



EMPLOYMENT TRIBUNALS

Claimant: J McCulpha
Respondent: Nicholas Postgate Catholic Academy Trust
Heard at Teesside Justice Centre
On: 25-28 and 31 March and 1 April 2025
(in chambers 2 April and 20 June 2025)

Before: Employment Judge Aspden
Members: C E Hunter
E Wiles

Representation:

Claimant: Mr Bulman
Respondent: Miss Corby, counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claimant's complaints that the respondent contravened section 47B of the Employment Rights Act 1996 by subjecting her to detriments on the ground that she made a protected disclosure are not well founded and are dismissed.
2. The claimant's complaints that the respondent contravened the Employment Rights Act 1996 by unfairly dismissing her are not well founded and are dismissed.

REASONS

Claims and Issues

1. By a claim form received at the Tribunal on 12 October 2023 Ms McCulpha made complaints that:

- 1.1. contrary to section 47B of the Employment Rights Act 1996, she had been subjected to detriment by various acts on the ground that she made protected disclosures; and
- 1.2. the respondent had unfairly dismissed her.
2. It is not in dispute that Ms McCulpha was dismissed. In her claim form Ms McCulpha contends that her dismissal was automatically unfair by virtue of ERA 1996 section 103A or, in the alternative, an 'ordinary' unfair dismissal by virtue of ERA 1996 section 98. The respondent's case is that it dismissed Ms McCulpha for reasons relating to her conduct.
3. The detrimental treatment Ms McCulpha complains she was subjected to the on the ground that she made protected disclosures were described in a list of detriments as follows:
 - 3.1. The Respondent's treatment of and ultimate dismissal of the Claimant's three grievances and subsequent appeals, without having properly considered all of the evidence submitted by the Claimant to support her position (including her 50-page document of evidence dated 22 January 2021).
 - 3.2. The latest dismissal of the Claimant's grievance appeal (in relation to Grievances 2 and taking place on 12 May 2023).
 - 3.3. The Claimant's fob being cancelled and her access to the School withdrawn on or around 5 July 2021.
 - 3.4. The Respondent's failure to provide answers to the various questions the Claimant asked of the Respondent regarding the testimony of Mr. Law, Ms. Muttries and Ms. Eilbeck (provided to both the Council as part of its disciplinary investigation in September 2020) and Mr. Macaulay as part of his investigation into the Claimant's grievance, questions which were raised to Lisa Jones during her investigation into Grievances 2 and 3, which commenced in or around September 2021.
 - 3.5. Excluding the Claimant from a team Christmas lunch on 15 December 2021.
 - 3.6. Excluding the Claimant from the School's Secret Santa event in December 2021.
 - 3.7. Denying the Claimant the opportunity to sign the leaving card of a colleague in October 2021.
 - 3.8. Ms. Joanne Coe (Head of School) slamming a door in the Claimant's face on 5 January 2022 when the Claimant asked why she had been excluded from the School's annual Secret Santa in December 2021.
 - 3.9. Suspending the Claimant on 11 January 2022.
 - 3.10. Preventing the Claimant from gaining the testimony from her witnesses; denying her the opportunity to meet/talk with them.
 - 3.11. The Respondent's failure to follow Occupational Health's advice issued on 24 March 2021 or to redeploy the Claimant to a different school and/or offer any sort of mediation whilst the various disciplinary matters were progressed during the remainder of 2021/22 and 2023, including her period of sickness absence from January 2022 until 31 July 2022.
 - 3.12. The Respondent's failure to appoint a nominated person to hold fortnightly meetings and the Respondent's failure to hold any sickness management or wellbeing meetings with the Claimant during her suspension, despite being a requirement of the Respondent's sickness management and disciplinary procedures.
 - 3.13. The Claimant's prolonged suspension from the School from 11 January 2022 to 28 September 2023 (exceeding 20 months in total in contrary to the

Respondent's Disciplinary Procedure which states that suspension should "be as short as possible");

- 3.14. The removal of the Claimant's photograph from the School's website on or around 2 May 2023;
 - 3.15. The Respondent's failure to make any attempt to invite the Claimant to a grievance appeal meeting (for a period of six months) until 2 February 2023, (despite the Claimant being fit to participate in proceedings from 1 August 2022 onwards).
 - 3.16. The Respondent's failure to invite the Claimant to a disciplinary hearing until 26 September 2023, some three months after the investigation meeting held on 23 June 2023.
4. On 14 March 2024 Ms McCulpha presented a second claim to the Tribunal. In this claim Ms McCulpha complained that the respondent subjected her to further detriment contrary to section 47B of ERA 1996 by dismissing her appeal against dismissal on 13 November 2023.
 5. Employment Judge Arullendran directed Ms McCulpha to set out details of each alleged protected disclosure relied upon, setting out what was said, to whom, where it was said, whether there were any witnesses and how it is contended that each allegation is a protected disclosure. That information was provided by Ms McCulpha's then solicitors in the form of a table, which was included at pages 118 to 125 of the file of documents for this hearing.
 6. Subsequently Ms McCulpha's solicitors stopped representing her. Ms McCulpha has since then been represented by her partner, Mr Bulman.
 7. In our reading at the start of the case we noted that certain alleged protected disclosures that had been referred to in the grounds of claim were not reproduced in the table. Mr Bulman confirmed Ms McCulpha was no longer relying on those protected disclosures and that the protected disclosures Ms McCulpha alleges she made are those set out in the table in the hearing file, subject to one correction made during the hearing. The correction is that Ms McCulpha no longer relies on the alleged disclosure numbered 12 in the table.
 8. We also noted that the table contained some alleged protected disclosures that had not been referred to in the grounds of claim. Ms McCulpha had not had permission to amend her claim but neither had the respondent objected to Ms McCulpha relying on them and indeed the respondent's representatives had included the additional alleged protected disclosures in a draft list of issues prepared for this hearing. Miss Corby told us the respondent was in a position to deal with the case reflected in the table and did not submit that Ms McCulpha was not able to rely on those additional protected disclosures.
 9. In the case of all of the remaining 19 alleged protected disclosures, Ms McCulpha's case is that the information she alleges she disclosed amounted to protected disclosures because she believed that the information tended to show that the respondent had failed, was failing or was likely to fail to comply with the implied duty of trust and confidence in her contract of employment. In the case of disclosures numbered 1, 2, 3, 6-19 and 20 (ie all except disclosures 4, 5 and 19) Ms McCulpha also contends that the information she disclosed amounted to protected disclosures because she believed that the information tended to show that a breach of the implied term of trust and confidence had been, was being or was likely to be deliberately concealed. In the case of disclosure 7 Ms McCulpha

also contends that the information she disclosed amounted to a protected disclosure because she believed that the information tended to show that a criminal offence had been committed, was being committed or was likely to be committed or that such an offence had been, was being or was likely to be deliberately concealed.

Relevant legal framework

Detriment for making a protected disclosure

10. The Employment Rights Act 1996 gives workers the right not to be subjected to detriment for making what a 'protected disclosure' (commonly referred to as a 'whistleblowing' disclosure). The right is set out at section 47B, which says this:

47B Protected disclosures.

A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker ('W') has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

*(b) by an agent of W's employer with the employer's authority,
on the ground that W has made a protected disclosure.*

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer...

Meaning of 'protected disclosure'

11. In order for a whistleblowing disclosure to be considered as a protected disclosure, three requirements need to be satisfied (ERA 1996 s 43A). Firstly, there needs to be a 'disclosure' within the meaning of the Act. Secondly, that disclosure must be a 'qualifying disclosure', and thirdly it must be made by the worker in a manner that accords with the scheme set out at ERA 1996 ss 43C–43H.

12. In this regard, the following provisions of the 1996 Act are relevant:

'43A Meaning of 'protected disclosure'.

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

43B Disclosures qualifying for protection.

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

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

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

- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
13. As recorded above, Ms McCulpha contends the disclosures she made fall within paragraph (b) and, in many cases, paragraph (f), and, in respect of the disclosure numbered 7 in the table, paragraph (a).
14. As to what amounts to a 'disclosure of information', the Court of Appeal held in *Kilraine v Wandsworth London Borough Council* [2018] ICR 1850, that in order for a statement to be a qualifying disclosure for the purposes of section 43B(1), it must have a sufficient factual content and specificity capable of tending to show one of the matters listed in paragraphs (a)–(f) of that subsection; the concept of 'information' is capable of covering statements which might also be characterised as allegations, although not every statement involving an allegation would constitute 'information' and amount to a 'qualifying disclosure' within section 43B(1).
15. In the context of section 43B(1)(b), the EAT has held that the term 'likely' requires more than a possibility or a risk that the employer might fail to comply with a relevant legal obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable or more probable than not that the employer will fail to comply with the relevant legal obligation: *Kraus v Penna plc* [2004] IRLR 260, EAT.
16. Provided the whistleblower's belief that a criminal offence has been committed, is being committed or is likely to be committed is objectively reasonable, neither (1) the fact that the belief turns out to be wrong — nor (2) the fact that the information which the worker believed to be true (and may indeed be true) does not in law amount to criminal offence — is sufficient of itself to render the belief unreasonable and thus deprive the whistleblower of the protection of the statute: *Babula v Waltham Forest College* [2007] EWCA Civ 174, [2007] IRLR 346. The same must be true of a belief that a person has failed, is failing or is likely to fail to comply with any legal obligation or that information tending to show any such matter has been, is being or is likely to be deliberately concealed.
17. The words 'in the public interest' in s 43B(1) were considered by the Court of Appeal in *Chesterton Global Ltd v Nurmohamed* [2017] IRLR 837. The lead judgment of Underhill LJ made clear the following:
- 17.1. *The question for the tribunal is whether the worker believed, at the time he or she was making it, that the disclosure was in the public interest and whether, if so, that belief was reasonable.*
- 17.2. *The tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking, but only that that view is not as such determinative.*

- 17.3. *The necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence.*
- 17.4. *While the worker must have a genuine and reasonable belief that a disclosure is in the public interest, this does not have to be his or her predominant motivation in making it (indeed Underhill LJ expressed the opinion that it may not need to form any part of the worker's motivation for making the disclosure.*
- 17.5. *The phrase 'in the public interest' is not defined but the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest.*
- 17.6. *In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under s.43B(1) where the interest in question is personal in character), there may nevertheless be features of the case that make it reasonable for a worker to regard disclosure as being in the public interest as well as in the personal interest of the worker. The question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case, and the following factors may be of particular relevance:*
- 17.6.1. *the numbers in the group whose interests the disclosure served;*
- 17.6.2. *the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;*
- 17.6.3. *the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;*
- 17.6.4. *the identity of the alleged wrongdoer - 'the larger or more prominent the wrongdoer (in terms of the size of its relevant community, ie staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest'.*
- 17.7. *It is conceivable that the disclosure of a breach of a worker's contract of may reasonably be regarded as being in the public interest if a sufficiently large number of other employees share the same interest. However, employment tribunals should be cautious about reaching such a conclusion, because the broad intent behind the amendment of s.43B(1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers – even where more than one worker is involved.*
18. In order to qualify for protection, the disclosure must be to an appropriate person. Ms McCulpha's case is that each of the disclosures which led to her being subjected to detriment fell within section 43C(1)(a) ie it was a disclosure to her employer.

