Judge V Butler which appear in the bundle between pages 2191 to 2197.

240. Employment Judge V Butler also extended the terms of both the restricted reporting Order and the anonymisation order in order to cover not only the Claimant, Child X and Child Y but also the Respondent's witnesses, the Governors and any other member of staff. This was in order to avoid jigsaw identification. The duration of the restricted reporting order was also extended until 1 April 2031 as an interim measure to mirror an order made by the Court of Appeal on 18 April 2023 in respect

of the Claimant's judicial review proceedings.

241. At the start of the hearing before us, Mr Stroilov made an application to vary the terms of the restricted reporting order. After hearing from Mr Stroilov, we also invited submissions from the press who were in attendance in the hearing to what extent the restricted reporting order should be varied. No submissions were made by the press.

242. Mr Stroilov stated that he now sought to have the Claimant removed from the scope of the Tribunal's restricted reporting order. He supplied us with a copy of the Court of Appeal's order of 28 February 2025 and sought to argue that the Claimant's right to a fair trial under Article 6 would be infringed if we she were not able to have her name made publicly available. We did not accept that argument. Indeed, we are unable to conclude that there has been any breach of the Claimant's rights under Article 6. Merely because a restricted reporting order has been made it does not follow that there has been a breach of Article 6. This was a case where there was a public hearing. Indeed, the case attracted significant public interest.

243. Members of the public attended in person. In addition, members of the public had requested permission to observe the Tribunal proceedings remotely. Permission was granted for such individuals to observe remotely. Members of the Press also attended the hearing and a copy of the witness statement bundle was made available for inspection. Permission was also granted for the organisation, Tribunal Tweets, to live 'Tweet' these proceedings.

244. We did not agree that the terms of the restricted reporting order should be varied so that the Claimant should be excluded from its scope. In short, the Claimant had not persuaded us, at that point in time, that her right to freedom of expression under Article 10 outweighed Child X's right to respect for their private and family life under Article 8. We did however vary the duration of the restricted reporting order by shortening its duration until 14 March 2025. The 14 March 2025 was chosen as that was the scheduled final date of the rescheduled liability hearing. We informed the parties that once we had heard all the evidence in respect of liability, we would be in a much better position to assess the extent to which the restricted reporting order should be varied, if at all. To that end, we heard submissions from both parties with regard to the restricted reporting orders alongside their submissions on liability on 10 March 2025.

245. On 13 March 2025 we issued an updated restricted reporting order. This directed that the following individuals should not be identified on an indefinite basis:

a. The child referred to in the claim as Child X
b. The child referred to in the claim as Child Y
c. The Claimant
d. The Respondent's witnesses and any other teacher or member of staff at the school
e. The Governors of the school

246. We set the relevant law in relation to this matter before setting out our reasons for making that Order.

The Law in relation to Rule 49 and Restricted Reporting Orders

247. Rule 49(1) of the Employment Tribunal Rules of Procedure 2024 provides that the Tribunal may make an order with a view to preventing or restricting the public disclosure of any aspect of proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person.

248. Rule 49(2) expressly provides that in considering whether to make an order under this rule, the Tribunal must give full weight to: (1) the principle of open justice; and (2) the Convention right to freedom of expression.

Open Justice

249. The vital, constitutional significance of open justice has been repeatedly emphasised by the judiciary. For example:

a. Lord Atkinson in ***Scott v Scott [1913] AC 417***: "*The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses…but all this is tolerated and endured, because it is felt that in public trial is to found, on the whole, the best security for the pure, impartial, and efficient administration of justice*";
b. Toulson LJ in ***R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court*** **[2012] EWCA Civ 420; [2013] QB 618** (at [630B]): "*In a democracy, where the exercise of public authority depends on the consent of the people governed, the answer must lie in the openness of the courts to public scrutiny*"; and
c. Lord Reed in ***A v British Broadcasting Corporation*** **[2014] UKSC 25; [2015]AC 588** (at [23]): "*It is a general principle of our constitutional law that justice is administered by the courts in public, and is therefore open to public scrutiny. The principle is an aspect of the rule of law in a democracy*".

