EMPLOYMENT TRIBUNALS

Claimant	v	**Respondents**
Mrs S Leighton		Buckinghamshire Council (1) The Governing Body of Hughenden Primary School (2)

Heard at: Reading Employment Tribunal

On: 2, 3, 4, 6, 9, 11, 12, 13, 16, 17 and 18 September 2024 and (tribunal only) 19 and 20 September 2024 and 18 October 2024

Before: Employment Judge Hawksworth
Mr J Appleton
Mrs C Baggs

Appearances
the Claimant: represented herself, assisted by Mr D Wallace
for the Respondent: Mr L Davidson (counsel)

RESERVED JUDGMENT

IMPORTANT: there is a permanent restriction on reporting or publishing in respect of these proceedings the name or any identifying material of any person who was a student of Hughenden Primary School at any time during the period 2012 to 2024, or any member of the family of any such student. A further permanent restriction prevents disclosure of any document or witness statement which was in evidence before the tribunal if it includes the name of any person who was a student of Hughenden Primary School at any time during the period 2012 to 2024, or any member of the family of any such student, even if the name of the person is redacted.

1. The claimant's complaints against both respondents of being subjected to detriments for making protected disclosures are not well-founded and are dismissed.

2. The claimant's complaints against the first respondent of automatic and ordinary unfair dismissal and of wrongful dismissal (breach of contract in relation to notice) are not well-founded and are dismissed.

3. The claimant's complaints against both respondents of direct disability discrimination and discrimination arising from disability are not well-founded and are dismissed.

REASONS

Claims, hearings and evidence

1. The claimant was employed from 1 September 2012, latterly as Head Teacher of Hughenden Primary School. She was dismissed with effect from 22 September 2021. She started her tribunal claim on 18 February 2022. The claim was brought against the first respondent (Buckinghamshire Council) and four named members of the school's governing body.

2. The complaints are for whistleblowing detriment, automatic unfair dismissal for whistleblowing, ordinary unfair dismissal, wrongful dismissal and disability discrimination (direct discrimination and discrimination arising from disability). The respondents presented their response on 11 April 2022.

3. There was a preliminary hearing before Employment Judge Brown on 6 October 2022. At that hearing the complaints against the individually named members of the school's governing body were rejected as the claimant had not engaged in early conciliation in relation to them. The second respondent, the Governing Body of Hughenden Primary School, was added instead, the claimant having engaged in early conciliation in relation to that body.

4. The liability hearing took place on 2, 3, 4, 6, 9, 11, 12, 13, 16, 17 and 18 September 2024. Preliminary matters, witness evidence and closing remarks were completed on those days. The hearing had originally been listed to take place on 5 and 10 September as well but there was no hearing on those dates for judicial resourcing reasons. We started at 12.00 on 12 September 2024 as the claimant had a medical appointment in the morning.

5. The claimant has a hearing impairment. The tribunal provided a hearing loop which the claimant used for part of the hearing. We also discussed with the claimant the seating arrangements in the tribunal room and we adjusted the set up to ensure that it was suitable for her.

<u>Documents</u>

6. At the start of the hearing the respondent provided an opening note and a reading list of key documents. Both parties provided separate cast lists and chronologies.

7. There was a large volume of documents in this case. The parties had agreed the main hearing bundle. It was made up of 14 lever arch files with 5,344

pages and a 40 page index. In these reasons we refer to documents in that bundle using the prefix MB before the page number.

8. Prior to the start of the hearing before us the parties agreed a supplemental hearing bundle which was made up of two more lever arch files with 640 pages and a 9 page index. In these reasons we refer to documents in that bundle using the prefix SB before the page number.

9. On the first day of the hearing the claimant provided a pack of additional documents contained in a plastic wallet. That pack of documents was paginated and had 54 pages. The respondent did not object to those documents being referred to. During the course of the hearing a second version of the document on page 54 was added, bringing the total in this pack to 55 pages. We do not need to refer to any pages from that pack in these reasons.

10. Many of the pages in the main and supplemental bundles had some redacted information, for example relating to students at the school and their families. At times, the redactions made it difficult for the parties and the tribunal to fully understand the document and to understand who was being referred to. In the interests of proportionality, we dealt with this by the respondent providing an additional file with unredacted versions of key documents (rather than an unredacted copy of the whole bundle). Further unredacted documents were added as requested by the claimant during the initial days of the hearing. On 11 September the respondent produced an updated file of unredacted documents. It had 450 pages in four sections, A to D. We found it helpful to have unredacted copies of some of these documents during the hearing but we do not need to refer to any of the pages in the unredacted documents file in these reasons.

11. On 11 September we told the parties that, for reasons of proportionality and to avoid delay, no more documents could be added.

Witness evidence

12. We had a discussion about timetabling at the start of the hearing. With assistance from the parties and taking into account witness availability and the reduced time allocation, the tribunal produced a timetable. We printed copies for the parties. As the hearing progressed, we allowed some flexibility, and adjusted the timetable to reflect this. The final version of timetable was produced on 9 September. A copy is attached as Appendix A.

13. We are grateful to the parties for their assistance with keeping largely to this timetable.

14. We heard evidence from the witnesses on 4 to 17 September, as set out in the timetable.

Closing remarks

15. The parties made closing remarks on 18 September 2024.

16. Mr Davidson produced written closing comments and we allowed reading time for this document. Both Mr Davidson and Mrs Leighton made oral closing remarks.

Reserved judgment

17. We hoped to be able to tell the parties our decision and reasons at the end of the hearing but, given the number of issues to be determined, there was insufficient time. We told the parties in the course of the hearing that we had decided to reserve judgment. We deliberated on 19 and 20 September and 18 October 2024.

18. At the end of the hearing we made some orders under rule 50 and explained them to the parties. The orders relate to restrictions on reporting, publication of the judgment and the use of documents disclosed and referred to at the hearing. These orders were explained at the hearing on 18 September and sent to the parties in writing afterwards. The tribunal will need to consider whether these orders should be continued after the promulgation of this reserved judgment. Case management orders about this have been sent to the parties separately.

19. The judge apologises to the parties and their representatives for the delay in promulgation of this judgment. This is because of the current workload in the employment tribunal, and the large number of issues for consideration in this case.

The issues

20. The issues in the case were identified and set out in the case management summary prepared after the preliminary hearing on 6 October 2022 (pages MB107 to 111). The list of issues is set out in Appendix B.

21. The list of issues in the case management summary did not set out the protected disclosures relied on by the claimant. These were recorded in a Scott Schedule (page MB96). The Scott Schedule was difficult to read because of the size of the font in the copy in the bundle. The claimant provided an electronic version of the document which the tribunal was able to print in a legible form. Appendix B includes an extract from the Scott Schedule of alleged protected disclosures.

22. The list of issues also did not include the whistleblowing detriments relied on by the claimant. These were set out in paragraphs 46 and 47 of the claimant's particulars of claim (page MB34). We have included these in Appendix B.

Findings of fact

23. We set out in this section a summary of what happened. As far as possible, we set out our findings in chronological order.

24. Where there is a dispute between the parties, we decide, by reference to the evidence we have heard and read, what we think is most likely to have happened. This is called the balance of probabilities.

25. We heard a lot of evidence during the course of the hearing. Some of it was not directly relevant to the issues for us to consider. In our findings of fact, we have focused on the evidence which was of most assistance to help us decide the issues in the complaints before us.

Introduction

26. The claimant's continuous employment as a teacher began on 1 September 1989. She was employed by the first respondent who we refer to in these reasons as the Council. She started as Head Teacher of Hughenden Primary School on 1 September 2012. We refer to Hughenden Primary School as the School. A head teacher has overall responsibility for the day-to-day management of their school. The head teacher is accountable to the governing body of the school, which oversees and directs the school's strategic direction. We refer to the second respondent as the Governing Body.

27. There was an Ofsted inspection of the School in 2017. The School was graded as good overall. Behaviour was graded as outstanding.

Alleged protected disclosures

28. The claimant says she made protected disclosures on 18 occasions between 2016 and October 2020. In relation to each of the alleged protected disclosures, we set out here our findings of fact about what happened and what the claimant believed. We return in the conclusions section to the questions of whether the claimant's beliefs were reasonable, and whether any detrimental treatment was done on the ground of any protected disclosure.

29. We have adopted the numbering of the alleged protected disclosures used the claimant's Scott Schedule (but we have recorded our findings on each of them in chronological rather than number order).

Alleged protected disclosure 16

30. As part of its provision of primary education in the county, the Council had a Primary Executive Board. That board included representatives from schools by geographical area and also subject area representatives. On a date in the period 2015 to 2017 the claimant attended a Primary Executive Board meeting and was asked to leave. This forms the background to alleged protected disclosure 16.

31. The chair of the meeting was Ms Jo Garlick. When the claimant arrived at the meeting, Ms Garlick asked the claimant to leave. This was because, although the claimant had previously been the nominated representative for Wycombe North, another head teacher had been elected by group members as the new representative for Wycombe North. The claimant thought she was entitled to attend the meeting on behalf of the Safeguarding Children Board. Ms Garlick did not agree. She asked the claimant to leave the meeting as her view was that the claimant was not entitled to be present at the meeting.

32. After the meeting the claimant spoke to David Johnson who was at the time the Head of Children's Services for the Council. She told him what had happened and complained about being asked to leave the meeting.

33. We find that the claimant believed:

    33.1 that telling Mr Johnson that she had not been permitted to attend the Primary Executive Board in the capacity of representative for the Safeguarding Children Board was a disclosure of information related to the potential for danger to be done to children's health and safety; and

    33.2 that this was in the public interest, namely the interests of children attending schools in Buckinghamshire within the Council's remit.

34. Ms Garlick said, and we accept, that neither Mr Johnson nor anyone else spoke to her in any capacity about the complaint Ms Leighton had made to him about this incident. Ms Garlick was unaware that the claimant had made any complaint about what happened at this meeting.

Alleged protected disclosure 1

35. In mid 2018, the claimant interrupted a meeting between Pat Beveridge, the School's safeguarding governor and Julie Wainwright, a teacher and Special Needs Co-ordinator at the School. The meeting was about children at the School with special educational needs. The claimant had seen that, as part of their discussion, Mrs Beveridge and Ms Wainwright had put the first names of some children up on a board. The claimant reminded them that, to ensure confidentiality, they should not use first names in this way, as it meant that anyone walking past the room might be able to identify the children who were being discussed. She also said that too much confidential information was being shared in reports to governors.

36. We find that in doing this the claimant believed:

    36.1 that she was disclosing information which tended to show that there had been a failure to comply with the Data Protection Act 2018 (which had recently come into force); and

    36.2 that her disclosure was in the public interest, namely the interests of children at the School with special educational needs.

37. (The claimant also relied on a text sent to Ms Wainwright on 17 September 2020 (page SB206) in support of this allegation. The claimant did not say that the text of 17 September 2020 was itself a protected disclosure. In any event, we find that the text itself did not disclose information, rather it was a reminder the claimant sent to a member of her staff about the requirement for confidentiality.)

Alleged protected disclosure 2

38. The claimant said she made a disclosure to Mike Pearson, the Council's Education, Health and Care Plans Co-ordinator, in May/June 2019 that a

looked after child had been refused a place at one secondary school and was likely to be refused a place at another school.

39. She said that in doing so she disclosed information in the public interest which tended to show that the health of the child in question was being, or was likely to be endangered, and/or that legal obligations relating to the Schools Admission Code Statutory Guidance had been breached.

40. There was no written evidence of this disclosure. Emails on this subject were sent by Ms Wainwright, not by the claimant herself. There was no evidence in the claimant's witness statement detailing what she actually said to Mr Pearson, for example whether she referenced any statutory guidance or not.

41. While we accept that this matter was reported by the School to Mr Pearson, there was no evidence before us from which we could conclude that on this occasion the claimant herself disclosed information which she believed tended to show a danger to health and safety or a failure to comply with a legal obligation.

Changes to the governing body and alleged protected disclosure 3

42. In spring 2018 the Governing Body's safeguarding governor, Simon Cook, resigned as governor. This was because he did not feel able to commit the time required for the role. Another governor took over the role.

43. At around this time the claimant spoke to the chair of governors, David Sparks, to say that she thought the new safeguarding governor was an inadequate replacement because she did not have sufficient safeguarding training and that this was worrying. Mr Sparks thought that governors, including safeguarding governors, did not need any special safeguarding training beyond that provided as part of their induction.