Detriment

19. Section 47B applies where a worker was subjected to a detriment by an act or a deliberate failure to act. Where the complaint is that there has been an omission

or failure to act, it will need to be a deliberate failure in order to attract the protection of this section.

20. The concept of detriment is very broad and must be judged from the view point of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and the Court of Appeal in *Jesudason v Alder Hay Children's NHS Foundation Trust* [2020] EWCA Civ 73, [2020] ICR 1226 confirmed that it has the same meaning in whistle-blowing cases.
21. A detriment exists if a reasonable worker (in the position of the claimant) would or might take the view that the treatment accorded to him or her had, in all the circumstances, been to his or her detriment: *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337. As May LJ put it in *De Souza v Automobile Association* [1986] ICR 514, 522G, the tribunal must find that, by reason of the act or acts complained of, a reasonable worker would or might take the view that he or she had thereby been disadvantaged in the circumstances in which he had thereafter to work. However, as was made clear in *Shamoon*, an 'unjustified sense of grievance cannot amount to 'detriment''.

Reason for detrimental treatment

22. Section 47B requires that the act, or deliberate failure to act, is 'on the ground that' the worker has made the protected disclosure. That requires the tribunal to ask itself why the alleged perpetrator of unlawful detriment acted as they did.
23. In light of our conclusions below on the question of whether Ms McCulpha made any protected disclosures there is no need for us to say any more about the law in this area.

Time limit

24. An issue arose in this case as to whether some of the claims made by Ms McCulpha under section 48 were made outside the time permitted by the Act. Given our conclusions on the 'protected disclosure issue' as set out below it is unnecessary for us to say any more about the relevant law in this area.

Unfair dismissal

25. An employee has the right under section 94 of the Employment Rights Act 1996 not to be unfairly dismissed.

Automatic unfair dismissal

26. A dismissal is unfair if the reason for the dismissal (or, if there is more than one reason, the principal reason) is that the employee made a protected disclosure: Employment Rights Act 1996 s103A.

Ordinary unfair dismissal

27. When a complaint of unfair dismissal is made, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within section 98(2) of the 1996 Act or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held: ERA section 98(1).
28. The reference to the reason, in section 98(1)(a), is not a reference to the category within section 98(2) into which the reason might fall. It is a reference to the set of facts known to the employer, or beliefs held by the employer, which cause it to

dismiss the employee: *Abernethy v Mott, Hay and Anderson* [1974] ICR 323, CA. In *Abernethy* the Court of Appeal noted that: 'If at the time of his dismissal the employer gives a reason for it, that is no doubt evidence, at any rate as against him, as to the real reason, but it does not necessarily constitute the real reason'.

29. Having identified the reason (or, if more than one, the principal reason) for the dismissal, it is then necessary to determine whether that reason falls within subsection (2) or is some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. In this case the respondent contends that the reason for Ms McCulpha's dismissal was a reason relating to the conduct of Ms McCulpha, which is a potentially fair reason for dismissal within section 98(2)(b).
30. Where an employer alleges that its reason for dismissing the employee was related to their conduct the employer must show:
 - 30.1. that, at the time of dismissal, it genuinely believed the employee had committed the conduct in question; and
 - 30.2. that this was the reason (or, if there was more than one reason, the principal reason) for dismissing the employee.
31. The test is not whether the Tribunal believes the employee committed the conduct in question but whether the employer believed the employee had done so.
32. If the respondent shows that it dismissed the employee for a potentially fair reason the Tribunal must then decide if the employer acted reasonably in dismissing the employee for that reason applying the test in section 98(4) of the Employment Rights Act 1996.
33. Section 98(4) of ERA 1996 provides that:

'... 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.'
34. In assessing reasonableness, the Tribunal must not substitute its view for that of the employer: the test is an objective one and the Tribunal must not fall into the substitution mindset warned against by *Mummery LJ in London Ambulance Service NHS Trust v Small* [2009] EWCA Civ 220, [2009] IRLR 563.
35. The objective approach requires the Tribunal to decide whether the employer's actions fell within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted (*Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439). This 'range of reasonable responses' test applies just as much to the procedure by which the decision to dismiss is reached as it does to the decision itself (*Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23).
36. The Employment Appeal Tribunal (EAT) set out guidelines as to how the reasonableness test should be applied to cases of alleged misconduct in the case of *British Home Stores Ltd v Burchell* [1980] ICR 303. The EAT stated there that what the Tribunal should decide is whether the employer had reasonable grounds for believing Ms McCulpha had committed the misconduct alleged and had carried

out as much investigation into the matter as was reasonable in all the circumstances of the case.

37. In that case the EAT also made clear that, in deciding whether an employer had reasonable grounds for believing that the employee had committed the misconduct alleged, the test is not whether the material on which the employer based its belief was such that, objectively considered, it could lead to the employer being 'sure' of the employee's guilt. What is needed is a reasonable suspicion amounting to a belief and that the employer had in his or her mind reasonable grounds upon which to sustain that belief. If the employer's decision was reached his or her conclusion of guilt on the balance of probabilities that will be reasonable.
38. The concept of a reasonable investigation can encompass a number of aspects, including: making proper enquiries to determine the facts; informing the employee of the basis of the problem; giving the employee an opportunity to make representations on allegations made against them and put their case in response; and allowing a right of appeal.
39. The Tribunal must take into account relevant provisions of the In ACAS Code of Practice on Disciplinary and Grievance Procedures when assessing the reasonableness of a dismissal on the grounds of conduct. Trade Union and Labour Relations Consolidation Act. 1992 s207 and 207A. This requirement applies to the Code of Practice itself, not the guidance that accompanies it.
40. The Code says in its introduction:

'Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. Employment tribunals will take the size and resources of an employer into account when deciding on relevant cases and it may sometimes not be practicable for all employers to take all of the steps set out in this Code.

That said, whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

- Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.*
- Employers and employees should act consistently.*
- Employers should carry out any necessary investigations, to establish the facts of the case.*
- Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.*
- Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.*
- Employers should allow an employee to appeal against any formal decision made.*
- It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case.*
- In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.'*

41. The reason the ACAS Code says periods of suspension should be as brief as possible is that suspension is not a neutral act. As the Court of Appeal said in *Mezey v South West London & St George's Mental Health NHS Trust* [2007] EWCA Civ 106, [2007] IRLR 244 'it changes the status quo from work to no work, and it inevitably casts a shadow over the employee's competence.' The Court of Appeal also made observations about suspension in the case of *Crawford v Suffolk Mental Health Partnership NHS Trust* [2012] EWCA Civ 138, [2012] IRLR 402, noting that an employee who is suspended may feel belittled and demoralised by the total exclusion from work and the enforced removal from their work colleagues, many of whom will be friends and that, even if they are subsequently cleared of the charges, suspicions may linger, because the suspension may appear to add credence to them. And as the Court of Appeal said in another case, *Gogay v Hertfordshire County Council* [2000] IRLR 703, suspension as a knee jerk reaction, done without reasonable and proper cause, may amount to a breach of the implied term of trust and confidence.
42. Even if procedural safeguards are not strictly observed, the dismissal may be fair. This will be the case where the specific procedural defect is not intrinsically unfair and the procedures overall are fair (*Fuller v Lloyd's Bank* [1991] IRLR 336, EAT).
43. Furthermore, defects in the initial disciplinary hearing may be remedied on appeal if, in all the circumstances, the later stages of a procedure are sufficient to cure any earlier unfairness (*Taylor v OCS Group Ltd* [2006] IRLR 613). The Court of Appeal noted that the Tribunal must 'determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage.'
44. In applying section 98(4) the Tribunal must also ask itself whether dismissal was a fair sanction for the employer to apply in the circumstances ie one falling within the range of reasonable responses open to a reasonable employer. As noted above, it is not for the Tribunal to substitute its view for that of the employer.
45. In some cases, an employer might say that, whilst the misconduct in question was not, on its own, sufficiently serious to warrant dismissal, the fact that an earlier disciplinary warning was given to the employee for other misconduct tips the balance and justifies dismissal. In *Wincanton Group plc v Stone* [2013] IRLR 178, EAT at para 37 Langstaff P summarised the relevant law as follows:
- 'If a Tribunal is not satisfied that the first warning was issued for an oblique motive or was manifestly inappropriate or, put another way, was not issued in good faith nor with prima facie grounds for making it, then the earlier warning will be valid. If it is so satisfied, the earlier warning will not be valid and cannot and should not be relied upon subsequently. Where the earlier warning is valid, then:*
- (1) *The Tribunal should take into account the fact of that warning.*
- (2) *A Tribunal should take into account the fact of any proceedings that may affect the validity of that warning. That will usually be an internal appeal. This case is one in which the internal appeal procedures were exhausted, but an Employment Tribunal was to consider the underlying principles appropriate to the warning. An employer aware of the fact that the validity of a warning is being challenged in other proceedings may be expected to take account of that fact too, and a Tribunal is entitled to give that such weight as it sees appropriate.*

(3) *It will be going behind a warning to hold that it should not have been issued or issued, for instance, as a final written warning where some lesser category of warning would have been appropriate, unless the Tribunal is satisfied as to the invalidity of the warning.*

(4) *It is not to go behind a warning to take into account the factual circumstances giving rise to the warning. There may be a considerable difference between the circumstances giving rise to the first warning and those now being considered. Just as a degree of similarity will tend in favour of a more severe penalty, so a degree of dissimilarity may, in appropriate circumstances, tend the other way. There may be some particular feature related to the conduct or to the individual that may contextualise the earlier warning. An employer, and therefore Tribunal should be alert to give proper value to all those matters.*

(5)

(6) *A Tribunal must always remember that it is the employer's act that is to be considered in the light of section 98(4) and that a final written warning always implies, subject only to the individual terms of a contract, that any misconduct of whatever nature will often and usually be met with dismissal, and it is likely to be by way of exception that that will not occur.'*