Derogations from Open Justice

250. The principle of open justice is accordingly of "*paramount importance*" and derogations from it (such as any order made under Rule 49) can only be justified "*when strictly necessary as measured to secure the proper administration of justice*": ***BBC v Roden [2015] IRLR*** (at [22]).

251. The burden of justifying a derogation lies on the person seeking it: ***Fallows v News Group Newspapers Ltd*** **UKEAT/0075/16***.* Justification can only be established by clear and cogent evidence that harm could be done to the rights of the person seeking the restriction.

252. If such evidence has not been presented, any application under Rule 49 must be refused. If such evidence has been presented, unless life and limb are objectively shown to be at risk, the Tribunal must still carry out a balancing exercise before deciding whether to grant the application.

253. Factors to be weighed in the balance include:
a. The extent to which the derogations would interfere with the principle of open justice;

b. The importance to the case of the information the applicant seeks to protect; and
c. The role or status within the litigation of the person whose rights or interests are under consideration: ***Clifford v Millicom Services [2023] EWCA Civ 50*** (at [42]).

254. The more remote an item of information is from the issues in a case, the less likely it is that a restriction on its disclosure will offend the open justice principle: ***Millicom*** (at [44]).

Convention Rights

255. When a Rule 49 order is necessary to protect in an individual's Convention rights the Tribunal must carry out a further balancing exercise, weighing the inference with those rights against the interference with the other Convention rights which are engaged.

256. Where the conflict is between the Article 8 rights of the applicant and the Article 10 rights of others, the following four principles apply to the balancing exercise the Tribunal must conduct:
1. Neither article has precedence over the other;
2. Where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary;
3. The justifications for interfering with or restricting each right must be taken into account; and
4. The proportionality test must be applied to each: ***Re S (a child) (Identification Restrictions on Publication)*** **[2004] UKHL 47; [2005] 1 AC 593** (at [17]).

Reasons regarding the Restricted Reporting Order

257. We are aware that proceedings in the Court of Appeal still proceed and are subject to their own restricted reporting orders. However, as Warby LJ said in his order of 28 February 2025:

> *Whether there should be any order withholding or prohibiting the reporting of names, addresses or any other information with a view to protecting the child's identity as someone "concerned in" or the subject of or otherwise involved in the ET proceedings is a separate question and a matter for the ET. My order did not and still does not affect that question.*

Before us, Mr Stroilov submitted that the principle of open justice is paramount and that the burden of justifying a derogation lies on the person seeking it. He also submitted that justification can only be established by clear and cogent evidence that harm could be done to the rights of the person seeking the restriction. Whilst we take such matters into account, it must be recorded again that it was the Claimant who requested a derogation from the principle of open justice in her ET1 claim form. In that, she clearly requested anonymisation of herself in order to protect the identities of child X and Child Y. At that point in time, she was being represented by Mr Stroilov. It was therefore at the Claimant's request that there was a derogation from open

justice in this case.

258. The derogation of not publicising the claimant's name represents an interference with the principle of open justice but it seems to us that the identity of the Claimant is not critical to public understanding of the case. In addition, open justice has been facilitated by an open hearing, remote observation of the hearing by interested parties via CvP, press attendance and reporting, contemporaneous live 'tweeting' of the hearing via Tribunal Tweets, and witness statements being made available for inspection by members of the press and public.

259. When weighing the Claimant's Article 10 rights against Child X's Article 8 rights we have concluded that the latter outweighs the former. There is a significant risk of jigsaw identification of Child X in this case. Child X is a young, vulnerable individual about whom we have heard a significant amount of evidence. Child X already has had to move from one school to the school in question in this case because of concerns about their biological sex becoming public knowledge. In addition, Child X has had their data breached by the Claimant and subsequently shared with others. Following that, and in conjunction with organisations working for her, the Claimant has approached media organisations and stories have appeared regarding Child X. By way of example, there is a Daily Mail article in the bundle entitled, "Teacher who was sacked 'after refusing to call schoolgirl, eight, by a boy's name or use male pronouns' launches judicial review over claims 'transgender affirming' policy is harming children" (pages 1870 to 1873). There is also a Daily Telegraph article entitled, "Teacher sacked after refusing to use eight year-old's trans pronouns" (page 1924). We conclude that if the claimant's name were to be allowed to be publicised, there is a real and significant risk that the identity of Child X could be revealed through jigsaw identification. That is particularly so given the media attention this case has already attracted notwithstanding that the claimant's identity cannot be revealed. In summary we conclude that child X's rights under Article 8 prevails over the Claimant's rights under Article 10.