44. The claimant said that in raising this concern with Mr Sparks, she was disclosing information that tended to show that the School was failing to comply with its obligations under the 'Keeping Children Safe in Education' guidance. We find that Mr Sparks and the claimant were having discussions, as would be expected between a headteacher and the chair of governors, about safeguarding within the School. They had different views about what training was required. We find that the claimant did not believe that the information she disclosed during these discussions with Mr Sparks tended to show that any had failed, was failing or was likely to fail to comply with a legal obligation.

45. In spring 2019 a different governor, Catherine Hinds, was appointed to the safeguarding governor role.

46. In Governing Body meetings during this period there were frequent discussions about the possibility of Mr Cook remaining on board as an associate member of the Governing Body. There was a dispute between the parties as whether Mr Cook had any formal role after he resigned from his post as a full governor.

47. We find that Mr Cook became an associate governor of the School in April 2020 when he emailed Mr Sparks to accept a proposal that Mr Sparks had sent him in December 2019 Mr Sparks as to the terms and scope of a role as an associate governor (page MB682). (Leaving the chronology briefly here, we find that Mr Cook's associate governor role came to an end in November 2020 when Mr Sparks confirmed that the role would not be renewed (page MB906).)

Alleged protected disclosure 14

48. On 23 March 2020, the first national lockdown started. During the following months the Governing Body met by video call every two weeks. Governing Body meetings were normally minuted, but the Governing Body decided, for reasons of practicality, that no minutes would be taken of these remote meetings.

49. In the early months of the pandemic, the chair of governors, Mr Sparks, spoke to the claimant about concerns that staff had raised with him and other governors about covid arrangements at the school. During those discussions, the claimant said to Mr Sparks that in allowing staff to come directly to governors with their concerns, the governors were making her position as head very difficult, and were hindering her ability to focus on key issues of education, protection and safeguarding.

50. We find that in saying this to Mr Sparks, the claimant was not disclosing information which she believed tended to show that a legal obligation had been breached, or that she was providing this information in the public interest. She did not reference any legal obligation or specific health and safety issue. It is not clear what legal obligation or health and safety concern could have been impacted by staff having the ability to raise concerns with the governors. The information the claimant conveyed to Mr Sparks related to her concerns about her own position, rather than to any relevant public interest failure.

Complaints about the claimant

51. On 26 April and 25 May 2020, the Council's audit team received two whistleblowing allegations against the claimant. They made allegations about safeguarding issues (page MB2905 and MB769). On 29 May 2020 the head of the Council's audit team, Maggie Gibb, referred these to one of her team members, Mike Frost, an Audit Manager, to deal with.

52. At the same time, the governors were continuing to receive informal complaints about the way the school was being run during the pandemic. One such complaint was made by Ms Wainwright to Mr Sparks. He reported this to the claimant.

Alleged protected disclosure 15

53. Around May 2020 the claimant had some communications with Ms Wainwright about the plans to re-open the school more fully. Ms Wainwright,

the School's NEU representative, was raising concerns on her own behalf and also on behalf of other staff.

54. On 30 May 2020, the claimant sent an email to Mr Sparks complaining about the conduct of Ms Wainwright (page MB773). The claimant said that Ms Wainwright appeared to be trying to dictate how the school was run and undermining her position as head. In her email the claimant said that she had given careful consideration to the plans for re-opening the school, to ensure stability for children and staff without compromising the safety of the whole school. The claimant suggested that these decisions were very much hers, as they related to the day-to-day running of the school. She said that Ms Wainwright had no right to tell her or the governors how and when they talk to staff.

55. We find that when viewed in the context of previous discussions between the claimant and Mr Sparks, the claimant believed that:

    55.1 she was disclosing information that tended to show that the health and safety of children at the school was likely to be endangered, by the undermining her position; and

    55.2 she was acting in the public interest in informing Mr Sparks about this.

Alleged protected disclosure 4

56. In spring 2020 the claimant raised concerns verbally to Mr Sparks that a member of staff had made purchases from a company owned by a family member without advising the school of the fact that she had a link with the company, and without declaring any pecuniary interest.

57. We find that in making this complaint the claimant believed that:

    57.1 she was disclosing information which tended to show that there had been a breach of the Council's obligations regarding financial accountability and the requirements to account to the Department for Education; and

    57.2 she was making a disclosure in the public interest, that is, in the interests of the School and the Council.

Alleged protected disclosure 5

58. We find that in spring 2020 the claimant disclosed to Mr Sparks that there had been a leak of confidential information from the School to a parent of a pupil at the School who was also working at the School.

59. We find that the claimant believed that:

    59.1 this information tended to suggest that there had been a failure to comply with legal obligations regarding data protection; and

59.2 it was in the public interest, that is the interests of the School's children, parents and the School community more widely, to raise this concern with Mr Sparks.

Alleged protected disclosure 7

60. In her Scott Schedule the claimant said that in May/June 2020 she made a disclosure to Mr Pearson that two vulnerable children had wrongly not been admitted into secondary schools.

61. The claimant provided no evidence in her witness statement as to what she said on this occasion. None of the documents she referred to in this context contain any detail about what she said.

62. The claimant has not provided any evidence from which we could find that on this occasion she made a disclosure of information which met the requirements to be a protected disclosure.

Alleged protected disclosure 9

63. A meeting took place at the School on 18 September 2020. The people at the meeting were the claimant, Mr Cook, who was an associate governor of the school at the time, and Mrs Hinds, a governor of the school. The meeting was to discuss the role of safeguarding governor, which Mrs Hinds had taken on the year before.

64. After the meeting, Mrs Hinds spoke another member of the School's leadership team, and received permission to walk around the school grounds, outside the classrooms, to wave to students and staff. Mrs Hinds wanted to do this to convey her encouragement and support for the children and staff of the School at what was a difficult time for everyone.

65. When the claimant found out that Mrs Hinds had done this, she felt that it was not acceptable. She thought Mrs Hinds should not have remained on the school grounds after their meeting, in circumstances where the number of people on the site should be kept to a minimum. The claimant was also concerned about the safety of Mrs Hinds herself.

66. The claimant disclosed this concern to Mr Cook in September 2020 in a conversation. We find that, the claimant believed that:

66.1 the information she disclosed tended to show that there had been a failure to comply with covid health and safety requirements which could endanger the health and safety of Mrs Hinds and the children and staff at the School; and

66.2 it was in the public interest to raise this concern because ensuring safety of a school during the covid pandemic was a matter of public interest.

The staff and parent survey

67. In about June 2020 the Governing Body decided to run a staff survey and a parent survey. This was prompted in part by concerns which had been raised with them by Ms Wainwright about the running of the School during the pandemic.

68. The Governing Body wanted to ensure that, during a period when governors were less able to visit the School and speak to people in person, staff and parents had a way of providing information and raising any concerns. Because of the informal concerns that had been raised with them, the governors took a greater part than usual in developing the staff survey. They were concerned to find out how the covid situation was affecting staff and parents.

69. The claimant was involved with the drafting and development of the staff survey. She was not keen that a survey should be sent out during the covid pandemic period as she thought it was a difficult time to be sending out a questionnaire and it might be expected that people would be critical. She also disagreed with the governors about the wording of the questions. She had the opportunity to discuss her views with the governors.

70. When the questionnaire itself was sent out the claimant was missed off the circulation list for the email. We find that the claimant was omitted because of a mistake. Once the mistake was realised, the email was forwarded to her.

Alleged protected disclosure 8 and 10

71. The claimant alleges that in summer 2020 she made protected disclosures to Mr Sparks about two members of staff who were claiming overtime for hours they had either not worked at all, or for which they had already been compensated by way of time off in lieu.

72. We find that the claimant did raise concerns about these issues with Mr Sparks in summer 2020. As with other disclosures relied on by the claimant, these were part of the day-to-day discussions between the head teacher and the chair of governors about issues relating to the running of the School.

73. We find that in making these disclosures, the claimant believed that:

    73.1 she was disclosing information which tended to show that there had been a breach of the financial and accounting obligations of the School and

    73.2 these disclosures were in the public interest.

Alleged protected disclosure 6

74. On 11 June 2020 the claimant received an email from Ms Wainwright raising concerns about an incident which had taken place between two children at the School. Although the claimant had not been present at the time of the incident, she thought that Ms Wainwright's description of the incident was exaggerated. The claimant formed this view based on an account she had been given by another teacher who had been present at the incident.

75. The incident was discussed in the full Governing Body meeting on 17 June 2020. The Governing Body agreed arrangements to address the concern raised by Ms Wainwright.

76. The claimant said that, in the course of the discussions at the full Governing Body, she disclosed that Ms Wainwright's email contained exaggerated information and provided an inaccurate and incomplete picture about a vulnerable child. She did not explain how this amounted to a disclosure tending to show that health and safety was being endangered, or that there had been a breach of a legal obligation. The minutes of this Governing Body meeting do not contain any detail about the claimant's concerns about the email.

77. It is clear that the claimant did not agree with Ms Wainwright's account of the incident. However, we do not have any evidence from which we could find that the claimant provided information to the full Governing Body which, in her belief, tended to suggest that there had been a breach of a legal obligation or a danger to health and safety.

Concerns about the claimant

78. In June 2020, the Governing Body received responses to the staff survey which had been sent out previously. There were 14 to 15 individual separate (and anonymous) responses. The responses raised a number of concerns about the School including about the senior leadership team and the head teacher. Staff outlined concerns about leadership, management, support for children with additional needs, behaviour, staffing and specific points about arrangements during the pandemic.

79. The Governing Body prepared a summary of the concerns raised in the responses to the survey (page MB817). Mr Sparks spoke to the Council's employee relations and change manager, Beryl Hammond-Appiah, on 10 July 2020 (page MB866). Ms Hammond-Appiah advised Mr Sparks about capability management procedures. Mr Sparks said he would await the start of the new academic year and take action if the problem persisted.

80. At about the same time, one of the staff members who had reported concerns to the council's whistleblowing line in April/May 2020 also made a report to the NSPCC. The NSPCC forwarded the report to the Council's Local Authority Designated Officer (LADO), a safeguarding officer.

81. In July 2020, Mrs Hinds, the safeguarding governor, in agreement with Mr Sparks, spoke to the Council about some safeguarding concerns which had been reported to her. On 22 July 2020, on the advice of the Council, Mrs Hinds completed a formal LADO referral document in respect of one of the safeguarding incidents that had been reported to her (page SB464).

82. On 10 August 2020, the LADO team held a position of trust meeting. This is a multi-agency meeting to consider safeguarding concerns about people in positions of trust. The meeting was to consider the concerns that had been raised about the claimant in the two whistleblowing line complaints and in the

NSPCC complaint and those raised by the Governors following informal complaints to them and the staff survey responses (page MB879 to 888).

83. The meeting jointly concluded that an investigation should be carried out. Mike Frost, who was already dealing with the whistleblowing complaints about the claimant, was appointed to oversee the investigation. An external consultant, Dave Verma, was appointed as investigating officer.

84. Mr Verma was appointed on 10 August 2020 but his investigation had to be paused during the period 20 August to 2 September 2020 at the request of the LADO Team.

85. (The claimant was not aware at this time that an investigation was being carried out. She did not know about the investigation until she was suspended from work on 20 October 2020.)

Alleged protected disclosure 12

86. On 1 September 2020, the claimant had a conversation with Victoria Dolley, assistant team manager in the assessment team in children's services at the Council. The claimant raised concerns about a family whose children were at the School. She confirmed her concerns in an email the following day (page SB202). This was copied to another manager in the council's children services directorate.

87. We find that the claimant believed that:

87.1 the information she disclosed to Ms Dolley on 1 and 2 September tended to show a danger to health and safety of the children in this family in that she considered that there had been failings in social care practices in respect of this family; and

87.2 that she was raising these matters in the public interest because they concerned potential child protection issues.

Alleged protected disclosure 11

88. Around 9 September the claimant made a formal referral about the same family to the LADO Team. The LADO Team asked Mr Sparks to carry out an urgent risk assessment. He carried out the risk assessment on 11 September and wrote it up on 16 September 2020.

89. On 14 September the claimant escalated her concerns within the Council and asked for the referral to be treated as a Children in Need referral (page SB205). We find that in doing so the claimant believed that:

89.1 the information she was disclosing tended to show that the children's safety was being endangered; and

89.2 she was acting in the public interest in raising issues about these children's safety.