Evidence and Facts

46. We heard evidence from Ms McCulpha and, in support of her case, Mr Bulman. For the respondent we heard evidence from the following individuals:
- 46.1. Emma Duffy, HR Advisor with the respondent who has been employed by the respondent since October 2022.
 - 46.2. Chris Barker, HR Manager at the respondent.
 - 46.3. Nichola Jamalizadeh who in 2021/2022 dealt with grievances made by Ms McCulpha. She was Senior Standards Officer at the time.
 - 46.4. Michael Burns, Executive Leader/Executive Head Teacher at the Trust who chaired the disciplinary panel that decided to dismiss Ms McCulpha.
 - 46.5. Joseph Hughes, Chair of the Trust Board for the respondent. Mr Hughes chaired the panel that dealt with an appeal brought by Ms McCulpha against the outcome of a grievance. Mr Hughes also chaired a panel that dealt with Ms McCulpha's appeal against her dismissal.
47. We were also referred to a large number of documents which we took into account.
48. We were struck by the fact that the witness statement prepared for Ms McCulpha and that prepared for Mr Bulman were identical in very many respects. When Ms McCulpha began giving evidence we asked if her statement contained her evidence. She replied that it did. During cross examination Miss Corby asked Ms McCulpha further questions about her statement. When asked whether Mr Bulman had written her witness statement for her Ms McCulpha initially said she was not sure. She then confirmed that she had not written it herself and when asked if Mr Bulman had written it Ms McCulpha responded 'I think so'. Miss Corby put it to Ms McCulpha that her statement contained what Mr Bulman thinks rather than what Ms McCulpha thinks. Ms McCulpha initially denied that was the case. When asked if she had read Mr Bulman's statement Ms McCulpha initially said she was 'not sure about that one'. When asked to look at Mr Bulman's statement Ms McCulpha then told us she had not read it before. When Miss Corby pointed out the

similarities between Ms McCulpha's statement and that of Mr Bulman, Ms McCulpha then agreed that her statement contained Mr Bulman's 'opinion and writing' and not her own.

49. It is clear to us that, despite Ms McCulpha's reluctance to say so, her statement was written by Mr Bulman. Mr Bulman told us that himself when he gave evidence after Ms McCulpha. He described a process of he and Ms McCulpha having jointly agreed the content of various documents and emails he wrote over the years and the information having 'stayed with him' as a result. When Miss Corby put it to him that there was a difference between helping Ms McCulpha with paperwork and putting into Ms McCulpha's statements opinions that were his and not hers Mr Bulman said that the opinions were shared by both of them as there were issues they needed to describe and pull together. He Suggested they had worked through the statement paragraph by paragraph and that they had together found 'the appropriate set of words helping her to stand firm and put her case.' He also said the contents of Ms McCulpha's statement were by agreement between the two of them.
50. It is not at all unusual in employment tribunal proceedings for a witness statement to be written up by someone other than the witness. That in itself is not improper or suspicious and there can be lots of reasons why this happens, including when the witness finds it difficult write things down or use a computer. However, a witness statement should be written in the witness' own words wherever practicable. Above all, the statement must contain the witness' own account of the facts as they knew, believed or perceived them (as the case may be) and the person writing up the statement must take real care to avoid putting words into the mouth of the witness.
51. In this case we have no confidence that Ms McCulpha's witness statement contained only her own account of the facts as she herself knew, believed or perceived them to be.
52. Ms McCulpha was employed by the respondent Trust to work as a breakfast club and lunchtime assistant/supervisor at St Gerard's Primary School. She also had a separate contract of employment with Middlesbrough Council under which she worked as a cleaner at St Gerard's school.
53. The respondent has a 'grievance resolution policy and procedure for staff' which explains how grievances will be dealt with. It includes the following provision:

'10.1 Making a false, vexatious or malicious grievance under this procedure is a serious disciplinary offence which could result in dismissal on the grounds of gross misconduct.'
54. The respondent also has a disciplinary procedure which includes the following relevant provisions:
 - 54.1. Paragraph 7 deals with suspension. It includes the following:

7.1 Suspension should be as short as possible and be reviewed if it continues for a period of one month to assess the reasons for delays. Following this, a review should take place, by the Headteacher or a specific nominated person, every two weeks to ensure suspension is kept to a minimum and the employee is kept up to date with progress via their designated named contact.

...

7.3 An employee may be suspended if:

7.3a it is considered that an act of gross misconduct may have occurred or there is a serious allegation of misconduct, and it is considered that the employee's continuation at work represents a serious risk to themselves, colleagues, members of the public or pupils or property.

...

7.3d The presence at work of the employee under investigation may be an obstacle to a proper investigation.

7.3e Working relationships have severely broken down.

7.5 If suspension is being considered, alternative options should also be considered. Alternatives to suspension, could include the employee temporarily:

7.5a Being moved to a different location ...

7.6 During the suspension period:

7.6a The employee will have access to an impartial named person who will be allocated to the employee by the Headteacher or nominated person. If they have any concerns or enquiries, then they should contact the named person. The named person will maintain contact with the employee on a fortnightly basis and a record kept. The employee should not make contact with any other colleagues and discuss the suspension or any matters relating to the disciplinary process.

7.6b The employee must be available to attend meetings as required and must not attend the workplace unless invited to do so. Should the employee not be available or acts in breach of the suspension rules then this may affect their pay.

7.6c The employee must not communicate in any way with parents, pupils or members of the Local Governing Body/Trust Board except:

- i. with the prior written agreement of the Headteacher/nominated person*
- ii. where following the investigation the employee is called to a formal disciplinary meeting.*

...

7.6h Every effort must be made to minimise the period of time for which an employee is suspended and in deciding to suspend, the Headteacher/nominated person should be conscious of the need not to prejudice any disciplinary decision that will need to be considered later.

54.2. Paragraph 8 deals with disciplinary investigations. It says, amongst other things:

'8.1h The Investigating Officer will examine relevant documents, records etc. and will interview appropriate people. Interview notes should be confirmed with the interviewees and signed statements taken.'

54.3. Appendix A contains examples of matters that will be considered gross misconduct.

Allegations regarding missing perfume

55. In July 2020 some perfume belonging to one of the teachers, Ms Eilbeck, went missing at the school.
56. On 21 July 2020, the head of school, Ms White, contacted Ms McCulpha's cleaning supervisor at the council that she suspected Ms McCulpha of stealing Ms Eilbeck's perfume as well as some perfume belonging to someone else that Ms White said had gone missing. Ms White then emailed the council saying:

'... I write to confirm that we do not wish for Joanne McCulpha to be on site at St Gerard's Catholic Primary School, Hemlington.

Unfortunately, we have reason to believe that she has been stealing items from staff's desk drawers/bags, this could be on at least three occasions. On two of these occasions, the teacher concerned has spoken to Joanne about the missing items which have then 'reappeared' in the same location a couple of days later. Joanne has been the only cleaner in the rooms concerned when the items have gone missing.'

57. Later that day Ms McCulpha's cleaning supervisor at the council telephoned Ms McCulpha and told her Ms White had said she was no longer allowed on site at St Gerard's to do the cleaning work and she should work from the neighbouring school instead. Ms McCulpha asked why and the supervisor told her that she did not know.
58. That same day Ms McCulpha saw the perfume bottle in the school grounds (in the car park area). The evidence is that she saw it as she walked past the grounds on her way home after finishing her shift and before she received the phonecall from the cleaning supervisor at the council.
59. Early the next morning, Ms McCulpha telephoned the school and spoke to Mr Law, the caretaker. She told him that she had seen the perfume bottle belonging to Ms Eilbeck in the car park and told him where he would find it. Subsequently he retrieved the perfume.
60. Later that day Mr Pinnegar from the council told Ms McCulpha that she had been accused of stealing a bottle of perfume and that the council would be conducting a disciplinary investigation. In the meantime, Ms McCulpha was directed to carry out cleaning duties for the council at a neighbouring school rather than St Gerard's. She continued working for the respondent at St Gerard's as a breakfast club assistant and lunchtime supervisor. The respondent did not carry out an investigation of its own into whether or not Ms McCulpha had taken the perfume because, although Ms White suspected she had, Ms White believed Ms McCulpha had done so while undertaking her cleaning duties as an employee of the council.

Ms McCulpha's first grievance

61. On 16 August 2020 Ms McCulpha submitted her first grievance to the respondent. It was a lengthy document entitled 'grievance regarding Joanne McCulpha'. The document was typed up by Mr Bulman, not by Ms McCulpha herself. It started with an account of events concerning Ms Eilbeck's perfume. In the document it is said the following.
- 61.1. Ms White had made Ms McCulpha and others aware that Ms Eilbeck had not been able to find some perfume she had brought into work.

- 61.2. Then on 17 July 2020 Ms Muttrie [a teacher at the school] said to Ms McCulpha on three occasions that she should make sure she brings the perfume back; this was described in the grievance as 'harassment'.
- 61.3. When going home after work on 21 July Ms McCulpha saw something in the car park glinting in the light 'tucked against the kerb edge of the car park' in the general vicinity where Ms Eilbeck normally parks her car; she thought it was Ms Eilbeck's perfume bottle and had speculated that 'unknowingly to [Ms Eilbeck], whilst she had been loading her car with all of her bags the previous Tuesday the bottle of perfume had accidentally fallen out and tumbled out of sight beneath her car.'
- 61.4. Later that day she received a phone call from her cleaning supervisor.
- 61.5. She told Mr Law the next day where she had seen what she thought was the perfume bottle; he went outside and located the perfume. He then told Ms McCulpha that Ms White wanted her fob (a security device to enter the school). By now she had deduced that Ms White believed she had stolen the perfume.
62. The document goes on to give an account of what happened subsequently.
63. In this document, allegations were made that Ms White had falsely accused Ms McCulpha of theft and that this was part of a 'plot' between Ms White, Ms Eilbeck and Ms Muttrie who were said to be 'desperate to blame and point the finger at someone, simply due to the fact that [Ms Eilbeck] couldn't find the bottle of perfume because [Ms Eilbeck] herself never 'THOROUGHLY' retraced all of her steps ...'
64. The document went on to say:
- 'I myself have got on incredibly well throughout the years with each and every one of them; just as they have themselves with me, but it now as a direct result of their recent ridiculous unfounded actions becomes absolutely necessary for each of those three individuals: Vicky White, Claire Eilbeck and Lynsey Muttrie, to firstly recognise their catastrophic errors of misjudgement, and secondly: collectively provide three individual written letters of apology; indicating the fact they 'NOW' appreciate and understand where they went wrong and that I myself [Joanne McCulpha] had nothing [100%] at all to do with the unforeseen disappearance of a bottle of perfume, within the bounds of St Gerard's School, Hemlington on Tuesday 14 July 2020. I myself can easily recognise how these three members of staff have gotten themselves into this situation. I would hope that they can learn from their mistakes and as a result become more experienced and knowledgeable for the benefit of the children and their own families; I can forgive; the important question is can they? If they can, then this could be a POSITIVE RESOLUTION for themselves, the children, the parents and St Gerard's School itself, and all because of the unknowing and accidental occurrence involving a bottle of perfume dropping and tumbling out of a bag beneath a private car on Tuesday 14 July 2020.'*
65. The grievance was referred to Mr Macaulay (Executive Headteacher) to deal with and Miss Barker supported him from an HR perspective. Mr Macaulay met with Ms McCulpha to discuss her grievance on 18 September 2020. Ms McCulpha was accompanied by her union representative, Mr Thompson. Miss Barker was

also present as was an HR support officer as note taker (Ms Walker). Ms McCulpha said her grievance was against Ms White, Ms Muttrie and Ms Eilbeck. She referred to comments allegedly made by Ms Muttrie about bringing the perfume back and said she had been 'accused and felt intimidated at work' although she also said that Ms Muttrie and Ms Eilbeck had recently been complimenting her at work. Ms McCulpha said she wanted an apology letter from Ms White and her cleaning job back at St Gerard's. Mr Macaulay said he would be speaking to Ms White and Ms Muttrie when he got back to school. He also said he would speak to Ms Eilbeck.