260. We also conclude that the restricted reporting order should remain in place indefinitely. In short, the right for X to live a life in their chosen gender identity for the rest of their life prevails over the Claimant's Article 6 and 10 rights. If we were to place a restriction on the duration of the restricted reporting order, there is a risk that the biological sex of Child X could become known in the future. This could result in Child X's biological sex becoming aware to groups of people including for example their future classmates, employers, partners, friends and indeed, in time, their own children. Child X has a right to privacy regarding their biological sex for the remainder of their life. Through the process of jigsaw identification, there is a substantial risk that Child X's identity and biological sex would become known if the Claimant's name were made public. We therefore conclude that the indefinite time duration is justified given the substantial interference with Child X's Article 8 rights in this matter.

Approved by:

Employment Judge McTigue

Date: 12 May 2025

JUDGMENT SENT TO THE PARTIES ON:

…13 May 2025……..

…….

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

Appendix: Agreed List of Issues

Protected disclosures

1. The Claimant relies on the following disclosures as qualifying disclosures within the meaning of s. 43B of the Employment Rights Act 1996:

a. All information provided by the Claimant in and under the cover of her letter to the School's Governors dated 5 October 2021 (PcC paras 10-12). It is common ground that this was a protected disclosure.

b. All information provided by the Claimant in and under the cover of her letter to the School's Governors dated 14 October 2021 (PcC para 14);

c. All information provided by the Claimant in and under the cover of her letter to LADO dated 11 February 2022 (PcC para 16);

d. All information provided by the Claimant to her solicitors as part of preparing the judicial review claim, and subsequently disclosed to the High Court and to the Respondents by the Claimant's solicitors (PoC paras 19-23);

e. Accessing the information via CPOMS system and conversations with colleagues, and then sharing that information with the Claimant's solicitors and/or with the High Court (PoC para 21.4);

f. Whether the actions referred to in subpara 1(e) above were an integral part of the protected disclosure identified in subpara 1(d) above.

2. In relation to each of 1(b), 1(c), 1(d) and 1(e) above:

a. Whether the Claimant believed the disclosure to be in the public interest;

b. Whether the Claimant believed that the disclosure tended to show that the Respondent and/or the School had failed, was failing and/or was likely to fail to comply with legal obligations to which they were subject;

c. Whether the Claimant believed that the disclosure tended to show that the health and safety of Child X had been, was being and/or was likely to be damaged.

d. If the Claimant had beliefs in subparas (a), (b) or (c) above, whether those beliefs were reasonable.

3. In relation to 1(e) above:

a. Whether the disclosure was "made in the course of obtaining legal advice" within the meaning of s. 43D ERA 1996. If not:

b. Whether the Claimant believed that the information disclosed, and any allegation contained in it, were substantially true;

c. If so, whether that belief was reasonable;

d. Whether the disclosure was of "substantially the same information", within the meaning of s. 43G(2)(c) ERA 1996, as that previously disclosed to the Respondent;

e. Whether the relevant failure was "of an exceptionally serious nature" within the meaning of s. 43H ERA 1996.

f. Whether in all the circumstances of the case, it was reasonable for the Claimant to make the disclosure (having regard to the factors identified in s. 43G(3) or s. 43H(2), whichever is applicable).

4. **Automatically unfair dismissal**: whether the reason (or the principal reason) for the Claimant's dismissal was that she made protected disclosure(s).

5. Whether the Respondent subjected the Claimant to the following **detriments** on the ground that she made protected disclosure(s):

a. Suspension on 9 May 2022 (PoC para 28);
b. Disciplinary investigation between 9 May and 21 September 2022 (PoC para 28);
c. Summary dismissal on 21 September 2022
d. Reporting allegations of a criminal offence by the Claimant to the Information Commissioner (PoC para 29);
e. Reporting the Claimant to TRA (PoC para 32.1);
f. Reporting the Claimant to DBS (PoC para 32.2);
g. Dismissing the Claimant's appeal (PoC para 33).