Investigation by Mr Verma into the allegations against the claimant

90. At the same time, Mr Verma was progressing the investigation into the concerns raised about the claimant. On 6 October 2020, he interviewed Mr Sparks, Mrs Beveridge and Mrs Hinds about the allegations against the claimant (page MB942 to 949).

Alleged protected disclosure 13

91. On 8 October 2020 the claimant sent an email to all governors about the use of their personal email addresses (page SB414). The email included a thread of emails showing that a parent of child at the School had mistakenly been included in an email sent to governors, because of a similarity in their name. The claimant asked whether it was now time for governors to stop using personal email addresses and to be allocated school email addresses. She said, "We are mindful that there could be sensitive information or GDPR".

92. The context in which the claimant's comments were made was apparent from the thread of emails below hers. We find that, in sending this email about a breach of confidentiality, the claimant believed that:

    92.1 she was disclosing information which tended to show there was a risk of a breach of the GDPR; and

    92.2 the disclosure was in the public interest, namely in the interests of keeping school, governor and third-party information from being mistakenly disclosed.

October 2020 position of trust meeting

93. On 16 October 2020, the first respondent held another LADO position of trust meeting to consider the concerns raised about the claimant. At this meeting a joint decision was taken to suspend the claimant while the investigation was ongoing. The decision was taken by the LADO and by Gareth Drawmer, the Council's head of achievement and learning, with advice from Ms Hammond-Appiah. Following the meeting, the LADO told Mr Sparks the decision and asked him, as chair of governors of the School, to suspend the claimant pending the investigation.

94. The claimant said that her suspension was because of her loud voice, which she says is something arising from her disability (a hearing impairment). In the NSPCC referral about the claimant there is a reference to the claimant shouting regularly at pupils and using derogatory and belittling language. We find that these comments relate to the claimant's tone of voice and choice of words, rather than the volume of her voice. There was also a reference in the LADO referral made on 22 July 2020 to the claimant speaking forcefully to a child and being audible from the room next door. Again, we find that the concern was with the way in which the claimant was speaking to a child, not the volume of her voice.

95. We find that the decision to suspend the claimant was not taken because of her loud voice. It was taken by the members of the LADO meeting on 16 October because they felt that, overall, the allegations against the claimant merited investigation and that the investigation could be hampered by the claimant remaining at school whilst the investigation was ongoing.

96. We find that Mr Sparks suspended the claimant because that action was recommended by those at the LADO meeting, and Mr Sparks was asked to put that decision into effect. It was not because of the claimant's loud voice.

Suspension of the claimant

97. On 20 October 2020, the claimant was asked to attend a confidential meeting in church. She was not told in advance what the meeting would be about. The meeting was attended by governors Mr Sparks, Mrs Hinds and Mrs Beveridge.

98. At the meeting Mr Sparks handed the claimant a letter confirming that she was suspended and that she was required to stay away from work. The claimant did not open the letter at the time. Mr Sparks outlined that the council had received allegations serious enough to warrant an investigation and that she was suspended from work while the investigation was taking place.

99. The claimant assumed that the allegations related to the family that she had made referrals about in September. In fact, the allegations were based on the two whistleblowing complaints from April and May 2020, the NSPCC referral, the LADO referral by Mrs Hinds in July 2020 and the concerns arising from the responses to the staff survey in June/July 2020.

100. The suspension letter grouped the allegations as allegations relating to the health and safety of children, staff and others; allegations relating to bullying and harassment; and other serious concerns relating to the running of the school including finances, recruitment and management generally (page MB957 to 959).

101. The suspension letter concluded by telling the claimant that Mrs Beveridge had been nominated as her contact officer and that in that role Mrs Beveridge would keep in touch with the claimant and would try and resolve any queries she may have about the progress of the investigation.

102. On 22 October 2020, Jo Garlick was appointed interim head teacher for the school. She had significant experience in carrying out that kind of role. Mr Sparks had made enquiries with her prior to the claimant's suspension, to see if she would be available if needed. Ms Garlick played no part in the decision to suspend the claimant.

103. One of the issues arising from the claimant's suspension which was addressed by the respondents was the claimant's access to documents to respond to the allegations against her. She was allowed supervised access to the School's head teacher email account on two occasions. At an early stage of her role Ms Garlick also had access to the head teacher email

account. Later, a new head teacher email account was set up for Ms Garlick to use. After that the old head teacher account was not used but was kept for the purposes of the investigation.

The telephone conversation with Mr Verma

104. On 22 October 2020 Mr Verma who was conducting the investigation into the claimant, received a telephone call. There is a dispute between the parties about this call. Mr Verma says that the call was from the claimant pretending to be a parent of a child at the School, in order to find out more information about the allegations against her.

105. The claimant accepts that a call was made to Mr Verma from her phone at this time. She denies pretending to be a parent of a child at the School. The claimant says that the call was made by her mother, who was with her at the time, using the claimant's phone. The claimant says that her mother was worried about her. The claimant says her mother called Mr Verma to try and understand more about what the investigation was about.

106. We accept the claimant's evidence about this. We find that the most likely explanation for the dispute between the parties about this call is that there was a misunderstanding about the use of the word 'parent'. We find that the call was made by the claimant's mother and that she described herself as "a parent" meaning a parent of the claimant, not a parent of a child at the School. We find that the claimant's mother was asking questions to try to find out more about the allegations against the claimant.

107. Mr Verma told Mr Frost about the call (as he understood it). Mr Frost reported the call to Ms Hammond-Appiah. She said that it could form an additional allegation in the list of allegations against the claimant (page MB981). In the event this was not added to the allegations against the claimant.

108. We find there was a genuine misunderstanding on both sides about this call. It was not an underhand attempt by the claimant to get information, or an attempt by the respondent to inflate the allegations against the claimant.

Staff briefings

109. On around 22 October 2020, Mr Sparks gave staff briefings about the suspension of the claimant. Before he did so, he took advice from Ms Hammond-Appiah about the extent to which staff could have contact with the claimant during her suspension (page MB964). Ms Hammond-Appiah advised Mr Sparks to tell the School's executive senior leader that she should refrain from discussing any school issues with the claimant. Other than this, Ms Hammond-Appiah did not suggest any restrictions on staff contacting the claimant.

110. Mr Sparks made a note of his briefing to staff which we accept accurately records what he said (page MB1023). The note said the claimant had agreed to take leave whilst an investigation was being carried out into allegations from a whistleblower direct to the council and via the NSPCC and Ofsted. He

said this was not intended as a judgment or punishment and was simply to allow the investigation to be carried out impartially and fairly.

111. He said that staff 'would be well advised not to talk about this and to keep it entirely confidential'. He did not tell staff not to contact the claimant.

Call with Mr Frost

112. On or around 22 October 2020, the claimant had a telephone call with Mr Frost. We accept the claimant's evidence about the circumstances of that call, namely that:

    112.1 she called Mr Frost first but could not get through to him;

    112.2 he called her back while she was walking her dog in the woods, when she was not wearing her hearing aids;

    112.3 the signal was bad and there was a time lag on the call (a delay between a person speaking and the sound being heard on the other end of the call).

113. There is a dispute between the claimant and Mr Frost about what was said on that call. The claimant says that during the call Mr Frost mocked her inability to hear him. She did not particularise the words he used, either in her claim or the list of issues. On the first day of the tribunal hearing, when we were discussing the issues with the parties, we asked the claimant what words Mr Frost had used. The claimant gave a number of different versions: "How can you say you can't hear me? You're not deaf" and "Well, you're talking to me, you must be able to hear me, you're not deaf", and "How can you hear me if you're deaf?". Mr Frost recalled the conversation with the claimant but denied saying anything about the claimant's hearing impairment.

114. Notes taken by Mrs Beveridge (the claimant's point of contact) record that the claimant told her about a conversation with Mr Frost which included the comment, "Are you aware I'm deaf" (page SB214 to 215). This comment, because of the use of 'I'm deaf', must have been made by the claimant herself. The notes do not record any comment being made by Mr Frost about the claimant's hearing.

115. The evidence relevant to this issue also includes a report made by the claimant by email on 4 November 2020 to the Council's HR service mailbox (page SB176). Her email was asking about what technology was available for hearing impaired staff. The email had been prompted by a request the claimant had made to have a laptop to use at home; she had been told that no laptops were available. In this email the claimant also said that a recent telephone call had left her 'feeling upset when the call handler mocked her deafness'. An HR officer replied and asked the claimant for more details about this but the claimant said she did not want to say anything 'at this stage' (page SB175).

116. We find, based on Mrs Beveridge's note, that the claimant's hearing impairment was referred to by the claimant during her call with Mr Frost. We find that Mr Frost did not mock the claimant's inability to hear or make any comment along the lines suggested by the claimant. Time lags on telephone calls such as occurred here often lead to people talking over each other without meaning to, so that it can be difficult to hear or understand what others are saying. We think it is more likely that the claimant misheard or misunderstood what Mr Frost was saying, because of the poor sound quality of the call.

Subject Access Requests

117. On 22 October 2020 the claimant told Mrs Beveridge that she wanted to make a Freedom of Information request (page MB985). Ms Hammond-Appiah gave Mrs Beveridge the name and email address of the Council's Data Protection Officer (DPO) (page MB984).

118. A few days later Mrs Beveridge provided the claimant with information about making a subject access request. She gave the claimant the wrong name and email address for the Council's DPO (page SB603). We find that Mrs Beveridge made an error with the names: she gave the name and email address of a Council employee who has the same first name as the DPO.

119. On 29 October 2020 the claimant made a subject access request and, relying on Mrs Beveridge's email, sent it to the wrong person at the Council (page SB603).

120. We move on in the chronology here to explain what happened to the claimant's subject access requests.

121. The recipient of the claimant's incorrectly addressed subject access request forwarded the request on to a manager but unfortunately neither of them took any further action with the request. They were not in the information governance department and were probably not sure what to do with it. They did not forward the request to the Council's DPO. There was no evidence to suggest that either of these people knew about the claimant's disclosures.

122. The request was only received in the correct department when the claimant chased it up about eight months later, on 24 June 2021 (page MB1628). At about this time the claimant began making more subject access requests. She made multiple requests and they were wide-ranging and overlapping. The Council's information governance team had to ask her to clarify them or provide more information to enable them to respond. There were disputes between the claimant and the Council about whether the requests had been properly responded to.

123. In January 2022, the Council carried out a review of the claimant's requests (page MB2925). The Internal Governance team wrote to the claimant with the outcome of the review. They said that the claimant's scattergun approach, the overlapping and repeated requests and the continued volumes of correspondence were causing a disproportionate or unjustified level of

disruption. The letter gave an example that two officers in the resources department had been directly sent or copied into more than 400 emails from the claimant in the 6 month period since July 2021.

124. Over the longer period from 1 July 2021 to March 2024 the claimant made 7 subject access requests and 15 freedom of information requests.

125. In March 2024 following complaints by the claimant, the Information Commissioner's Office wrote to the Council giving the opinion that the Council had complied with its data protection obligations in respect of responses to the claimant's subject access requests (and disclosure of information to the Governing Body). The ICO was of the view that the Council had conducted appropriate searches and applied appropriate exemptions and authorities (page SB182).

126. We accept the evidence of Amy Roscoe, the Council's senior information governance manager, that she did not have any involvement investigating or responding to any of the disclosures the claimant made to the School or the Council. Ms Roscoe had some tangential awareness of the claimant's disclosures due to the multiple requests that the claimant made to the Council and the hundreds of associated pieces of communication relating to those requests, in some of which the claimant provided information about her disclosures.

Letter of 1 December 2020

127. We now return to the chronology.

128. The respondent had initially anticipated that the investigation into the allegations against the claimant would be concluded by 17 November 2020, but there was a delay in the completion of the investigation. The claimant was informed on 16 November 2020 that her suspension had to be extended (page MB1150 to 1151).

129. During the period following her suspension the claimant had been in contact with Mr Verma and Mr Frost on a number of occasions by email and telephone. The claimant's contact with those at the Council after her suspension was discussed at a LADO position of trust meeting on 27 November 2020 (page MB1221). Those attending the meeting concluded that the claimant should be reminded of the need for confidentiality and of the terms of her suspension. The agreed action was for Mr Sparks to send the claimant a letter to remind her of the terms of her suspension

130. Mr Sparks sent the letter to the claimant on 1 December 2020 (page MB1226). It said that the claimant had been in touch with a few officials at the Council about her case and that this may breach the terms of her suspension letter. The 1 December letter urged the claimant to stop involving people who were not related to the case and to avoid compromising the investigation. It said that failure to comply with these requirements 'would imply that an additional allegation may be added'. It said that the claimant should be assured that this was not what the Governing Body intended or wanted to do.