66. Ms McCulpha did not mention in this meeting a conversation she later claimed she had had with Moly Sherwood on 4 September. Whether or not that conversation took place later became relevant in the disciplinary proceedings that led to Ms McCulpha's dismissal. When this omission was flagged at a later stage Ms McCulpha said that during this meeting she had just been answering questions that were put to her and that she had told Mr Macaulay on an earlier date (8 September) about her alleged conversation with Moly Sherwood on 4 September.
67. Meanwhile the council's disciplinary investigation was ongoing. On 22 September 2020 Ms McCulpha attended a meeting with Mr Thwaites of the council who was carrying out the investigation. The meeting was part of the disciplinary process. Mr Thompson from Unison also attended that meeting as Ms McCulpha's union rep. During this meeting Mr Thwaites asked Ms McCulpha not only about Ms Eilbeck's perfume but also perfume belonging to Ms Muttrie that was alleged to have gone missing. At this meeting Ms McCulpha became aware that Mr Law, the caretaker, had said that when he found Ms Eilbeck's perfume bottle it was not on the tarmac of the car park as described by Ms McCulpha but was nearer to the fence. He took photos which he said showed the perfume in situ where he found it. Ms McCulpha was shown the photos in this disciplinary investigation meeting. After the meeting Ms McCulpha was sent a copy of the minutes to sign as her 'statement'. Ms McCulpha and/or Mr Bulman made a significant number of changes and Ms McCulpha signed the amended version as her statement on 8 October 2020. Ms McCulpha returned the amended version to the council. The amended version contained the following paragraph:

'I have since been approached by Ms Sherwood, who is a teacher/support/assistant. It was Friday 4 September when she approached me on the field during my lunchtime session. She began talking and asked how I was before explaining to me in a very calm and thoughtful way, that she had heard of the situation going on, together with the fact that – 'this is awful what is happening to you'. More importantly; Ms Sherwood pointed out to me that on the day in question (Tue 14 July 2020) she did in fact – Observe an item falling out of CE handbag, as she was loading her car within the car park. Unfortunately, because Ms Sherwood was in a rush and didn't actually know what the item was and didn't realise its significance; simply continued her normal procedure of getting into her car and heading off home and thought no more about it.'

68. On 24 September 2020 Mr Macaulay sent Ms McCulpha a letter setting out the outcome of Ms McCulpha's grievance. In that letter he said:

'In relation to your stated grievance, the accounts of events provided by members of staff interviewed differed from your own account in terms of dates, events, people present and the tone of language and words used. As a result of these findings, I propose to take no further action in terms of requesting a written letter of apology from the three members of staff named.

It is an expectation that all NPCAT employees conduct themselves in a professional and courteous manner at all times. At the meeting you stated that since school has re-opened, staff have been polite towards you and I sincerely hope that this is a sign that positive, professional relationships are in place.'

69. Mr Macaulay's letter went on to say that if Ms McCulpha wished to appeal against the outcome she could do so in writing.

Claimant appeals against first grievance outcome

70. On 7 October 2020 Ms McCulpha submitted a letter containing her appeal against Mr Macaulay's decision not to uphold her grievance. We find it more likely than not that this was written by Mr Bulman rather than Ms McCulpha herself. The letter contained the following allegations, amongst others:

- 70.1. Ms White had prejudged Ms McCulpha's guilt with regard to the allegations of theft of perfume.
- 70.2. There was a 'prejudged conspiracy' carried out by Ms White, Ms Eilbeck, Ms Muttrie and Mr Law. They were described in the letter as the 'conspiracy theory group' and were alleged to have been 'desperate to find some evidence to prove that I was guilty of theft.'
- 70.3. Ms Eilbeck's perfume bottle had been intentionally moved after Ms McCulpha had seen it in the car park to make it appear that it was not found where Ms McCulpha had said she had seen it.
- 70.4. Ms White had refused to return Ms McCulpha's fob and when asked why on 4 September had said 'ye you know what you have done.'
- 70.5. Ms Sherwood had told Ms McCulpha on 4 September 2020 that she had seen something fall from Ms Eilbeck's handbag on 14 July 2020 as Ms Eilbeck was loading her car and Ms McCulpha had mentioned this to Mr Macaulay 'in the days prior to' Mr Macaulay's letter of 24 September.
- 70.6. Mr Macaulay had ignored Ms McCulpha's allegations of harassment and bullying in her grievance.
- 70.7. The reason Mr Macaulay had not upheld Ms McCulpha's grievance was 'to protect the integrity of the school, headteacher and Ms Eilbeck and Ms Muttrie at Ms McCulpha's expense.'
71. The letter repeated Ms McCulpha's request for apologies from Ms White, Ms Muttrie and Ms Eilbeck and also requested an apology from Mr Law. In that regard the letter said as follows:

'Within the final paragraph of my grievance I provided an adult sensible way to conclude these issues and consign it to the history books. The individuals concerned: headteacher (Ms White), teachers: Claire Eilbeck [CE] and Lynsey Muttrie [LM], together with George the caretaker, need to come to terms and recognise where they went wrong, with regards to falsely accusing me of theft. The honourable thing to do is to compile a

letter with the four individual names upon it and provisions for them to sign it. By outlining that errors of judgment had been made and that they fully understand that I, Joanne McCulpha had nothing to do with the unforeseen disappearance of bottles of perfume and that they are deeply sorry for their actions together with the unforeseen stress that I have had to suffer.

By compiling a letter of apology – the integrity of the St Gerard's RC Primary School and the staff members within it are maintained. It will also demonstrate that you yourself have now become much wiser and stronger, having initially become persuaded by false inaccurate information via a group of individuals who's thoughts, comments and beliefs were based entirely on Conspiracy Theory.

Unfortunately if the appropriate letter of apology is not forthcoming in order to conclude and recognise the simple act of apologising when someone has made a mistake; I will therefore have no alternative but to take this out of your control and implement the then necessary action of an industrial tribunal. Both sides have stipulated they require this event to be concluded quickly; the letter of apology achieves all of the appropriate aims 'people do learn from their mistakes.'

72. On 21 October Mr Thwaites visited the school in his role as investigating officer for the council's ongoing disciplinary investigation linked to the perfume incident.
73. In a report Mr Macaulay subsequently prepared for the grievance appeal, Mr Macaulay said that Mr Thwaites visited the school in his role as investigating officer for the council's ongoing disciplinary investigation linked to the perfume incident on 21 October and interviewed Ms Sherwood, in Mr Macaulay's presence, about what Ms McCulpha had said about a conversation between the two of them on 4 September. Mr Macaulay said in his report that during that meeting on 21 October Ms Sherwood categorically denied seeing the perfume fall out of Ms Eilbeck's bag and later that day sent an email to that effect. In his report Mr Macaulay attached a copy of the email he said Ms Sherwood had sent. That email was also referred to in the disciplinary investigation report prepared by Mr Thwaites. The email Ms Sherwood was said to have sent read as follows:

'Following the meeting this morning I would like to confirm that I never spoke to Joanne on 4 September regarding the perfume. At no point did I see Claire Eilbeck drop the perfume in the car park nor have I ever told Joanne that I witnessed any such incident.

Moly Sherwood'

74. On 6 November 2020 Mr Thwaites completed an investigation report recommending that a disciplinary hearing be held by the council to consider allegations of theft of perfume.
75. On 16 November 2020 Mr Macaulay completed a management report for the purposes of Ms McCulpha's appeal against the decision he had made on her grievance. In that report Mr Macaulay referred to the grievance meeting he had had with Ms McCulpha and annexed the notes of the meeting as an appendix. He also said that following that meeting he had met with Ms White, Ms Muttrie, Ms Eilbeck and Mr Law and annexed statements he said those individuals had given as appendices. Mr Macaulay said that Mr Law had also provided

photographs of the perfume bottle. In his report he said he also wished to 'challenge a number of points raised' by Ms McCulpha, saying:

- *'Moly Sherwood was not mentioned in the original letter nor at the grievance hearing on Friday 18 September. Ms Sherwood has been asked about the claim – she denies having a conversation with Ms McCulpha and also denies seeing an object fall from Claire Eilbeck's bag.'*
- He had no recollection of Ms McCulpha having mentioned her alleged conversation with Ms Sherwood before the grievance hearing.
- Mr Thwaites from the council had visited the school on 21 October in his role as investigating officer for the council's ongoing disciplinary investigation and had spoken to Ms Sherwood in Mr Macaulay's presence and Ms Sherwood 'categorically denied seeing the perfume fall out of Ms Eilbeck's bag.' He included a copy of the email as an appendix to his report.

76. A grievance appeal hearing was scheduled to take place on 16 December before a panel. On 7 December the respondent sent grievance appeal documents to Ms McCulpha. However, the appeal hearing was subsequently postponed because Ms McCulpha began a period of sick leave citing stress as the reason. That period of absence due to stress began on 10 December 2020.