Unfair dismissal

6. If the reason (or the principal reason) for dismissing the Claimant was not that she made protected disclosure, do the circumstances of the dismissal fall within the ambit of (a) Article 9 ECHR and/or (b) Article 10 ECHR?

7. If they do, does the state have a positive obligation to secure enjoyment of the relevant Convention right between private persons?

8. If it does, is the interference with the Claimant's Convention rights by dismissal justified as prescribed by law and necessary in a democratic society for such purposes as are permitted by Article 9(2) or Article 10(2) ECHR?

9. What was the reason for dismissal? The Respondent relies on conduct:

a. Whether the Respondent believed the Claimant to be guilty of misconduct;
b. Whether the Respondent had reasonable grounds upon which to sustain that belief;
c. Whether the Respondent had carried out as much investigation into the matter as was reasonable in the circumstances.

10. Whether the Respondent acted reasonably or unreasonably in treating the Claimant's
conduct as a sufficient reason for dismissing her.

11. Whether the dismissal of the Claimant was fair or unfair in accordance with equity and the substantial merits of the case.

Wrongful dismissal

12. Whether the Claimant's conduct amounted to gross misconduct such that the Respondent was entitled to terminate the employment contract without notice.

Direct discrimination on the grounds of beliefs

13. It is common ground that the Claimant held the following religious or philosophical beliefs:

a. in the truth of the Bible, and in particular, the truth of Genesis 1:27: "So God created man in His own image; in the image of God He created him; male and female He created them." It follows that every person is created by God as either male or female. Sex is a God-given reality which should not be conflated with 'gender identity'. Being male or female is an immutable biological fact mandated by God, not a person's own feeling or an identity.
b. Lack of belief that it is possible for a child to change their sex/gender;
c. Belief that any attempt at doing so is harmful and self-destructive.
d. Belief that it would be irresponsible for the School, or for the Claimant as a teacher, to accommodate or encourage a young child of 8 or 9 years to follow that course.
e. Belief that it would be irresponsible and harmful for the School or for the Claimant as a teacher, to require other young children to believe that a boy is a girl.

14. Whether the Respondent treated the Claimant less favourably because of her actual or perceived beliefs by subjecting her to any of the following detriments:
a. Accusations and/or threats allegedly made against the Claimant in the letter of 3 September 2021 (PoC para 6);
b. Suspension on 20 September 2021 (PoC para 7);
c. Commencing disciplinary investigation on 20 September 2021 (PoC para 7);
d. Suspension on 9 May 2022 (PoC para 28);
e. Disciplinary investigation between 9 May and 21 September 2022 (PoC para 28);
f. Reporting allegations of a criminal offence by the Claimant to the Information Commissioner (PoC para 29);
g. Dismissing the Claimant for alleged gross misconduct on 21 September 2022 (PoC para 31);
h. Reporting the Claimant to TRA (PoC para 32.1);
i. Reporting the Claimant to DBS (PoC para 32.2);
j. Dismissing the Claimant's appeal (PoC para 33).

15. Whether the Claimant's conduct had sufficiently close and direct nexus with her beliefs to be a manifestation of her beliefs within the meaning of Article 9 ECHR.

16. If yes, whether the Respondent's interference with the Claimant's Article 9 rights was prescribed by law and necessary in a democratic society such as to satisfy Article 9(2) ECHR.

Harassment

17. Alternatively, the Claimant relies on matters in paras 14(a)-(j) above as unwanted conduct.

18. Whether the conduct was related to any of the following:
a. Claimant's actual or perceived beliefs;
b. sex of Child X;
c. actual or perceived gender reassignment of Child X,
d. a philosophical beliefs in 'gender identity' being distinct from, and/or superseding, biological sex.

19. If so, whether the conduct had the purpose or effect of:
    a. violating the Claimant's dignity, and/or
    b. creating an intimidating, hostile, degrading, humiliating and/or offensive environment for the Claimant.

Time limits

20. Whether the alleged detriments in September 2021 (letter of 3 September, suspension on 20 September and investigation commenced on 20 September 2021) were part of the Respondent's conduct extending over a period.

21. If not, whether the Tribunal should extend the time.

Remedy

22. What, if anything, the Tribunal should order by way of:
    a. Damages/compensation;
    b. Reinstatement;
    c. Declaration;
    d. Recommendation.