131. The suspension letter which the claimant had been given on 20 October 2020 said that the claimant must not make contact with school employees other than her nominated work colleague or trade union representative, employees who are responsible for investigating the allegation and her contact officer. It added:

> "Throughout the course of the disciplinary procedure, it is expected that you will maintain strict confidentiality and only discuss the case with those directly investigating the allegations or your work colleague or trade union representative supporting you."

132. The suspension letter had also said that the matter would be investigated in accordance with the School's Conduct and Discipline Policy and Procedure (a copy was attached). The School's Disciplinary Policy also had a provision about contacting people during suspension (page MB3321). This allowed more contact than the letter itself. The Policy said:

> "During the period of suspension, unless otherwise informed, the employee is …
>
> - prohibited from contacting any pupil, parent, employee of the school or officer of the Council other than their representative or contact. This prohibition does not prevent the employee from having social contact with their colleagues outside of the workplace, provided the disciplinary issues that are the cause of the suspension are not discussed."

133. The Council thought that the claimant should only contact her trade union representative and Mrs Beveridge. This was the reason why Mr Sparks was asked to write to the claimant in the terms in which he did on 1 December 2020. However, the Council's understanding did not reflect the terms of the suspension letter or the School's Disciplinary Policy; it was not clear that the claimant had in fact breached any of the terms of her suspension.

134. The claimant had reasonably understood from her suspension letter that she was entitled to contact those who were responsible for the investigation. She also understood, again reasonably, that there was no restriction on her making whistleblowing complaints, subject access requests or freedom of information requests, and that there was no restriction on her contacting people at the Council about any of those requests.

135. We find that the approach of the LADO meeting and Mr Sparks' letter of 1 December was not motivated by any of the disclosures the claimant made. It was because of a misunderstanding or misinterpretation of the restrictions to which the claimant was subject during suspension.

Investigation meeting and report

136. On 27 January 2021 the claimant attended an investigation meeting with Mr Verma. The meeting lasted for six hours. There were few breaks and the claimant was unable to get any food. At the end of the day the claimant felt

so unwell that she had to go to the Accident and Emergency department for treatment.

137. At the meeting Mr Verma told the claimant that there were approximately 25 allegations made against her. He went through them with the claimant and asked for her response.

138. The claimant said that, during the investigation meeting, Mr Verma put his hands or arms up in frustration and sighed heavily, including at one point when the claimant had to replace the batteries in her hearing aid. Mr Verma said that he did not display frustration during the meeting.

139. We find that it is likely that Mr Verma did display frustration and sigh heavily at times when the claimant was responding to his questions. Mr Verma might not have been aware himself that he was displaying frustration with his body language and voice. We make the finding that he behaved in this way because what the claimant says is consistent with the evidence of Jo Warnock-Horn (the chair of the disciplinary hearing) about Mr Verma's style later, at the disciplinary hearing. We do not find that Mr Verma's behaviour in this respect was because of or related in any way to the claimant's hearing impairment or to her having to replace the batteries in her hearing aid. We find that Mr Verma behaved in this way because the claimant was finding it difficult to focus on the questions he was asking, and because she was giving long answers which were not always on the point. This is consistent with what Mrs Warnock-Smith says.

140. Mr Verma completed a draft of the investigation report in early March 2021. The main report was over 60 pages long. There were 63 exhibits with about 830 pages in total.

141. On 8 March 2021 the Council held another LADO position of trust meeting to consider the draft report (along with reports of the outcome of investigations into two other staff members) (page MB1471). The outcome of the meeting was that some matters would be considered by the police.

142. Another LADO position of trust meeting took place on 18 March 2021 (MB1480). At that meeting, the police officer representative who was present confirmed that the police had concluded that the allegations did not meet the threshold for opening a criminal investigation and that the police would not be taking any further action. He said that the actions by the claimant included inappropriate behaviour and inappropriate handling but that disciplinary action would be the most appropriate course of action.

143. After this meeting, Mr Verma's report was reviewed by a team at the Council which included Ms Gibb and Ms Hammond-Appiah. They conducted a process called "quality assurance". It included proofreading and sense-checking the report, and redacting information about children, complainants and other third parties. As a result of this process some of the allegations which Mr Verma had initially concluded were 'upheld' were re-designated as 'partially upheld'. The quality assurance process took a long time.

144. By 28 June 2021, the quality assurance process had been completed and the report was finalised. A 9 page table summarised the conclusions of the report (page MB3289): 14 allegations were upheld, 2 were partially upheld and 5 were not upheld.

145. On 28 June 2021 the claimant was invited to a disciplinary hearing on 15 and 16 July 2021 (page MB1657 and 1671). She asked for the hearing to be postponed to give her more time to consider the investigation report which she had not yet received (page MB1668). On 30 June, the date for the disciplinary hearing was changed to 22 and 23 July 2021 (page MB1670).

Alleged protected disclosure 18

146. On 3 July 2021, the claimant made a call to the Council's whistleblowing line (page SB379).

147. On 3 and 5 July 2021 the claimant exchanged emails with the Council's audit team in which she said she wanted to add to her whistleblowing disclosure. In one of the emails the claimant set out information which she said showed that the Council's children's services had significant weaknesses which had not been successfully tackled after the best part of a decade. She gave examples of what she said were weaknesses.

148. We accept that, when considered together, the claimant's disclosures to the Council's audit team were disclosures of information, and the claimant believed that:

148.1 They tended to show that children's safety was being endangered and;

148.2 it was in the public interest to make those disclosures.

Papers for disciplinary hearing

149. On 5 July 2021 the claimant was sent a copy of the investigation report and exhibits. There was a large amount of documents.

Alleged protected disclosure 17

150. On 10 July 2021 the claimant sent an email to Mrs Beveridge (page MB1803). In the email the claimant suggested that Ms Garlick had been brought in as head teacher so that the School could join an academy trust. The claimant described Ms Garlick as a competitor with a conflict of interest arising from her role.

151. We find that in saying this to Mrs Beveridge the claimant was not disclosing information which she believed tended to show that a legal obligation had been breached or that there was danger to health and safety. She did not reference any failure to comply with any legal obligation. She referred to safety issues only in the most general terms ('I worry that some of these pupils may have had safeguarding requirements'). The information the claimant provided related to her views about Ms Garlick 'taking over' the head teacher

role; the claimant did not believe that she was providing this information in the public interest.

152. In her Scott Schedule, the claimant said that alleged disclosure 17 also included information about safety dangers arising from changes to car parking arrangements at the School. We find that this was not information disclosed by the claimant. There was nothing about it in the claimant's email of 10 July 2021. We did see an email about car parking issues, but it was sent in November 2021, and not by the claimant (page MB2839).

Postponement of disciplinary hearing

153. The disciplinary hearing that was due to take place on 22 and 23 July 2021 could not go ahead because the claimant was signed off sick. New dates were set.

154. During the period between the investigation report and exhibits being sent to the claimant and the disciplinary hearing taking place, the Council discovered that when carrying out the lengthy quality assurance process, it had made some mistakes in the redaction of third-party information. Ms Gibb attended the claimant's home to replace copies of exhibits SL37 and SL38 with properly redacted versions. Ms Gibb did the same for exhibits SL37 and SL38 in the copy of the report which had been sent to the chair of the disciplinary panel, Mrs Warnock-Horn.

Disciplinary hearing and decision

155. The disciplinary hearing could not be rescheduled until after the school summer holidays. It took place on 14 and 15 September 2021 (page MB2214). Another day (17 September) was added because the hearing was not finished in two days. The claimant had a companion with her for support and her union representative attended the hearing by video link.

156. Mr Verma attended the disciplinary hearing and presented the management case. His approach was to go through the evidence point by point. The claimant was given the opportunity to respond to the allegations against her and to call witnesses.

157. We accept Mrs Warnock-Horn's evidence that Mr Verma's style on the first day of the hearing was brusque and that he made his frustrations apparent if he felt that he was not receiving a direct answer to a question. When the claimant indicated through her union representative that Mr Verma's style and manner made her uncomfortable, Mrs Warnock-Horn let Mr Verma know about the claimant's concerns. The claimant said, and we accept, that Mr Verma's approach was less brusque on the second and third days after this issue had been drawn to his attention.

158. Mrs Warnock-Horn noted during the hearing that there had been a long delay between the investigation and the hearing. She said the panel had grave concerns about the Council's timeline, highlighting in particular the delays in April/May 2021 and August 2021.

159. At the hearing, witness were called by both the management and the claimant. The witnesses included governors and members of staff. There were around nine witnesses in all. Both sides were permitted to ask them questions. We accept the evidence of Mrs Warnock-Horn that the body language of at least two of the staff who gave evidence at the disciplinary hearing suggested that they were uncomfortable being in the room with the claimant.

160. During the hearing, the claimant was permitted to provide additional evidence (for example, pages SB541 to SB546 and SB551 to SB555).

161. After the hearing, the panel went through each of the allegations against the claimant and considered them carefully. Mrs Warnock-Horn prepared a detailed decision-making table setting out the panel's findings on each of the allegations (page MB2309-2321).

162. In reaching its conclusions, the panel took into account the claimant's responses to the allegations, including that statements had been embellished because some staff had an axe to grind, that those making the complaints were not trained in Team Teach behaviour support techniques, and that multiple witnesses were talking about the same event. The panel considered the mitigation put forward by the claimant including character witnesses, length of service and health concerns. The claimant's mitigation was included in the panel's decision-making table.

163. Having made its findings, the panel considered what the sanction was appropriate, and reached the unanimous decision that dismissal was the appropriate sanction.

164. Mrs Warnock-Horn wrote to the claimant on 22 September 2021 with the outcome of the disciplinary hearing (page MB2364). The letter recorded that eight of the allegations had been found to be substantiated. The panel found compelling evidence from multiple members of staff of frequent, repeated and distressing occasions when children were handled (allegation 1a). The panel found that this amounted to gross misconduct (page MB2366).

165. The panel also concluded that the following allegations were substantiated:

    165.1 the claimant's approach to dealing with behavioural issues was inconsistent, to the detriment of the general running of the school (allegation 1b);

    165.2 the claimant did not appropriately manage bullying behaviour by one of the senior leadership team, and displayed manipulative behaviours herself (allegation 2a). The panel found this to be a serious breach of safe working practices, amounting to gross misconduct (page MB2311);

    165.3 the claimant's strong interest in safeguarding grew into an unhealthy balance, meaning that she did not ensure a good and safe learning environment for every pupil (allegation 3d);

165.4 false returns relating to numbers of staff in school during lockdown were submitted and the claimant was accountable for the reporting discrepancy (allegation 3e);

165.5 the claimant failed to provide strong and rigorous performance management of the senior leadership team, and the actions of one of the team caused distress to others in the workplace (allegation 4d);

165.6 the claimant approved the payment of honoraria to four staff during the pandemic by way of Amazon vouchers, meaning that no statutory deductions were made in respect of the payments (allegation 4i);

165.7 the claimant failed to maintain essential child safeguarding data and essential data on incidents when restraint was used (allegation 5a). The panel found this was gross negligence by the claimant which amounted to gross misconduct (page MB2319). The claimant accepted that the safeguarding files were not in good order. The school kept a bound and numbered book to record the use of physical intervention (page MB3741). The panel noted that the entries in the book had significant gaps and incomplete recording. The panel noted that a secondary school had described a file of a student who transferred to them as in 'complete disarray' (page MB3925). We make an additional finding in respect of the complaint of wrongful dismissal: in her evidence to us, the claimant was unable to identify in the bound and numbered book which of the occasions were records of interventions by her, and which by others, and what had happened, and we find that the entries in this important record book were clearly insufficient.

166. The panel gave details of the specific evidence it had accepted which supported each of the allegations it upheld, considered the relevant policies, and explained how it reached its conclusions.

167. The other allegations against the claimant were not upheld.

Dismissal

168. The panel decided that the claimant should be dismissed on the grounds of gross misconduct with immediate effect. Dismissal took effect on 22 September 2021.

Appeal

169. The claimant appealed against her dismissal. The clerk to the Governing Body sent the claimant the papers for the appeal (including the notes of the disciplinary hearing) on 20 October 2021 (page MB2465).

170. The School policy provided that the role of the appeal panel was to conduct a review where the appeal was based on the severity of the sanction, and a re-hearing where the grounds of appeal are broader (page MB3326). The respondents considered the claimant's grounds of appeal and decided to adopt a hybrid arrangement in her case, permitting the claimant to call

witnesses who had not attended the disciplinary hearing, and considering other issues by way of review.