Disciplinary investigation begins into covid issues

77. Meanwhile, in November 2020, another matter had arisen that led to a disciplinary investigation involving Ms McCulpha, which investigation would, eventually, result in Ms McCulpha being given a final written warning. On 9 November 2020 Ms White told Ms McCulpha there was to be a disciplinary investigation because of alleged inconsistencies with regard to things Ms McCulpha had said and/or done in the preceding days in connection with covid tests Ms McCulpha was alleged to have said she'd undergone. Ms White followed that conversation up with a letter setting out the allegations that were being investigated in the following terms:

- *You misled the school regarding a positive covid test.*
- *Your actions could have resulted in very serious repercussions for the school and its pupils.*
- *You attempted to cover for your actions by providing false information.*
- *Bringing the Trust into disrepute.*

78. Mr Conway, the Trust's standards officer, carried out an investigation into those allegations.

79. On 10 December 2020 Mr Conway completed his disciplinary investigation report into the covid test allegations. He set out his conclusions as follows:

'Based on the evidence collated, I would suggest that it is highly probable that in conversation with both St Gerard's and Middlesbrough Borough Council that Joanne McCulpha informed her employers that she had tested positive for Covid- 19 on Wednesday 4 November. ... It is also clear that Joanne McCulpha attended work whilst having symptoms for covid ... On Thursday 5 November, Joanne McCulpha presented the school with

an email to state that her result was in fact negative. She confirmed in interview that this was an 'official communication' despite its poor grammar but could not confirm who had sent it. On comparison against official NHS covid communication, it is clear that Joanne McCulpha's email did not come from via official means.'

80. Mr Conway recommended that a disciplinary hearing be held to consider the matter further. A decision was taken to pursue the matter under the disciplinary procedure but the disciplinary process was suspended due to Ms McCulpha's absence from work on sick leave.

Ms McCulpha's sickness absence

81. Ms McCulpha has alleged that the respondent did not hold regular meetings with her whilst she was on sick leave. We do not accept that was the case. Ms White held meetings with Ms McCulpha to discuss her absence on 27 January, 24 February, 8 March and 26 April 2021.
82. The first sickness absence meeting was on 27 January 2021. Ms White led the meeting. Ms McCulpha was accompanied by Mr Thompson of Unison. Mrs Barker from HR also attended and Ms Walker of HR took notes. At that meeting Ms McCulpha said:
- She had no definite date to return to work and she may be absent for a further four weeks at a minimum.
 - The stress she was experiencing was due to anxiety over the disciplinary investigations in which she was involved; she did not intend to return to work until the investigations were completed, but would not be willing to attend any disciplinary meetings whilst on sick leave.
 - Ms McCulpha would now like a referral to the counselling service offered through NPCAT. Ms White agreed she would make a referral by the end of the week.
83. Ms McCulpha was told that if she returned to work that could be on a phased basis over a four week period. It was pointed out to Ms McCulpha that if she was unwilling to attend any meetings related to the disciplinary investigations, that would mean no conclusions could be drawn at that stage. Ms McCulpha then said that she intended to return to work at the end of her next sick note, possibly in early March. They agreed to meet again on 24 February. Miss Barker subsequently arranged for Ms McCulpha to be referred to Alliance Psychology for counselling.
84. Meanwhile the council disciplinary proceedings were ongoing. Mr Bulman wrote a document comprising some 50 pages for Ms McCulpha to use in those disciplinary proceedings as her written representations. The document was written in Ms McCulpha's name. It included, amongst other things, comments on an investigation report prepared by Mr Thwaites. The document contained various allegations, including, amongst others, that statements prepared for the council's disciplinary proceedings and/or Ms McCulpha's grievance had been altered; that there had been 'deception and corruption' and a plot to 'frame' Ms McCulpha involving Ms Muttrie, Ms White, Ms Eilbeck and Mr Law who, it was alleged, had conspired against Ms McCulpha. It was also alleged that Mr Macaulay was 'in cahoots' with those individuals and was one of the 'increasing numbers of involved individuals attempting to frame me, whilst trying

desperately to protect those of the accusers holding senior teaching positions at my personal expense.’ The document also contained allegations that Mr Thwaites was intentionally and dishonestly misrepresenting the facts and trying to mislead the disciplinary panel. It alleged Mr Thwaites’:

‘primary objective is to produce a set of documents that provide a portrayal of events and circumstances that allows for disciplinary charges to be put upon myself; which is intended to safeguard the integrity and positions of the accusers, who are all senior members of staff. He therefore knowingly and intentionally is providing an inaccurate twisted and orchestrated set of circumstances to deliberately mislead appropriate third parties.’

It was suggested in the document that Mr Thwaites ‘could possibly in due course be facing several criminal charges, including those of ‘deception, defamation, fraud, abuse of position/power and/or corruption; thereby bringing shame and disrepute to not just himself and his family but for all individuals who are employed or associated with Middlesbrough Council; including property services’. It was also said in the document that Ms McCulpha had a ‘case file of evidence, awaiting to be submitted at an appropriate industrial tribunal or court of law, with support and assistance from my union reps and solicitors.

85. In February 2021 the council decided to uphold at least some, if not all, of the disciplinary allegations that the council had put to Ms McCulpha (we were not told the details of the outcome). Ms McCulpha subsequently appealed that decision.
86. On 24 February there was a second sickness management meeting with the same people present as before. Ms McCulpha said she was feeling good and was ready to return to work the following Monday. She said she felt she had improved and no longer needed the counselling referral. Ms White told Ms McCulpha that a phased return to work would be put in place to reintroduce Ms McCulpha back into school starting on 1 March 2021 with normal hours and duties resuming during week commencing 22 March. Ms White told Ms McCulpha that the school would accommodate any medical appointments Ms McCulpha needed to attend. Ms McCulpha told Ms White that the council case had been resolved.
87. Ms McCulpha had been due to return to work on 1 March but contacted the school that morning to say she was not returning and that she had been issued with a further four week sick note. The respondent wrote to her arranging a sickness management meeting for 8 March and asking Ms McCulpha to let them know if she wished to take up the offer of counselling.
88. On 8 March a sickness attendance meeting took place between Ms McCulpha and Ms White with Mrs Barker and Ms Walker present. Ms McCulpha said she did not feel she had the confidence yet to return to work. She said she saw herself returning to school after the Easter break but that she was anxious. Mrs Barker and Ms White asked Ms McCulpha what the school could do to help. Ms McCulpha replied that she was worried what members of staff at the school would say about her and felt that everybody in school would be talking about her and know of her circumstances. Ms White said that staff at the school would treat Ms McCulpha as normal and would be getting on with their own jobs, were not aware of the meetings that had taken place and that there was nothing for Ms McCulpha to worry about. Counselling was offered again but Ms McCulpha said she didn’t wish to take it up. Mrs Barker said that the grievance appeal hearing would be rescheduled and would take place on 23 March. She said that the

meeting would go ahead in Ms McCulpha's absence if she chose not to attend. As for the disciplinary proceedings regarding the covid test results, Mrs Barker said that was still ongoing and it was still to be confirmed when the hearing would take place. Ms McCulpha was told that an occupational health referral was going to be made given that Ms McCulpha had been absent for some time. Ms McCulpha was told that a further meeting would be arranged following the occupational health appointment.

89. At some point in March Ms McCulpha's appeal against the disciplinary decision taken by the council was upheld. However, the council did not ask Ms McCulpha to return to cleaning duties at St Gerard's at that time. Rather, she was required to continue carrying out cleaning duties at the neighbouring school.

Grievance appeal hearing

90. On 23 March 2021 the grievance appeal hearing took place before a panel heard by Canon Turnham. The other panel members were Mr Dent and Ms McCullagh, both directors. Mrs Barker attended. Mr Macaulay also attended, described as 'Trust representative'. Also present were a Ms Mitchell who was the clerk to the board from Berry Education, and Chris Fairs, also from Berry Education, as an independent note taker. Berry Education was an external provider of services to the respondent.
91. In advance of this appeal hearing, Mr Bulman had prepared a document running to some 32 pages. It was written in large font so that Ms McCulpha could read it out at the meeting and that is what she did. Mr Macaulay presented his 'case' by reference to the report he had prepared and which is referred to above. The panel asked a few questions. Ms McCulpha and Mr Macaulay were then asked to leave the room and Ms McCulpha was later told she was no longer needed. Ms McCulpha had also brought with her a copy of the 50 page document prepared in January 2021 for the council disciplinary proceedings and she handed that document to Ms Mitchell. The panel discussed the matters before them and unanimously agreed that the appeal should be rejected. It did not take the panel long to reach that decision: the minutes show that the decision was reached within 30 minutes of Ms McCulpha and Mr Macaulay leaving the meeting.
92. On 29 March 2021 Ms McCulpha was sent a letter informing her of the outcome of her grievance appeal. That outcome was that the findings of the original meeting held on 18 September 2020 should be upheld. The reasons given for that decision were that there was no evidence to support the appeal; the investigation documentation evidenced a thorough, clear, transparent and professional investigation process; and the investigation had not resulted in any accusation of guilt directed towards Ms McCulpha. That letter ended by saying 'this concludes the grievance process in its entirety, and you have no further recalls of appeal with the Trust.'

Ms McCulpha's return to work

93. Meanwhile, on 24 March 2021, the occupational health advisor to whom Ms McCulpha had been referred had prepared a report. In that report the advisor said that Ms McCulpha 'has been experiencing symptoms of stress and upset due to the accusations, the investigation itself and her perception of how colleagues have been treating her, she now has a sense of distrust towards the

colleagues involved and the way that processes have been undertaken as part of this investigation.’ The advisor said that at that time Ms McCulpha was not fit to return to work due to ongoing symptoms of stress and that it was difficult to predict a timescale for her to return to work with any accuracy as this ‘largely depends upon the investigation being successfully concluded and her being assured that staff at the school will not treat her in a different way to normal.’ The advisor said ‘I would recommend that an early resolution to the investigation occurs followed by the opportunity for Joanne to have a debrief session and that mediation is offered between Joanne and the colleagues instigating/involved with the investigation so that trust can be restored going forward. This should be facilitated by someone neutral to the investigation, who may wish to access support from ACAS to undertake this ...’

94. On 1 April 2021 Ms McCulpha returned from her sickness absence.
95. There was a sickness management meeting on 26 April, after Ms McCulpha’s return. By this time she had completed a phased return and was working her normal hours. The meeting was between Ms McCulpha and Ms White with Mrs Barker present and a note taker. Mrs Barker said the investigation into the covid test matter was still ongoing and would come to a conclusion. Ms McCulpha said she felt good to be back at work and was happy to be back in her role, that she no longer felt any stress and anxiety, and that she had no issues with staff at the school. However, she referred to the fact that she was still carrying out her cleaning duties at a different school which, she said, was a hassle to get to. Mrs Barker and Ms White said, in effect, that that was a matter for the council. Ms White and Mrs Barker offered a mediation session. Ms McCulpha said she was unsure about that at the present time but would think about it.
96. That same day Mrs Barker sent a letter to Ms McCulpha explaining that the disciplinary investigation with regard to the covid test matter would be discussed in a meeting to be held in the near future and that Ms McCulpha would be told in a separate communication of the dates and times of the meeting.