171. We do not find that the respondents withheld information from the claimant to prevent her from defending herself, at either the disciplinary or appeal stages. The claimant sought large volumes of documents from the respondents, some of which were not directly relevant to the allegations against her and much of which contained sensitive third-party information. We find that the respondents did their best to respond in a proportionate and fair way to the claimant's requests for information.

172. The appeal hearing took place on 2 November 2021 (page MB2861). The claimant attended the appeal and was supported by her union representative.

173. Nicolette Habgood chaired the committee of three. The claimant said that while she was waiting outside the room for the appeal to start, Dr Habgood arrived and the claimant heard her say to another member of the committee, '100% dismissal'. The claimant said that this meant that Dr Habgood had already made the decision not to allow the appeal, before the appeal hearing had started. Dr Habgood was unavailable to attend the tribunal hearing to give evidence to us. She provided a written witness statement but it did not deal with this point as the claimant raised it for the first time in her witness statement for the hearing before us.

174. We find that it is more likely that the claimant misheard this. We make this finding because of the circumstances in which the claimant heard the comment (overhearing part of a conversation) and because the length of the appeal hearing and the detailed appeal decision letter do not suggest that the outcome was pre-determined.

175. At the start of the hearing one of the panel members made a declaration that she was a friend of one of the claimant's witnesses. The claimant agreed that the panel member could remain on the committee, saying that 'she appreciated that all concerned had professional integrity'. She recognised that because of the wide school community, it would be difficult to find a panel member who was completely unconnected (page MB2862).

176. The same panel member told the appeal hearing that, because of postal delays, some of the appeal papers had only been received by her that morning, however she felt that she had sufficient papers for the meeting. The notes record that the claimant agreed that the delay in receipt of some of the papers would not make a material difference.

177. Mr Verma attended the appeal to present the case on behalf of management. He was supported by an exhibits officer. The claimant said that Mr Verma put his hands or arms up in frustration and sighed heavily during the appeal meeting as well as in the disciplinary hearing. We find that it is likely that the claimant was thinking of Mr Verma's conduct during the disciplinary hearing, because she agreed that he had stopped doing this when Mrs Warnock-Horn brought it to his attention.

178. The appeal hearing started at 10.00am. The claimant made submissions to the appeal panel for most of the morning. She then called four witnesses, one of whom was a parent whose evidence had been wrongly omitted from the papers before the disciplinary panel. Her witness evidence finished at about 1.35pm. After a lunch break and a short management presentation, the claimant asked questions of Mr Verma about the management case. Both sides concluded with short summaries and the hearing ended at 4.20pm.

179. Dr Habgood wrote to the claimant on 8 November 2021 with the outcome of the appeal. The conclusion was that the dismissal for gross misconduct was upheld (page MB2794).

180. The Council appointed an independent investigator to consider the claimant's outstanding whistleblowing allegations. The final report was sent to the claimant on 7 March 2022 (page MB3039-3040). The investigator recommended a review of the School's procedure for raising LADO referrals, and a review of the effectiveness of the Governing Body.

Reference

181. On 14 January 2022 the School received a request from an employment agency called TikBox for a reference for the claimant (page MB3024). The School liaised with the Council's employee relations and change manager, Ms Hammond-Appiah. Ms Hammond-Appiah and the claimant corresponded about the request. The claimant asked to see a copy of the School's reference, and said that if the School was not willing to share the reference with her, it should not reply to the request (page MB3017).

182. Ms Hammond-Appiah had further discussions with the School and Mr Sparks. They were concerned that the request was from an agency, and so the identity of the prospective employer was not clear. They felt that a reference would have to go direct to a potential employer because of the statutory obligations which apply to the provision of references for employment at schools, in particular the requirement to disclose disciplinary action in some circumstances (page MB3012). They took advice from the Council's solicitor (page MB3014).

183. Ms Hammond-Appiah emailed the Claimant on 21 January 2021 to explain the statutory obligations. She said that the School would not provide a reference as the request appeared to come from an agency on behalf of someone else. She also explained that there was no requirement on the School to consult with the claimant before providing a reference (page MB3026).

184. Following this email, the School replied to TikBox to say that they would only respond directly to an employer, not to an agency (page MB3025)

The Law

Protected disclosures

185. Section 43A of the Employment Rights Act 1996 provides that a protected disclosure is:

185.1 a 'qualifying disclosure' as defined by section 43B;

185.2 which is made in accordance with one of the specified methods of disclosure set out in sections 43C to 43H.

186. Section 43B explains what a qualifying disclosure is. Sub-sections 43B(1) and (5) say:

> *"(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.*
>
> *…*
>
> *(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1)."*

187. In summary, a qualifying disclosure is i) a disclosure of information that ii) in the reasonable belief of the worker making it, is made in the public interest and iii) (again, in the reasonable belief of the worker making it) tends to show that one or more of six 'relevant failures' has occurred, is occurring or is likely to occur. Relevant failures include a failure to comply with a legal obligation, or endangering a person's health and safety.

188. Points ii) and iii) both have two elements: that the claimant has the required belief (as a matter of fact and on a subjective basis) and, if they do, that their belief is a reasonable belief to hold (on an objective basis).

189. Section 43C says:

> *"(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."*

Protected disclosure detriment

190. Section 47B of the Employment Rights Act says:

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

191. 'Detriment' is given a wide interpretation. It means putting under disadvantage, or doing something that a reasonable worker would consider to be to their detriment (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11).

192. The test for whether a detriment was done 'on the ground that' the worker has made a protected disclosure is explained in *Fecitt and others v NHS Manchester* [2012] IRLR 64, CA. The question is whether the protected disclosure materially influenced (in the sense of being more than a trivial influence) the treatment of the worker.

Burden of proof in protected disclosure detriment

193. In a complaint of detriment, section 48(2) provides that it is for the employer to show the ground on which any act, or deliberate failure to act, was done. This means that the burden shifts to the employer where the other elements of a complaint of detriment are shown by the claimant.

194. Unlike the operation of the burden of proof under the Equality Act 2010, a failure by the employer to show positively the reason for an act or failure to act does not mean that the complaint of whistleblowing detriment succeeds by default. It is a question of fact for the tribunal as to whether or not the act was done 'on the ground' that the claimant made a protected disclosure (*Ibekwe v Sussex Partnership NHS Trust* UKEAT/0072/14/MC).

Automatic unfair dismissal

195. Section 103A of the Employment Rights Act says:

> *"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."*

196. A dismissal which is contrary to section 103A is 'automatically' unfair. The tribunal does not need to consider whether the dismissal was reasonable in the circumstances.

'Ordinary' unfair dismissal

197. Section 98 of the Employment Rights Act 1996 says:

> *"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*
>
> *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*
>
> *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) A reason falls within this subsection if it—*
>
> *…*
>
> *(b) relates to the conduct of the employee…*
>
> *(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
>
> *(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

(b) shall be determined in accordance with equity and the substantial merits of the case."

198. In a complaint of unfair dismissal where the reason for the dismissal is conduct, the role of the tribunal is not to examine whether the employee is guilty of the misconduct. Guidance set out in *British Home Stores v Burchell* [1980] ICR 303 explains that the tribunal must consider the following questions:

198.1 whether, at the time of dismissal, the employer believed the employee to be guilty of misconduct;

198.2 whether, at the time of dismissal, the employer had reasonable grounds for believing that the employee was guilty of that misconduct; and

198.3 whether, at the time that the employer formed that belief on those grounds, it had carried out as much investigation as was reasonable in the circumstances.

199. The tribunal considers whether the decision to dismiss and the procedure adopted by the employer were within the range of reasonable responses open to the employer. It must not substitute its own view of the appropriate penalty for that of the employer.

Wrongful dismissal (notice)

200. The Tribunal has jurisdiction to consider a complaint of breach of contract under Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. This includes a complaint that the claimant was wrongfully dismissed without notice.

201. The approach here is not the same as in a complaint of unfair dismissal. It is not sufficient for the employer to demonstrate a reasonable belief that the employee was guilty of gross misconduct. In a case of wrongful dismissal, the tribunal must decide whether:

201.1 the claimant actually committed the misconduct; and

201.2 the misconduct was of a sufficiently serious nature to amount to a repudiatory breach justifying summary dismissal.

Disability

202. Disability is a protected characteristic under sections 4 and 6 of the Equality Act 2010.

Direct discrimination

203. Section 13(1) of the Equality Act says:

> *"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."*

Discrimination arising from disability

204. Section 15(1) of the Equality Act 2010 says that a person (A) discriminates against a disabled person (B) if:

> *"(a) A treats B unfavourably because of something arising in consequence of B's disability, and*
>
> *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim."*

205. Section 15(2) says that:

> *"Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."*

206. In *Pnaiser v NHS England and anor* 2016 IRLR 170, EAT, Simler J summarised the approach to be taken under section 15. In relation to the 'something arising', she said (paragraph 31):

> *"(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.*
>
> *(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.*
>
> *(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572 . A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises…*
>
> *(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in*

consequence of' could describe a range of causal links…the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) … However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) … [there is a] difference between the two stages — the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of section 15(2) makes clear … that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so.

(i) … it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment."

Burden of proof in complaints under the Equality Act 2010

207. Sections 136(2) and (3) provide for a shifting burden of proof:

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) This does not apply if A shows that A did not contravene the provision."*

208. This means that if there are facts from which the tribunal could properly and fairly conclude that there has been unlawful discrimination, the burden of proof shifts to the respondent.

209. If the burden shifts to the respondent, the respondent must provide an "adequate" explanation, which proves on the balance of probabilities that the respondent did not fail to make reasonable adjustments.

210. The respondent would normally be expected to produce "cogent evidence" to discharge the burden of proof. If there is a prima facie case and the explanation for that treatment is unsatisfactory or inadequate, then it is mandatory for the tribunal to make a finding of discrimination.

Conclusions

211. We apply these legal principles to our findings of fact to reach our conclusions on the issues for us to decide. (We have adopted a slightly different order to the list of issues, starting with the complaints of detriment, then the dismissal complaints under the Employment Rights Act and wrongful dismissal, then the Equality Act claims.)

Protected disclosures

212. We found that in respect of six of the alleged protected disclosures, the claimant did not have the beliefs required to make them qualifying disclosures. This applies to alleged disclosures 2, 3, 14, 7, 6 and 17.

213. We found that on 12 occasions the claimant made disclosures of information which she believed were made in the public interest and which she believed tended to show that there had been a relevant failure. We next consider whether the claimant's beliefs were reasonable, such that these disclosures were qualifying disclosures and if so, whether the disclosures were made in circumstances such that they were protected disclosures.

214. We do not decide whether or not the information disclosed by the claimant was true. Rather, the issue for us is whether it was reasonable for the claimant to believe that the information she disclosed tended to show that there had been a relevant failure, and to believe that disclosure was in the public interest. We have concluded that the claimant's beliefs in relation to the ten following disclosures were reasonable, and that they amounted to qualifying disclosures and protected disclosures.

214.1 Alleged protected disclosure 16: in about 2016, a verbal disclosure of information to Mr Johnson that she had not been permitted to attend the Primary Executive Board in the capacity of representative for the Safeguarding Children Board. This qualifying disclosure was made to the Head of Children's Services at her employer, the Council. It was protected within section 43C(1)(a).

214.2 Alleged protected disclosure 1: in mid 2018, a verbal disclosure of information to Mrs Beveridge and Ms Wainwright about putting children's names up on a board. This qualifying disclosure was made to a member of the School's Governing Body. The Governing Body has legal responsibility for the oversight of the school. The disclosure was protected within section 43C(1)(b).

214.3 Alleged protected disclosure 4: in spring 2020, a verbal disclosure to Mr Sparks about purchases made for the School from a company owned by a family member of a member of staff, without a declaration of interest. This qualifying disclosure was made to the chair of the School's Governing Body. It was protected within section 43C(1)(b).

214.4 Alleged protected disclosure 5: in spring 2020, a verbal disclosure to Mr Sparks that there had been a leak of confidential information from the School. This qualifying disclosure was made to the chair of the School's Governing Body. It was protected within section 43C(1)(b).

214.5 Alleged protected disclosures 8 and 10: in summer 2020, two verbal disclosures to Mr Sparks about claims for overtime pay by two members of staff. These qualifying disclosures were made to the chair of the School's Governing Body. They were protected within section 43C(1)(b).

214.6 Alleged protected disclosures 12 and 11: in September 2020, a verbal disclosure and a written disclosure to the Council about child safeguarding concerns. These qualifying disclosures were made to the claimant's employer, the Council. They were protected within section 43C(1)(a).

214.7 Alleged protected disclosure 13: on 8 October 2020, an email to the Governing Body about the use of personal email addresses. This qualifying disclosure was made to the School's Governing Body. It was protected within section 43C(1)(b).

214.8 Alleged protected disclosure 18: on 3 and 5 July 2021, in a phone call and two emails to the Council's audit team about child safeguarding issues. This qualifying disclosure was made to the claimant's employer, the Council. It was protected within section 43C(1)(a).

215. We have concluded that the claimant's beliefs were not reasonable in relation to the following two disclosures, and that therefore these two disclosures were not qualifying disclosures.

215.1 Alleged protected disclosure 15: on 30 May 2020, an email disclosure of information to Mr Sparks about her communications with Ms Wainwright. It was not reasonable for the claimant to believe that information she provided about Ms Wainwright's concerns about arrangements during the covid pandemic tended to show that the health and safety of children at the School was likely to be endangered. Viewed objectively, having open discussions about covid arrangements would be more likely to lead to robust health and safety protections. The claimant's belief that it was dangerous to health and safety for other staff members to highlight concerns was not objectively reasonable.

215.2 Alleged protected disclosure 9: in September 2020, a verbal disclosure to Mr Cook about Mrs Hinds walking round outside the classrooms to wave to students and staff. It was not reasonable for the claimant to believe that this tended to show that there had been a failure to

comply with covid health and safety requirements which endangered the health and safety of Mrs Hinds, students or the staff. Mrs Hinds was outdoors and, after she left the School building following the meeting, she was not in contact with anyone in the School. It was not reasonable to believe that anyone was put in danger by Mrs Hinds' actions.

216. Therefore, we have concluded that the claimant made ten protected disclosures within the period from about 2016 to July 2021. As an overview, the disclosures were:

    216.1 in about 2016 to the Council about exclusion from a Primary Executive Board meeting;

    216.2 in mid 2018 to a governor about use of children's names in SEN meetings;

    216.3 Two disclosures in spring 2020 to Mr Sparks, about financial matters and confidential information;

    216.4 Two disclosures in summer 2020 to Mr Sparks about staff pay issues;

    216.5 Two disclosures in September 2020 to children's services at the Council;

    216.6 on 8 October 2020 to the Governing Body about email addresses;

    216.7 on 3/5 July 2021 to the Council's audit team about child safeguarding.

Protected disclosure detriment

217. The claimant complains that she was subjected to six detriments on the ground that she had made protected disclosures, contrary to section 47B. The test for us is whether one or more of the claimant's protected disclosures materially influenced the treatment of the claimant.

218. The first alleged detriment (detriment a) is 'not being involved in the drafting of staff questionnaires for sending and completion in Summer 2020'. This allegation is not made out on the facts: we found that the claimant was involved with the drafting and development of the staff survey. She was missed off the circulation list for the questionnaire and this had to be corrected. We have found that the reason this happened was because of a mistake. It was not because of (materially influenced by) any of the claimant's protected disclosures.

219. The second alleged detriment (detriment b) is 'the Council advising the staff of the School to have no contact with the claimant whatsoever'. Again, this allegation is not made out on the facts. We have not found that anyone advised the staff of the School to have no contact with the claimant whatsoever. Mr Sparks said that staff 'would be well advised not to talk about this and to keep it entirely confidential'. He told another member of the leadership team that she should refrain from discussing any school issues with the claimant. He did so on the advice of Ms Hammond-Appiah. The

guidance Mr Sparks gave to staff was to try and minimise gossip, to the claimant's benefit. It was not an unusual step to take in a suspension situation. His actions were not materially influenced in any way by any of the claimant's protected disclosures.

220. There were some restrictions placed on the claimant in relation to her contacting staff at the school, but the allegation in detriment b is not about that type of contact. In any event, we are satisfied that restrictions placed on the claimant in that respect were not because of or materially influenced by the claimant's protected disclosures.

221. The third alleged detriment (detriment c) is 'being threatened with further misconduct allegations, following leaving a gift at a colleague's door'. We did not hear much evidence about the leaving of a gift, but we understand that this complaint relates to Mr Sparks' letter of 1 December 2020.

222. We have found that Mr Sparks sent the letter because he was asked to do so by those attending the LADO meeting on 27 November 2020. The LADO meeting attendees recommended the sending of the letter because they were concerned about the claimant's contact with Council officials after her suspension, in particular the calls she had been making to the Council regarding her case, as the letter explained. This relates to calls to Mr Verma and Mr Frost.

223. The claimant's actions did not appear to us to be in breach of the terms of her suspension letter, because that letter expressly said that she could discuss the case with those investigating it. However, the concerns of those at the LADO meeting and the action they recommended were not in any way related to any of the claimant's protected disclosures. The concerns were about what had happened after the claimant's suspension. The protected disclosures were made before she was suspended (or, in the case of disclosure 18, had not yet been made). Neither Mr Sparks nor the LADO meeting attendees were materially influenced by any of the claimant's protected disclosures.

224. The fourth alleged detriment (detriment d) is 'the continued failure to properly comply with Subject Access Requests, the first of which was made on 29th October 2020 but which remains incomplete as at the time of drafting, the Claimant's most recent email chasing the completed SAR was on 31st January 2022'.

225. We have found that the delay in dealing with the claimant's first subject access request was because of a series of errors, starting with Mrs Beveridge's mistake about the name of the Council's DPO, followed by the person who received the claimant's email and their manager not taking any action or forwarding the email to the correct person. None of these actions or omissions were materially influenced by the claimant's protected disclosures. Mrs Beveridge made a genuine mistake. Neither the recipient of the claimant's email or her manager knew about any of the claimant's protected disclosures.

226. In relation to the responses to the claimant's other subject access requests, we are satisfied that the reason the responses took the time they did is because of the volume of requests made and the detailed communications which the claimant sent about her requests. The Council did its best to comply with the requests as quickly as it could. The way in which the Council's information governance team dealt with the requests was not influenced in any way by any of the claimant's protected disclosures.

227. The fifth alleged detriment (detriment e) is 'the delay in conducting and completing the disciplinary procedure against the claimant'. As the disciplinary panel recognised, the disciplinary procedure took a long time. The claimant was suspended on 20 October 2020. The outcome of the disciplinary hearing was sent on 22 September 2021, 11 months later.

228. The main periods of delay were:

    228.1 between the completion by Mr Verma of his draft investigation report in early March 2021 and the invitation sent to the claimant on 28 June 2021 to the disciplinary hearing; and

    228.2 between the postponed disciplinary hearing dates in July 2021 and the actual disciplinary hearing which took place on 14, 15 and 17 September 2021.

229. The delay between March and June 2021 was because the Council was carrying out a detailed quality assurance review of the draft investigation report. This took a long time because the report was lengthy and detailed (over 60 pages). The Council carried out a proofread and sense-check of the whole document. There were also about 830 pages of exhibits, all of which required checking for and redaction of third-party information. In addition, a substantive review of the proposed outcomes was conducted, and some conclusions were changed, in the claimant's favour. We accept that this whole process would have taken a long time. Even after this detailed process, some third party information had been missed and had to be redacted later. We accept that the length of time the quality assurance process took was not materially influenced by any of the claimant's protected disclosures.

230. As to the delay between the proposed July 2021 hearing dates and the actual hearing which took place in September, part of this was because of the claimant's reasonable requests for postponements. After those requests, there was insufficient time to arrange the hearing before the school summer holiday period. We accept that the reason for that delay was because it would have been very difficult to arrange a hearing during the holiday period. It was not because of any of the claimant's protected disclosures.

231. The sixth alleged detriment (detriment f) is (in summary) that 'post dismissal, Ms Hammond-Appiah refused to provide confirmation of the claimant's dates of employment for a new role without knowing the identity of her future employer. Ms Hammond-Appiah also declined to confirm what reference would be given, intimating only that it would likely provide a negative reference'.

232. We have not found that Ms Hammond-Appiah intimated that a negative reference would be provided. We have found that Ms Hammond-Appiah told the claimant that a reference would not be provided to an agency, and that there was no requirement to consult with her before providing a reference.

233. We are satisfied that the respondents dealt with the request from TikBox in the way they did because of their understanding of the statutory obligations in relation to the provision of references in education, which they checked with the Council's solicitor. The way the respondents dealt with the reference request was not materially influenced by any of the claimant's protected disclosures.

234. None of the treatment complained of happened because the claimant had made one or more protected disclosure. The claimant having shown that she made protected disclosures and that she was subjected to detrimental treatment, under section 48(2) the burden fell on the respondents to show the reason for the treatment. We are satisfied that the respondents have shown that the ground on which each of the alleged acts of detriment was done was not one or more of the protected disclosures made by the claimant. None of the detrimental treatment the claimant complains of was materially influenced by any of the claimant's protected disclosures.

235. The claimant's complaints of whistleblowing detriment set out in paragraphs 8.1(a) to (f) of the list of issues fail.

236. The claimant also complained about her dismissal as an act of detriment by the Governing Body (issue 8.2). We explain our conclusions about this next, after the complaint of automatic unfair dismissal.

Automatic unfair dismissal and dismissal as detriment

237. The claimant complains of automatic unfair dismissal contrary to section 103A of the Employment Rights Act. This complaint is brought against the Council, which is the first respondent and was the claimant's employer.

238. The key question is whether the reason or the principal reason for the claimant's dismissal was that she had made a protected disclosure (or disclosures).

239. The reason for the dismissal was the claimant's conduct as found in the investigation report, and accepted by the disciplinary panel. The conduct which was the principal reason for the dismissal was inappropriate handling, bullying behaviours and a failure to maintain essential records. Those were the aspects of the claimant's conduct which the panel found to amount to gross misconduct. The claimant having made one or more protected disclosure was not the reason or a reason for the dismissal.

240. This conclusion means that the complaint of automatic unfair dismissal which is brought against the first respondent does not succeed.

241. The claimant also complained about her dismissal as an act of detriment. This complaint is brought against the Governing Body, the second respondent. The Governing Body was not the claimant's employer, and the respondents accepted that this meant that a complaint about dismissal against the second respondent could be framed as a complaint of detriment under section 47B rather than as a complaint of dismissal under section 103A.

242. The test for us to consider in relation to a complaint of dismissal as a detriment under section 47B is different to the test under section 103A. We decide whether the dismissal was materially influenced by the claimant having made a protected disclosure or disclosures. This is wider than deciding whether a protected disclosure was the reason or the principal reason for the dismissal.

243. Applying this different test, we reach the same conclusion. The decision to dismiss the claimant was not influenced in any way by her protected disclosures. The dismissal was because of the claimant's conduct which was investigated and found to amount to misconduct, including three aspects of conduct which the disciplinary panel regarded as sufficiently serious to amount to gross misconduct justifying dismissal.

244. It is not surprising that as a headteacher, the claimant made disclosures of information to governors and to the Council over a period of some years that met the tests for qualifying and protected disclosures. In her role, she was very frequently dealing with and communicating about matters of public interest such as the safety of children and the School's legal obligations. It would perhaps have been more surprising if she had not been sharing information about those things. However, none of the claimant's protected disclosures, either individually or cumulatively, influenced the decision to dismiss her in any way. The claimant suggested that she 'ruffled feathers' but there was no evidence before us that the decisions to investigate, discipline and ultimately dismiss her were based on anything other than concerns about the claimant's conduct.

245. This conclusion means that the complaint against the second respondent of dismissal as a detriment for making a protected disclosure does not succeed.

<u>Ordinary unfair dismissal</u>

246. We go on to consider the complaint of ordinary unfair dismissal which is brought against the first respondent, the Council. The Council relies on conduct as the reason for dismissal. We have considered the three elements of the test established in *Burchell.*

247. We accept the evidence of Mrs Warnock-Horn that at the time of dismissal, the panel believed the claimant to be guilty of misconduct. The decision and the conduct-based reason for it was explained in detail in the dismissal letter. There was no other reason or 'hidden agenda' behind the decision to dismiss.

248. At the time of dismissal, the panel had reasonable grounds for believing that the claimant was guilty of misconduct. Mrs Warnock-Horn listed in detail in

the dismissal letter the evidence the panel relied on in reaching their conclusions. That evidence included the investigation report and exhibits including the witness statements of other members of staff which it was reasonable for the panel to accept.