Alleged protected disclosure 1 and the statement Ms McCulpha said Ms Sherwood signed

97. On 25 May 2021 Ms McCulpha sent to the respondent a long, 13 page letter, together with supporting documents, addressed to Mr Hegarty, the CEO of the Academy Trust. The letter is said to be the first protected disclosure made by Ms McCulpha. This letter was written by Mr Bulman, not Ms McCulpha. The letter began as follows:
‘This communication is to bring your attention to the potential forthcoming involvement of Ofsted inspectors, the Press and Media, together with the increasing likelihood of an industrial tribunal due to the extremely negative way I have been treated during the past 10 months, the sheer volume of stress, anxiety, harassment, bullying and mental suffering I have had to endure as a direct consequence of the following actions: ...’
98. The letter went on to set out allegations that:
 - Ms White, Mr Macaulay and Mr Thwaites had conspired to produce a false account of events and circumstances as well as a ‘false statement of Ms Molly Sherwood which she did not know about’. This ‘false statement’ was a reference to the email of 21 October 2020 that Mr Thwaites and Mr Macauley said Ms Sherwood had sent.

- They had chosen not to get signed statements from witnesses ‘to allow themselves to adjust dates and contents to fit their version of events.’
 - They had done this ‘in their attempt to cover up their numerous mistakes’ and to protect Ms White and ‘the other involved members of staff/employees’.
 - Mr Macaulay had told lies in the grievance appeal hearing about what Ms McCulpha had said about an alleged conversation on 4 September 2020 with Ms Sherwood and other things. In the document it was alleged that Ms McCulpha had told Mr Macaulay on 8 September 2020 that Ms Sherwood had told Ms McCulpha the previous week she had seen an item fall out of Ms Eilbeck’s bag.
 - The information provided ‘clearly demonstrates’ that Ms White, Mr Macaulay and Mr Thwaites ‘could possibly in due course be facing several criminal charges, including those of ‘Deception, Defamation, Fraud, Abuse of Position/Power and/or Corruption; thereby bringing shame and disrepute to not just themselves and their families but for all individuals who are employed or associated with Middlesbrough Council, including property services and NPCAT’.
 - Increasing numbers of staff such as Mrs Barker have attempted to IGNORE THE TRUTH in a desperate collective bid to safeguard the senior employees;
 - There was ‘a group of similar conspirators abusing their positions of authority’.
 - The procedure used at the grievance appeal had been unfair and that allegations made of bullying and harassment had been ignored.
99. In that document there were numerous references suggesting Ms McCulpha may involve Ofsted and the Press/Media, go to an ‘industrial tribunal’, and involve the mayor and MPs. In this context the following statements appeared in the document:
- ‘I’m not going to be treated like a criminal when all I was doing was getting on with my job ...*
- I am therefore preparing my case file of evidence inclusive with all submitted documentation (including a copy of this letter/communication) in preparation for the forthcoming potential of an industrial tribunal together with the direct involvement of the Press/Media and Ofsted; because I am not the thief; I never handled or touched any of the items of perfume.*
- I am determined to clear my name because it is absolutely obvious that senior involved members of staff within Middlesbrough council property services and NPCAT that their intentions throughout the past 10 months have been the opposite; believing that they can keep their wrong doings out of sight and behind closed doors; at my personal expense and suffering.*
- The children’s parents and members of the public, not just locally but nationally, need to observe and understand for themselves the volume of corruption and deception taking place within the previously mentioned two*

organisations and the conditions of interview within the crematorium alongside children's headstones...

...

The sooner the Press, Media and Ofsted become involved; the sooner I can clear my name, which all of the wrong doers; predominantly in senior positions can be brought to justice in the public eye.'

100. The document went on to suggest Ms McCulpha would not feel the need to contact the Media/Press, Ofsted or anyone else if the respondent were to tell the council that it would welcome Ms McCulpha's return to cleaning duties at St Gerard's School. It was also suggested Ms McCulpha would want a letter of apology and for disciplinary action to be taken against 'the involved individuals.' However, we find the primary aim of sending the letter was to secure Ms McCulpha's return as a cleaner to St Gerard's.
101. As recorded above, this letter was written by Mr Bulman, not Ms McCulpha. The claimant was asked at this hearing to describe how the letter came to be written. Ms McCulpha explained that she does not use a computer and that Mr Bulman typed up the letter. She said she sat next to him watching him type it and helping him out. Although at one point she said they both decided what to put in the letter and went over it together, she also said that it was Mr Bulman who decided what to write because she does not know the words to use and he knows what to put. When asked how Mr Bulman knew what to put in the letter she said she did not know how to answer that one. She told us the letter had been written over more than one day. When asked if she had read the letter before it was sent to Mr Hegarty she said she had not done so but Mr Bulman had. When asked if Mr Bulman had read it out loud she said he had not.
102. In response to other questions about this letter and other letters and emails written subsequently by Mr Bulman that are said to contain protected disclosures, Ms McCulpha accepted that they represented the beliefs held by Mr Bulman and did not represent her own beliefs. When he gave evidence after Ms McCulpha Mr Bulman gave a somewhat different account. He said that he had read all the documents containing protected disclosures to Ms McCulpha, they had gone through them together paragraph by paragraph and Ms McCulpha had agreed their contents and represented opinions shared by both of them. He suggested Ms McCulpha's answers to the contrary were given as a result of the stress she was under giving evidence.
103. Included with this letter was a document which was said to be a statement signed by Ms Sherwood dated 4 May 2021. The statement read as follows:
- 'Molly Sherwood's statement*
- I can confirm that I have not been interviewed by anyone with regards to the fact that on Tuesday 14th July 2020 whilst I was in the school car park preparing to go home; I witnessed an item fall from one of the bags of Mrs Claire Eilbeck's whilst she was loading them into her car but at that point in time didn't realise its significance.*
- I can also confirm that on Friday 4 September 2020 following the commencement of the new school term I approached Joanne McCulpha on the school field and informed her about the above mentioned occurrence.'*

104. The document bore a signature in the name 'Molly Sherwood'. Ms McCulpha would later tell Mrs Barker of HR that the statement had been written by Mr Bulman but signed by Ms Sherwood.
105. The letter was accompanied by a copy of the 50 page document Mr Bulman had produced for Ms McCulpha to use in the council disciplinary proceedings in January and a copy of the notes Ms McCulpha had read out in the grievance appeal hearing.
106. The letter and its accompaniments were passed to Mrs Barker in HR.

Covid disciplinary proceedings continue

107. On 17 June Ms McCulpha was told a disciplinary hearing in regard to the covid test issue was to take place on 28 June before a panel chaired by Mr Farquhar, the respondent's chief operating officer.

Second alleged protected disclosure

108. For the purposes of the covid test disciplinary hearing Ms McCulpha submitted a number of documents to Mr Farquhar on 21 June 2021. They included comments on a note of a meeting held on 30 November 2020; signed statements in the names of Ms McCulpha, Mr Bulman, Ms McCulpha's son, and Ms McCulpha's aunt; and some photographs. These documents were said to contain the second alleged protected disclosure.
109. We find it more likely than not that Ms McCulpha's statement and the comments on the note of the 30 November meeting were written by Mr Bulman.
110. In the notes were references to the fact that statements produced in the disciplinary investigation were unsigned. There were also allegations that things Ms McCulpha had said had been misinterpreted and misunderstood. Other allegations in the document included that:
 - Some individuals had made statements that were not accurate or that were 'false'.
 - Some information or evidence had been 'manipulated'.
 - Another comment 'completely and intentionally orchestrated wording utilised within this presented document to give a false portrayal of events, which in this instance extortionately exaggerates the situation.'
 - Important factual information was missing.
 - Somebody had made a comment that was 'completely untrue and totally fictional.'
111. The document also contained a complaint about Ms White not letting Ms McCulpha return to cleaning duties at St Gerard's.

Mrs Barker's meeting with Ms Sherwood

112. On 22 June 2021 Mrs Barker met with Ms Sherwood. At this meeting:
 - 112.1. Mrs Barker asked Ms Sherwood how she spelled her name. Ms Sherwood replied to the effect that her first name was spelt Moly not Molly.
 - 112.2. Mrs Barker showed Ms Sherwood a copy of the document that Mr Macauley and Mr Thwaites had said was an email Ms Sherwood had sent on 21 October 2020 to Ms White and Mr Macaulay but which Ms McCulpha was

alleging had been fabricated. Ms Sherwood said that she had sent the email and that the contents of it were correct.

- 112.3. Mrs Barker showed Ms Sherwood the statement Ms McCulpha had produced dated 4 May 2021 purporting to be signed by Ms Sherwood. Ms Sherwood said she had never seen it before, that the contents were untrue and that the signature at the bottom was incorrectly spelled (because it was spelled with two Ls rather than one).

Meeting on 1 July 2021

113. A disciplinary hearing in relation to the covid test matter was due to take place on 28 June, but on 24 June it was rescheduled and Ms McCulpha was told it would now take place on 1 July.
114. Ahead of this meeting Mrs Barker, with the approval of Mr Farquhar, decided to confront Ms McCulpha about the statement she had produced that was said to be from Ms Sherwood and put forward a proposal that they have discussions with a view to Ms McCulpha leaving the respondent's employment, thereby avoiding a further disciplinary investigation, with the respondent paying Ms McCulpha a sum of money to be agreed.
115. On 1 July 2021 Ms McCulpha attended for the disciplinary hearing which was due to start at 10am. However, when Ms McCulpha arrived Mrs Barker began the meeting by referring to the allegations made against Ms White and Mr Macaulay that they had intentionally produced a false statement of Ms Sherwood. Mrs Barker asked Ms McCulpha where she had got the statement she had sent in bearing Ms Sherwood's name. Ms McCulpha said that Mr Bulman had written the statement and that Ms Sherwood had signed it in her presence in the staff room. Mrs Barker said she had shown the statement to Ms Sherwood who had said it was not her signature and that she had not seen the document before, had never seen anything fall out of Ms Eilbeck's bag in July 2020 and that Ms Sherwood had claimed somebody had forged her signature. Mrs Barker said that Ms Sherwood would be within her rights to report the matter to the police. She said she had checked Ms Sherwood's signature and the signature on the statement did not match Ms Sherwood's and her name was misspelt. Mrs Barker told Ms McCulpha that the respondent would be willing to have discussions with her with a view to reaching an agreement that would entail the respondent paying Ms McCulpha a sum of money and the claimant leaving her employment. Ms McCulpha became upset. The meeting ended with Mrs Barker telling Ms McCulpha that if they did not hear from her by 4pm the following day they would begin an investigation the following week into the statement produced by Ms McCulpha.
116. It was suggested that the disciplinary hearing concerning the covid matter did not go ahead because Ms McCulpha had become upset. However, we find it more likely than not that the respondent had no real intention of holding the disciplinary hearing that day because they assumed Ms McCulpha would agree to their proposal or at least be willing to explore it and they still hoped she would.
117. On 1 July Mrs Barker sent a letter to Ms McCulpha reiterating the offer to discuss Ms McCulpha leaving on agreed terms.