249. At the time the panel formed that belief on those grounds, it had carried out as much investigation as was reasonable in the circumstances. Mr Verma had conducted a very full investigation and the report and exhibits which were sent to the panel were detailed and specific. The panel heard witness evidence at the hearing.

250. We have concluded that the three elements of the *Burchell* test are met. The reason for the dismissal was the claimant's conduct. This is a potentially fair reason for dismissal under section 98(2) of the Employment Rights Act.

251. We also decide, applying a neutral burden, whether the Council acted reasonably or unreasonably in treating the claimant's conduct as a sufficient reason for dismissing her. We take into account the size and administrative resources of the employer. This part of the test is sometimes summarised as whether dismissal fell within the range of reasonable responses of a reasonable employer, in relation to both the procedure adopted and the decision to dismiss itself.

252. The claimant was critical of the procedures adopted by the first respondent. We remind ourselves that we assess whether the procedure was within the range of reasonable responses of a reasonable employer; there is no requirement that the procedure must be perfect. We have reached the following conclusions about those aspects of the procedure which were criticised by the claimant:

252.1 Investigation meeting: we have found that this was a very lengthy meeting with few breaks and with no opportunity for the claimant to eat during the day, and that the claimant felt so unwell she had to go to hospital afterwards. It would have been better if the arrangements for the investigation meeting had been considered more carefully. For example, when it became apparent that the meeting would not be concluded by lunchtime and that the claimant had not brought any lunch with her, the meeting could have been paused for lunch, or continued on another day. However, the circumstances of the investigation meeting did not take the procedure outside the range of reasonable responses when the procedure is looked at in the round. The claimant had other opportunities to respond fully to the allegations against her and to present her case, in written responses and at the disciplinary and appeal hearings.

252.2 Delay: this was an issue which the disciplinary panel was also concerned about, as we have explained. We have concluded that some of the time which was lost was because of the quality assurance process, and the re-scheduling of the hearing on a date in term time rather than during the school holidays. The delay did not in itself make the dismissal unfair. Given the number of allegations being considered, the seriousness of the allegations and the requirement for sensitivity in respect of children and

colleagues raising concerns about the claimant, the length of time taken did not fall outside the range of reasonable responses.

252.3 Conflicts of interest: the claimant has raised several matters which she says undermine the independence of decision makers. However, as the claimant accepted in her disciplinary hearing, it would not have been realistic to expect that no-one involved with her case would have any connection at all, however indirect, with the School or with others who were involved. Most of the issues raised by the claimant arose from long-standing senior education practitioners having worked with or otherwise come across each other (or family members of each other) on previous occasions. The claimant did not substantiate any connections which would have given rise to real concern about bias or independence. Complete independence from the employer is not a requirement of the Acas Code of Practice: in many disciplinary procedures, the decision makers are other employees.

252.4 Documents: the claimant said that she was hampered in her defence by the respondents failing to provide her with documents. At her request, the claimant was permitted to access emails on two occasions after her suspension. She was provided with copies of the investigation report and exhibits on which the panel and the appeal panel made their decisions. The respondents were doing their best to take a proportionate approach in the face of requests from the claimant which they reasonably felt went beyond the scope of what was relevant. The provision of documents to the claimant by the first respondent fell within the range of reasonable responses of a reasonable employer.

252.5 Omission of evidence: A statement of a parent given in support of the claimant was omitted in error from the version of the exhibits which was sent to the disciplinary panel. This omission was remedied at the appeal stage when the statement was included in the bundle and the claimant was allowed to call the parent as a witness.

252.6 Approach of appeal panel: The decision to adopt a hybrid arrangement at the appeal, where the claimant was permitted to call additional witness evidence and other issues were considered by way of review, was within the range of reasonable responses. In the circumstances of this case it was within the range of reasonable responses not to conduct a full rehearing, bearing in mind for example that the disciplinary hearing had lasted three days and the hybrid appeal hearing took a further day. The claimant was given a reasonable opportunity at appeal to present her appeal points and to adduce any additional evidence she wanted to rely on.

253. In relation to the decision itself, the disciplinary panel considered what the appropriate sanction should be and reached a unanimous decision to dismiss. In light of the conclusions of the disciplinary panel (later upheld by the appeal panel) the decision to dismiss the claimant rather than to issue a lesser sanction or take no action, was within the range of reasonable responses.

254. Overall, the decisions of the panel to dismiss the claimant and of the appeal panel to uphold the dismissal were reached following a reasonable procedure and were decisions which fell within the range of reasonable responses, given the nature of the matters which had been found against the claimant.

255. This conclusion means that the complaint of ordinary unfair dismissal against the first respondent does not succeed.

Wrongful dismissal (breach of contract in relation to notice)

256. Wrongful dismissal here relates to the summary nature of the dismissal of the claimant, that is the fact that the dismissal was without notice. The question is whether dismissal without notice was in breach of the claimant's contract.

257. The test is different in a complaint of wrongful dismissal to that which applies in an ordinary unfair dismissal complaint. Rather than deciding whether the employer's decision was within the range of reasonable responses, the tribunal must decide, on the balance of probabilities, whether the claimant committed the misconduct, and whether the misconduct was sufficiently serious to amount to a repudiatory breach of contract such that summary dismissal was merited.

258. We have concluded on the balance of probabilities on the basis of the evidence before us, that the three aspects of the claimant's conduct which the disciplinary panel found to amount to gross misconduct happened as alleged, namely:

258.1 That there were frequent, repeated and distressing occasions when there was inappropriate handling of children (as explained in allegation 1a). There were witness statements from multiple members of staff about this. From the evidence before us, it is not likely that all of those members of staff were motivated to make malicious complaints against the claimant, or that they had all misunderstood what they observed because they had not had the same training as the claimant.

258.2 That the claimant did not appropriately manage bullying behaviour by one of the senior leadership team, and displayed manipulative behaviours herself (as explained in allegation 2a). Multiple members of staff said in written statements that this had happened. We have accepted the evidence of Mrs Warnock-Horn that the body language of at least two staff who gave evidence at the disciplinary hearing supported this allegation.

258.3 That the claimant failed to maintain essential data on safeguarding and on incidents when restraint was used (as explained in allegation 5a). The claimant accepted that the safeguarding files were not in good order, and there was evidence of this from a secondary school. We have found on the basis of the claimant's evidence to us that the records of physical intervention which were kept by the school were insufficient to understand what happened when and who had been involved.

259. Taken together, this conduct was sufficiently serious to amount to a repudiatory breach of contract such that summary dismissal was merited. The handling incidents described by members of staff were assessed by the police officer representative of the LADO meeting as inappropriate handling and clearly inappropriate behaviour. The behaviours of the claimant and the leadership teams amount to a serious breach of safe working practices. The failure to maintain safeguarding and restraint records was a failure in respect of a significant aspect of the claimant's role. It was her responsibility to ensure that proper records were kept of this important part of the management of the school.

260. As we have concluded that misconduct took place as alleged and that it was sufficiently serious to justify summary dismissal, the complaint of wrongful dismissal in respect of the failure to give notice fails and is dismissed.

Direct disability discrimination

261. The respondents accept that the claimant's hearing impairment amounted to a disability under section 6 of the Equality Act 2010.

262. The claimant makes two allegations of direct disability discrimination:

    262.1 Mr Frost mocking the claimant's inability to hear him during a telephone conversation on or around 22 October 2020; and

    262.2 Mr Verma putting his hands/arms up in frustration and sighing heavily, during the investigation meeting, when the Claimant had to replace the batteries in her hearing aid.

263. We did not find that the conversation with Mr Frost happened as alleged. We found that the claimant referred to her hearing impairment during her call with Mr Frost. We found that Mr Frost did not mock the claimant's inability to hear or make any comment along the lines suggested by the claimant. We found that it was more likely that the claimant misheard or misunderstood what Mr Frost was saying, because of the poor sound quality of the call.

264. This complaint fails because the facts are not made out.

265. As to the second allegation, we found that Mr Verma displayed frustration and sighed heavily at times when the claimant was responding to his questions at both the investigation meeting and the disciplinary hearing. We did not find that Mr Verma's behaviour was related in any way to the claimant's hearing impairment or to her changing the batteries in her hearing aid.

266. There was no evidence from which we could conclude that Mr Verma's behaviour in this respect was related to the claimant's disability, such that the burden would shift to the respondent. But in any event, even if the burden had shifted, we have accepted that there is an explanation for the treatment which has nothing whatsoever to do with the claimant's disability. We found that the reason for this treatment was because the claimant was finding it difficult to

focus on the questions Mr Verma was asking, and because she was giving long answers which were not always on the point.

267. This complaint fails because the treatment complained about was not because of the claimant's disability.

Discrimination arising from disability

268. The claimant makes four complaints of discrimination arising from disability:

268.1 Mr Frost mocking the claimant's inability to hear him during a telephone conversation on or around 22 October 2020;

268.2 Mr Verma putting his hands/arms up in frustration and sighing heavily, during the investigation meeting, when the Claimant had to replace the batteries in her hearing aid;

268.3 Her suspension; and

268.4 Her dismissal.

269. For the reasons set out in relation to the complaint of direct disability discrimination, the first and second complaints fail. The first complaint fails because the factual background is not made out. The second complaint fails because the treatment complained of was in no sense whatsoever to do with the claimant's disability or anything arising from it such as the claimant having to change the batteries in her hearing aid.

270. The third and fourth complaints are that the claimant was suspended and dismissed because of her shouting and loud voice, and that her shouting and loud voice are something arising in consequence of her disability. We did not hear much from the parties about these complaints; it appears that they were not a central part of the claimant's claim.

271. We have found that there were comments in the NSPCC referral about the claimant shouting at pupils. The LADO referral made on 22 July 2020 mentioned the claimant speaking forcefully to a child on one occasion and being audible from the room next door. The decision-makers at the LADO meeting at which the decision was taken to suspend the claimant had both referrals (among other information). These might be facts from which we could conclude that the claimant's shouting and loud voice played a part in the decisions to suspend and dismiss her. However, we have found that the concerns raised were about the claimant's tone of voice and choice of words and the way in which the claimant spoke to children on some occasions, not the volume of her voice. There was no evidence before us that the claimant's tone of voice was something arising from her disability such that the burden of proof would shift to the respondents.

272. In any event, if the burden had shifted to the respondents, we would have accepted that the decision to suspend the claimant was not taken because of her shouting or loud voice. It was taken by the members of the LADO meeting on 16 October because they felt that, overall, the allegations against the

claimant merited investigation and that the investigation could be hampered by the claimant remaining at school whilst the investigation was ongoing. We found that Mr Sparks suspended the claimant because that was an action recommended by those at the LADO meeting, and Mr Sparks had been asked to put that decision into effect.

273. This third complaint of discrimination arising from disability fails because the suspension was not because of the claimant's shouting or loud voice. The way in which the claimant spoke to children formed part of the complaints against her, but that was not something arising from her disability. In any event, we have accepted the respondent's explanation that the suspension of the claimant was because of the concerns raised about her conduct and the risk that the investigation could be hampered if she remained at work.

274. The fourth complaint is that the claimant was dismissed because of her shouting and loud voice, and that her shouting and loud voice are something arising in consequence of her disability. We reach a similar conclusion here. Again, the way in which the claimant spoke to children on occasions was the background to some of the allegations of misconduct against her. However, there was no evidence that this was something arising from her disability. And in any event, these allegations were not part of the three findings of gross misconduct which formed the basis of the decision to dismiss: inappropriate handling, bullying/manipulative behaviour and a failure to maintain essential records. The claimant was not dismissed because of shouting or having a loud voice. That did not play a part in the decision to dismiss her.

275. The complaints of discrimination arising from disability fail and are dismissed.

Summary and case management matters

276. Our conclusions as explained above mean that none of the claimant's complaints succeed.

277. Case management orders about the restrictions on publication and the related orders have been sent separately. If a hearing is required on these issues, the hearing which was listed for 28 March 2025 as a provisional remedy hearing will be converted to a case management hearing.