Alleged protected disclosure 3

118. On 2 July 2021 Ms McCulpha sent an email to Mrs Barker which is said to contain disclosure three. We find it more likely than not that this email was written by Mr Bulman as that is consistent with other communications sent by Ms McCulpha to the respondent. The email was sent from Ms McCulpha's email address. There has been no suggestion that it was sent without Ms McCulpha's approval.
119. In that email it is alleged again that signed statements had not been obtained, including by Mr Macaulay in his original grievance investigation, and that this contravened the Trust disciplinary policy. There was also an allegation that Mr Conway had not taken signed statements either. The email appeared to be critical of the Trust for the delay between the covid test issue arising and the disciplinary matter being concluded. It also referred to the circumstances in which it was alleged Ms McCulpha had obtained Ms Sherwood's signature to a statement, including an allegation that Mr Macaulay had accused Ms McCulpha of harassing his staff in connection with Ms Sherwood signing the statement. It also said 'it is very notable how the CEO has chosen to ignore the elements of harassment and bullying, significantly regarding the actions of Ms White.' The document went on to say that the disciplinary hearing needed to be concluded and that the Trust needed to write to Middlesbrough council 'welcoming my return'.

Alleged protected disclosure 4

120. On 4 July Ms McCulpha sent a further email to Mrs Barker which is said to contain disclosure four. We find it more likely than not that this too was written by Mr Bulman although there has been no suggestion that Ms McCulpha did not agree to it being sent in her name and from her email address.
121. This email contained an allegation that Ms McCulpha had been falsely accused of supplying false information (in the form of Ms Sherwood's statement).
122. In that email it was said that Ms McCulpha had received a 'confirmation reference number from ACAS' and that this was the 'commencement of the appropriate procedure that potentially leads to an industrial tribunal.'
123. Ms McCulpha contacted ACAS for early conciliation on 4 July 2021 and was later given early conciliation certificate reference number R152780/21/64.

Meeting of 6 July 2021

124. Ms McCulpha alleges that her fob access to the school premises was disabled on 5 July 2021.
125. On 6 July 2021 there was a meeting between Mrs Barker and Ms McCulpha. In that meeting:
- 125.1. Ms McCulpha said she wanted to work at St Gerard's as it was close to her home and her current cleaning role meant that she needed to get a bus.
- 125.2. Mrs Barker said the allegations Ms McCulpha had recently made would be investigated further by an independent investigating officer. In effect the respondent was treating the letter addressed to Mr Hegarty in May as a further grievance.
- 125.3. With regard to the covid disciplinary matter, Mrs Barker said the planned hearing on 1 July had not gone ahead because it was felt that it would not be fair as Ms McCulpha had been upset following the conversation that had been had.

Mrs Barker said the hearing had been rescheduled for 12 July and that would be confirmed in an email.

125.4. Mrs Barker reminded Ms McCulpha of the counselling service that was available. Ms McCulpha responded that she was okay and did not require any further support.

125.5. Mrs Barker suggested that as it was very close to the end of term Ms McCulpha should not return to St Gerard's to fulfil her breakfast club position but should stay at home, effectively on paid leave. Mrs Barker was under the impression that Ms McCulpha agreed with that approach.

Further complaint by claimant; alleged protected disclosure 5

126. Later on 6 July 2021 an email was sent from Ms McCulpha's email address to Mrs Barker. We find that this email was written by Mr Bulman rather than Ms McCulpha.

127. In the email it was alleged that Mrs Barker had bullied Ms McCulpha at the meeting by preventing her from taking notes by telling her to put her pen and paper away. This allegation is said to amount to protected disclosure 5.

128. The email also criticised Mrs Barker, alleging that she had said Ms McCulpha would not be allowed to return to school in September until the investigation into the Sherwood statement had been completed. It also implied again that Ms McCulpha may take matters to an employment tribunal.

Grievance investigation

129. On 12 July Mrs Jamalizadeh wrote to Ms McCulpha confirming receipt of her letter addressed to the CEO from May 2021 and the email of 6 July. She made it clear these were being treated as formal grievances and told Ms McCulpha that a meeting had been arranged for 16 July 2021 to discuss them.

130. In these proceedings the May 2021 letter addressed to the CEO (Mr Hegarty) was referred to as the second grievance and the 6 July email was referred to as the third grievance.

Covid test disciplinary hearing and alleged protected disclosure 6

131. On 12 July 2021 a disciplinary hearing took place regarding the covid test allegations. The meeting was chaired by Mr Farquhar. Mrs Jamalizadeh was on the panel alongside Ms Haycock a director.

132. Ahead of the meeting Mr Bulman had typed out and printed a 28 page brief, in large font. The intention had been that Ms McCulpha would read out the document at the disciplinary meeting, which was why it was printed in such large font. The document is said to contain protected disclosure six. Ms McCulpha left a copy of that document with the disciplinary panel. The document contained the following statements and allegations:

132.1. Statements had not been signed and had been altered.

132.2. The respondent's documentation was littered with inaccuracies and contradictions.

132.3. It referred back to the previous investigation into the perfume issue and alleged again that Ms White, Mr Macaulay and Mr Thwaites had 'intentionally produced a series of false documents and statements to use in evidence against

me. This included a totally false statement of a key witness, namely Ms Sherwood.'

Outcome of disciplinary hearing

133. By letter of 14 July 2021 Ms McCulpha was told that the outcome of the disciplinary hearing was that she was being given a final written warning which was to remain on her file for 24 months. The letter said that if Ms McCulpha was absent during the currency of the final written warning the timescale specified in it would be extended to reflect that.
134. The reasons given for the decision were that the panel believed Ms McCulpha had misled the school on 4 November 2020 by telling them she had tested positive for covid and that she had then fabricated and sent to the school an email on 5 November 2020 purporting to be evidence of a negative covid test result. The decision was based on evidence from two school staff and also the fact that, at the disciplinary hearing, Ms McCulpha had admitted writing and sending an email on 5 November 2020 knowing it was not a genuine test result. Her explanation had been that she had 'panicked' after accidentally deleting a genuine email containing a negative test result.

Claimant's appeal against disciplinary decision; alleged protected disclosure 7

135. On 26 July 2021 Ms McCulpha appealed the disciplinary outcome in a seven page letter written by Mr Bulman. This is said to contain protected disclosure seven. In that letter the following allegations and statements were made:
- No signed statements were taken, which was said to be contrary to the Trust disciplinary policy.
 - Ms McCulpha was given two instead of five days' notice of the disciplinary hearing, again contrary to the Trust's 'own rules'.
 - The panel had ignored evidence supplied to it.
 - Ms White was using the covid issue 'in her quest to frame and discipline me for something I hadn't done; in order to cover up her own wrong doings' with reference to the perfume investigation.
 - The occupational health report had said Ms McCulpha should be 'allowed to talk and make direct contact with the involved individuals' and no arrangements had been made for that to occur and that the Trust had intentionally kept Ms McCulpha away from the school to prevent Ms McCulpha from talking to them.
 - Mr Farquhar had put forward a 'corrupted theoretical storyline'.
 - Throughout the last 12 months Ms McCulpha had 'been bombarded with countless corruptive non-compliant documents from both my employers, which is why an Employment Tribunal will be forthcoming and Ofsted inspectors informed in order to clear my name.'
136. There was a reference again to Employment Tribunal proceedings and involving the 'Press and Media nationwide' and the 50 page document Ms McCulpha had previously provided. It was said 'I look forward to receiving support from the British public when they discover the level of corruption, deception, harassment and bullying taking place within the currently run NPCAT in my home town of Middlesbrough.' It referred to an ACAS conciliation certificate and said

‘meanwhile any further communication during this holiday period is via ACAS and the appropriate representatives.’

137. Ms McCulpha’s first early conciliation certificate was received on 13 August 2021.

Alleged protected disclosure 8

138. On 10 September 2021 Ms McCulpha sent a long 13 page letter to Mrs Barker which was written by Mr Bulman. That letter repeated Ms McCulpha’s wish to return to cleaning duties at St Gerard’s saying ‘I hadn’t done anything wrong, therefore the instruction currently remaining in situ needs to be revoked via further collaboration between the NPCAT and (PT) of property services; before ofsted become involved followed by the Press and Media in order to clear my name.’ In this letter complaints of bullying, alteration and adjustment of unsigned witness statements were repeated.
139. Before Ms McCulpha sent this email the new head teacher at St Gerard’s, Ms Coe, had already written to Middlesbrough Council saying the school had no objection to Ms McCulpha being considered for a cleaning vacancy that had come up at St Gerard’s.

Grievance proceedings continue

140. On 8 September Mrs Jamalizadeh had sent a letter to Ms McCulpha arranging a meeting on 16 September 2021 to discuss Ms McCulpha’s grievances.
141. At that meeting Ms McCulpha said she had been falsely accused of theft. She accused Mr Macauley of altering a statement from Ms Sherwood in relation to the investigation of the perfume incident. Ms McCulpha was asked what evidence she had to support this serious allegation. Ms McCulpha responded ‘it’s just what I think’. Ms McCulpha also referred to statements not having been signed and alleged they had been altered. Ms McCulpha repeated that she wanted to clear her name and get back to cleaning at St Gerard’s. She also said that she would like a letter of apology and if she was not allowed to return to St Gerard’s as a cleaner she would then send a letter to Ofsted.
142. Mrs Jamalizadeh told Ms McCulpha there would be an external investigator appointed to look into her grievances. The appointment of an external investigator was confirmed subsequently in a letter dated 20 September. That external investigator was Ms Jones, who was on a list of external contractors approved by Middlesbrough Council.
143. Ms McCulpha was also told that Middlesbrough Council had been told there was no objection to her returning to the school.

Alleged protected disclosure 9

144. Because Ms McCulpha had appealed the covid test disciplinary decision, Mr Farquhar prepared a management report for use in the appeal. His report was completed on 28 September 2021.
145. On 30 September 2021 Ms McCulpha sent a letter to the respondent which is said to contain disclosure nine. This letter was written by Mr Bulman. It contained, amongst other things, allegations that documentation used by Mr Farquhar and panel members in the disciplinary proceedings was ‘intentionally worded to mislead third parties by falsely representing what had actually

occurred.’ It also alleged that a false reason for cancelling the disciplinary hearing on 1 July was intentionally used by the respondent to deceive third parties.

Covid disciplinary appeal hearing; alleged protected disclosure 10

146. The disciplinary appeal hearing took place on 4 October 2021 and was chaired by Ms Wilson. Ahead of that hearing Mr Bulman had prepared some notes for Ms McCulpha to read out and that is what Ms McCulpha did. Those notes were said to contain disclosure ten.