_____

Employment Judge Hawksworth

Date: 9 December 2024

Sent to the parties on:
10 December 2024

For the Tribunal Office

Recording and Transcription
Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Appendix A – hearing timetable

Week	Date	Start time	Timetable
1	Monday 2 September	10.00	Opening discussion
		pm	Tribunal reading time
	Tuesday 3 September	12.00	Continuing opening discussion
		pm	Parties preparing unredacted documents bundle Tribunal reading time
	Weds 4 September	10.00	Mrs Leighton's evidence (questions by Mr Davidson)
	Thursday 5 September		No hearing on this day
	Friday 6 September	10.00	Mrs Leighton's evidence (questions by Mr Davidson)
2	Monday 9 September	10.00	Mrs Leighton's evidence (questions by Mr Davidson)
		Pm	Panel questions and Mrs Leighton's clarification points
	Tuesday 10 September		No hearing on this day
	Weds 11 September	10.00	Ms Hinds' evidence (questions by Mrs Leighton)
		2.00	Mr Frost's evidence (questions by Mrs Leighton)
	Thursday 12 September (late start)	1.00	Mr Verma's evidence (questions by Mrs Leighton)
		3.00	Mr Sherwell's evidence (questions by Mrs Leighton)
	Friday 13 September	10.00	Mr Sparks' evidence (questions by Mrs Leighton)
		2.00	Ms Gibb's evidence (questions by Mrs Leighton)

3	Monday 16 September	10.00	Ms Warnock-Horn evidence (questions by Mrs Leighton)
		2.00	Ms Garlick evidence (questions by Mrs Leighton)
	Tuesday 17 September	10.00	Ms Hammond-Appiah's evidence (questions by Mrs Leighton)
		2.00	Ms Roscoe's evidence (questions by Mrs Leighton)
	Weds 18 September	09.00	Exchange written closing comments (if making any)
		11.00	Closing remarks by Mr Davidson
		12.00	Closing remarks by Mrs Leighton
		pm	Tribunal deliberation time
	Thursday 19 September		Tribunal making decision (parties do not attend)
	Friday 20 September	tbc	(if possible) tribunal telling parties decision and reasons

Version 3 – 11.9.24 (finalised on 9 September)

Appendix B – list of issues

This is the list of issues identified and set out in the case management summary prepared after the preliminary hearing on 6 October 2022 (pages MB 107 to 111). The list below also includes:

- an extract from the claimant's Scott Schedule which listed the claimant 's 18 alleged protected disclosures (page MB96); and
- the 6 whistleblowing detriments in paragraph 46 and dismissal as a detriment as set out in paragraph 47 of the claimant's particulars of claim (page MB34).

Employment Rights Act 1996

Protected Disclosures

1. Did the Claimant make the disclosures (PD1 - 18) set out in her Scott Schedule? [An extract from the Scott Schedule is below.]

2. If so, were these disclosures of information?

3. If so, did any such disclosures tend to show in the reasonable of the Claimant one of the categories of failure set out at s.43B(1) ERA? The Claimant relies upon the failures as per the Scott Schedule.

4. If so, were any such disclosures made in the reasonable belief of the Claimant in the public interest?

Automatic Unfair Dismissal

5. Was the sole or principal reason for the dismissal the fact of the Claimant making protected disclosures (s.103A ERA)? The Claimant relies on each of the disclosures (PD1-16), separately and/or cumulatively as the sole or principal reason for her dismissal.

Ordinary Unfair Dismissal

6. If the sole or principal reason for the Claimant's dismissal was not the protected disclosure(s) has the Respondent proved that it was for potentially fair reason? The Respondent avers that it dismissed the Claimant on the grounds of conduct.

7. Where the Respondent has proved that misconduct was the sole or principal reason for dismissal, was the dismissal fair in all the circumstances:
   a. Did the Respondent have reasonable grounds to sustain a genuine belief in the alleged misconduct?
   b. Did the Respondent conduct a reasonable investigation, in the circumstances;
   c. Did the Respondent follow a fair procedure;

d. Was dismissal within the range of reasonable responses.

Detriment(s)

8.1 The Claimant asserts that she was subjected to detrimental treatment as [follows, as set out in paragraphs 46 and 47 of the Particulars of Claim:

a. Not being involved in the drafting of staff questionnaires for sending and completion in Summer 2020;
b. The First Respondent advising the staff of the school to have no contact with the Claimant whatsoever;
c. Being threatened with further misconduct allegations, following leaving a gift at a colleague's door;
d. The continued failure to properly comply with Subject Access Requests, the first of which was made on 29th October 2020 but which remains incomplete as at the time of drafting, the Claimant's most recent email chasing the completed SAR was on 31st January 2022 (claimed against the First Respondent only);
e. The delay in conducting and completing the disciplinary procedure against the Claimant;
f. Post dismissal, upon being contacted by the Claimant's employment agency for confirmation of her dates of employment for a new role, Beryl Hammond-Appiah (First Respondent's Consultancy & Advisory Manager for Human Resources & Organisational Development) refused to provide the information without knowing the identity of her future employer but stated that the Claimant will need a reference from the Respondent. The Claimant also contacted the First Respondent with regard to what reference would be given and Ms Hammond-Appiah declined to confirm, intimating only that it would likely provide a negative reference. The Respondents' interference caused delays and led to the shortening of an interim post secured by the Claimant.

8.2 The Claimant further claims that her dismissal was a detriment suffered by her - complaint against the Second Respondent.]

Has the detrimental treatment been proved?

9. If the Claimant was subjected to any such detrimental treatment, was this on the ground that she had made a protected disclosure as set out in the Scott Schedule?

<u>Wrongful Dismissal</u>

10. Was the Respondent entitled to dismiss the Claimant for gross misconduct and so without notice? If not, the Claimant is entitled to damages for wrongful dismissal.

<u>Equality Act 2010</u>

It is accepted that the Claimant's partial deafness amounted to a disability pursuant to EqA 2010.

11. Was the Claimant subject to the following:

    a. Mr Michael Frost (First Respondent's Audit and Anti-Fraud Manager) mocking the Claimant's inability to hear him, on a telephone call in early November 2020; and
    b. Mr Verma put his hands/arms up in frustration and sighed heavily, during the investigation meeting with Mr Verma, when the Claimant had to replace the batteries in her hearing aid.

Direct Discrimination

12. If so, did this treatment amount to a detriment and was the Claimant treated less favourably than a hypothetical comparator?

13. If so, can the Respondent prove that the reason for the less favourable treatment was nothing whatsoever to do with the Claimant's partial deafness.

Discrimination Because of Something Arising In Consequence

14. Did the treatment at 11 a. b. as well as her suspension and dismissal, amount to unfavourable treatment?

15. If so, was she subjected to this unfavourable treatment because of something arising in consequences of her disability (in the case of her suspension/dismissal, being her shouting and loud voice).

16. If so, is the Respondent able to justify the treatment by showing that it was a proportionate means of achieving a legitimate aim.

Remedy

17. Should the Tribunal order the Claimant's reinstatement or reengagement?

18. To what remedy is the Claimant entitled (including any remedy for injury to feelings and/or damages for pain, suffering and loss of amenity)?

19. If the Claimant's dismissal is found to have been procedurally unfair, does the Respondent show a prospect that the Claimant would have been fairly dismissed in any event?

20. If the Claimant's dismissal is found to have been unfair, should the basic and/or compensatory award(s) be reduced on account of any blameworthy conduct by the Claimant, and if so, by how much?

Uplift for Failure to Follow ACAS Code of Practice

21. Did the ACAS Code of Practice apply in relation to any of the Claimant's complaints?

22. If so, did the Claimant and/or Respondent(s) unreasonably fail to follow the same?

23. If so, should an adjustment be made to an award.

    The Claimant avers that an uplift to the award made for unfair dismissal should be made since the Respondent unreasonably failed to follow the ACAS Code with regards to failing to deal with issues promptly and without unreasonable delay (para 4 ACAS Code), suspending the Claimant for an unreasonably long period (para 8 ACAS Code) and the dismissal amounting to inconsistent treatment (para 4 ACAS Code).

Jurisdiction

24. Were the Claimant's detriment claims brought in time?
    a. Was each complaint presented before the end of the period of three months (plus the relevant time for early conciliation) beginning with the date of the act or failure to act to which the complaint relates;
    b. If not, is the act or failure to act part of a series of similar acts or failures and if so was the complaint brought before the end of the period of three months (plus the relevant time for early conciliation) following the last of that series;
    c. If not, was it reasonably practicable for the complaint to be brought in time;
    d. If so, was the complaint brought within a reasonable further period?

25. Were the Claimant's EqA claims brought in time?
    a. Was each complaint presented before the end of the period of three months (plus the relevant time for early conciliation) beginning with the date of the act or failure to act to which the complaint relates;
    b. If not, is the act or failure to act part of a conduct extending over a period and was the complaint brought before the end of the period of three months (plus the relevant time for early conciliation) following the end of that conduct;
    c. If not, has the complaint been brought within such other period as the tribunal think is just and equitable?

Alleged protected disclosures (extract from the claimant's Scott Schedule)

No.	Date	To whom	What information disclosed	How disclosed	Section relied on
1	Oct 2018	Ms Beveridge and Julie Wainwright	Too many confidential details about SEN were being shared in reporting meetings and SEN Governor reports.	Verbally (during a meeting)	s.43B (1)(b) ERA
2	May/June 2019	Mike Pearson (R1's Education Health Care Plans Co-ordinator)	A looked after child had been refused a place at one Secondary School and was also likely to be refused a place at another School.	Emails & Telephone Calls	s.43B(1) (b) and/or (d) ERA
3	2019/ 2020 (post-Mr Cook's departure)	Mr Sparks	The person who had replaced Mr Cook as the Safeguarding Governor lacked sufficient safeguarding training.	Verbally (during Governor's meeting)	s.43B(1) (b) ERA
4	Spring 2020	Mr Sparks	A staff member had made purchases from a company owned by a family member, without advising the school of this.	Verbally	s.43B(1) (b) and/or (f) ERA
5	Spring 2020	Mr Sparks	There had been a leak of confidential information from the School to a parent of a pupil at the School who was also working at the School.	Verbally	s.43B(1) (b) ERA
6	May 2020	The Full Governing Body	An email sent by Ms Wainwright to the FGB	Verbally	s.43B(1) (b) and/or (d) ERA

			contained exaggerated information about a very vulnerable looked after child.		
7	May/June 2020	Mr Pearson	Two vulnerable children had wrongly not been admitted into schools.	Emails & Telephone Calls	s.43B(1) (b) and/or (d) ERA
8	June 2020	Mr Sparks	A member of staff was claiming and being paid for hours worked when work did not appear to have been done. There were many staff at the school with familial relationships.	Emails & Telephone Calls	s.43B(1) (b) ERA
9	June 2020	Mr Cook (Associate Governor) & Ms Hinds	Ms Hinds was wandering around the school premises when the number of staff on site should be kept to a minimum.	Verbally (meeting) & Emails	s.43B(1) (d) ERA
10	Summer 2020	Mr Sparks	A member of staff was intending to pay herself 89 additional hours for overtime, as well as taking time off in lieu of the same overtime.	Telephone calls	s.43B(1) (d) ERA
11	Sept 2020	LADO & Ms Beveridge	About a transference of risk for safeguarding	Telephone calls & emails	s.43B(1) (d) ERA
12	Sept/Oct 2020	R1's Head of Children's Safeguarding Services, First Response & Assessment, and	Social workers had made errors by not engaging in suitable challenge and accepting information as fact.		s.43B(1) (d) ERA

		Independent Chair ICPC			
13	8th Oct 2020	School staff and FGB	Use of personal email addresses	Email	s.43B(1) (b) ERA
14	Fortnightly from April 2020	FGB (at Governor's meetings)	Governors were making her position difficult and hindering her ability to focus on the key issues of education, protection and safeguarding.	Verbally	s.43B(1) (b) and/or (d) ERA
15	30th May 2020	Mr Sparks	The Claimant was responsible for the daily management of the school and that Ms Wainwright and/or her unions should not dictate the same.	Email	s.43B(1) (b) and/or (d) ERA
16	2016	David Johnson (R1's Head of Children's Services)	Ms Garlick was trying to prevent her from carrying out her Buckinghamshire Safeguarding Children Board role, when she asked her to leave a meeting.	Verbally	s.43(1)(d) ERA
17	17th June 2020	Ms Beveridge	There may be a conflict of interest with regard to a potential Academy takeover, safeguarding had been compromised and Ms Garlick had opened the school's car park for parent vehicles which was dangerous.	Email	s.43B(1) (b) and/or (d) ERA

18	3rd, 5th July 2020	R1's whistle-blowing number	Investigations were inappropriate and mishandled, the mental health of staff and pupils was being impacted, there was cause for concern about a conflict of interest.	Verbally	s.43B(1) (b) and/or (d) ERA