147. In those notes it was said, amongst other things, that:

147.1. Mr Conway had not taken signed statements during the investigation and neither had Mr Macaulay previously, which was a breach of the Trusts own ‘rules and regulations’.

147.2. The reason for not getting statements signed was so they could be altered without the person who gave the statement knowing. Therefore, documents had been produced to ‘intentionally provide a false portrayal’ of what actually occurred.

147.3. Mr Farquhar had ‘corruptly’ stipulated ‘in order to deceive people’ that all of the evidence Ms McCulpha submitted was carefully and methodically reviewed and considered.

147.4. The management case of evidence was littered with countless contradictions.

147.5. Evidence had been misinterpreted.

148. The notes ended with the following statement:

‘I am not going to conclude these issues until my name has been cleared; having been falsely accused on three separate occasions throughout the past 12 months and all because Miss White made mistakes and she and others didn’t want to apologise.

Be prepared to have your names and pictures appear in the local and national newspapers and the corruption and non-compliance of the Trust’s own rules emphasised to the British public via Ofsted and the Press & Media because no one within the Trust will listen or act appropriately; Hugh Hegarty must go.’

149. The next day, 5 October 2021, Ms McCulpha was told that her appeal had not been upheld.

150. At some point in the Autumn the council reassigned Ms McCulpha to cleaning duties at St Gerard’s.

Alleged protected disclosure 11

151. On 21 October 2021 another letter was sent from Ms McCulpha to the respondent, again written by Mr Bulman. This letter is said to contain disclosure eleven.

152. This letter contained allegations that the Trust had not followed its own procedural rules in relation to her appeal against the covid disciplinary sanction. It referred again to statements not having been signed. It also said:

‘a signed witness statement confirming that I was denied my rightful opportunity to ask questions and sum-up will be made available for Ofsted

and all other appropriate forthcoming third parties, such as an Employment Tribunal, the Press and Media for just a few examples.'

It ended with the following statement:

*'I am now entering a concluding phase of preparation prior to presenting to appropriate third parties, which includes Ofsted, the catastrophic wrongdoings of increasing numbers of senior involved staff members of the NPCAT, which also includes the CEO, who have been **vehemently** attempting to avoid the **TRUTH**, whilst continually harassing, bullying and above all; **victimising** an individual employee for over a year now, July 2020 - October 2021, of which that **victimisation** and **discrimination** continues throughout the rank structure to this very day. I will indeed continue the forthcoming processes to clear my name; at all costs regardless of the consequences.'*

Leaving card

153. Ms McCulpha alleges she was prevented from signing the leaving card of a colleague in October 2021.

Alleged protected disclosure 13

154. Ms Jones had interviewed Ms McCulpha in connection with her grievance on 8 October 2021. Ms McCulpha later sent emails taking issue with the way Ms Jones worded Ms McCulpha's statement, claiming Ms Jones had deliberately left out allegations that Ms White and Mr Macaulay had both been involved in fabricating a statement from Ms Sherwood in relation to the perfume investigation.
155. On 17 November 2021 an email was sent from Ms McCulpha's email address to the respondent's HR department. This is said to contain disclosure thirteen. The email was written by Mr Bulman. It referred to Ms Jones' investigation, saying she **'has not answered the very simple BUT VERY SERIOUS question as to why SHE had left both Mr Macaulay and Miss White's names off the alleged statement of Molly Sherwood and only makes reference to Paul Thwaites????????????????'**

It also contained an allegation that the respondent had cancelled Ms McCulpha's security fob.

Christmas dinner incident and disciplinary investigation

156. On 15 December 2021 the respondent served Christmas dinner at the school. Ms McCulpha had ordered a Christmas dinner in advance and paid for it. However, when she went to the canteen to collect it she was told that they had run out of turkey. Ms McCulpha became upset and allegations were subsequently made about the language Ms McCulpha was said to have used in front of parents.
157. Ms Burnett (School Cook) gave an account of what had happened in a handwritten statement dated 15 December 2021. Another individual, Ms Stephenson, gave an account of what had happened in an email addressed to Ms Coe dated 15 December 2021.
158. On 16 December 2021 Ms Coe, who had succeeded Ms White as Head of School, met with Ms McCulpha and told her of the allegations of using inappropriate language and that there was to be a formal investigation under the Trust disciplinary procedure. This was confirmed in writing by letter of the same date.

Secret Santa

159. Ms McCulpha alleges the respondent excluded her from a Secret Santa event in December 2021.

Allegation about door slamming

160. Ms McCulpha alleges that on 5 January 2022 Ms Coe slammed a door in Ms McCulpha's face.

Alleged protected disclosure 14

161. On 7 January 2022 an email was sent from Ms McCulpha's email address to the respondent's HR department with the subject line 'Wrongdoings of a Headteacher' It was written by Mr Bulman. This is said to contain disclosure fourteen:
162. That email said:

'having been victimised and bullied for over 17 months now and ignored by increasing numbers of senior employees of the NPCAT who have become involved in a corruptive scandalous plot to target an individual employee who has had to deal with the endless wrongdoings committed directly by senior employees. They include as you know producing none compliant corruptive documents with false information within them to hide and stay away from the truth. Such as why the meeting at Postgate House was cancelled on 1st July 2021????????????? Similarly why HR cancelled my fob without informing me and prevented me from attending my rightful place of work; of which you have still not answered that very simple question and yet you have a duty of care regards my wellbeing, whilst furthermore intentionally preventing me from meeting directly with the originally involved people in order to regain trust; AND TOTALLY AGAINST PROFESSIONAL MEDICAL ADVICE.'

163. It also said that, in response to Ms McCulpha telling Mrs Coe that she would add her note of the conversation to papers she has for her solicitor, Mrs Coe slammed the door shut in Ms McCulpha's face.

Decision on claimant's second and third grievances and instigation of further disciplinary investigation

164. As part of her investigation into Ms McCulpha's second and third grievances, Ms Jones considered various documents and interviewed Ms McCulpha; Mrs Barker; Ms White; Mr Macaulay; Ms Eilbeck; Mr Law; Ms Sherwood; and Ms Muttrie. She also asked to interview Mr Thwaites of Middlesbrough Council but he declined.
165. Ms Sherwood told Ms Jones that:
- 165.1. She had not seen the perfume fall from Ms Eilbeck's bag.
- 165.2. As part of an investigation regarding the perfume, a male had asked her if she had seen the perfume fall from Ms Eilbeck's bag and she told him she had not.
- 165.3. That same person told her that Ms McCulpha had claimed that she (Ms Sherwood) had told Ms McCulpha, in September [2020], that she had seen the perfume falling out of the bag when Ms Eilbeck was getting out of the car. Ms Sherwood said she told the male that she had not spoken to Ms McCulpha.
- 165.4. She provided a statement and sent an email to Mr Macaulay about this, which was accurate.

- 165.5. She had never signed a statement prepared by Ms McCulpha or anyone else.
- 165.6. She spells her name Moly and always has done.
166. On 9 January 2022 Ms Jones prepared a grievance investigation report. Ms Jones said in her report that she had not found evidence to support Ms McCulpha's view that staff had harassed or bullied her and that she was 'unable to evidence that statements provided by staff have been amended, or that senior staff members have colluded or acted in any unprofessional manner, in order to 'frame' Ms McCulpha.' Ms Jones went on to say that there was evidence that Ms McCulpha had falsified information, in the form of the statement said to have been signed by Ms Sherwood in May 2021, in order to influence an investigation. Ms Jones recommended no further action in regard to the grievance but expressed the opinion that the respondent should consider 'further procedures' by reference to the section of the Trust grievance procedure that states that making a 'false, vexatious or malicious grievance' is a serious disciplinary offence which could result in dismissal on the grounds of gross misconduct.
167. On 11 January 2022 Mrs Jamalizadeh met with Ms McCulpha and told her:
- 167.1. Her second and third grievances had not been upheld.
- 167.2. There was to be an investigation under the Trust's disciplinary procedure into whether Ms McCulpha had falsified the statement said to have been signed by Ms Sherwood in May 2021 and made vexatious allegations.
- 167.3. Ms McCulpha was suspended.
168. Mrs Jamalizadeh confirmed these matters in letters of the same date. With regard to the disciplinary investigation, Mrs Jamalizadeh said in that correspondence that there was a disciplinary investigation into the following allegations:
- Making vexatious allegations against Trust officers which amounts to gross misconduct.
 - Deliberate falsification of records which amounts to gross misconduct.
 - Breach of trust and confidence.'
- She went on to say that a formal investigation into those allegations and the allegations that had been put to Ms McCulpha on 16 December 2021 about Ms McCulpha's behaviour the previous day in respect of the Christmas dinner, would take place under the disciplinary procedure. Ms McCulpha was told that a possible outcome was dismissal.
169. The suspension was said to be pending the disciplinary investigation into the allegations of falsifying documents, making vexatious allegations and breach of trust and confidence. Mrs Jamalizadeh said in that letter that she 'will ensure that the length of suspension is as short as possible' and that she would regularly review the suspension. She asked Ms McCulpha to remain available should Mrs Jamalizadeh need to contact her and said she must be available to attend meetings as required. She told Ms McCulpha that she should not attend the workplace unless invited to do so and asked her not to contact any colleagues or clients associated with the school or wider Trust.

170. Ms McCulpha remained suspended for 20 months until she was dismissed in September 2023. Mrs Jamalizadeh did not in fact review the suspension, regularly or at all. Nor did anyone else at the respondent. When asked at this hearing why that was Mrs Jamalizadeh said had not considered it her responsibility to do so. She speculated that Ms Coe would have been the person responsible.
171. As for the reason for the suspension, in Mrs Jamalizadeh's letter confirming suspension, the reason for the suspension was set out as follows:
'a suspension at this point is deemed necessary due to the seriousness of the above allegations and to protect both yourself and other Trust officers and is in no way a form of disciplinary action against you.'
- The letter did not say what Ms McCulpha and 'other Trust officers' were being protected from by being suspended.
172. We found Mrs Jamalizadeh's evidence as to the reason for Ms McCulpha's suspension to be somewhat inconsistent and unpersuasive. When questioned about the reason for the suspension Mrs Jamalizadeh initially said her thinking was based on Ms Jones' report and that there was evidence Ms McCulpha could have falsified the Moly Sherwood statement, which would be considered gross misconduct and there was going to be a disciplinary investigation. When pressed as to why that led her to suspend Ms McCulpha Mrs Jamalizadeh said that the main reason was that relationships were not very good in the school. She also said, however, that Ms McCulpha was suspended to ensure there was no interference with the investigation, which we took to mean the investigation into the statement allegedly signed by Ms Sherwood given that Mrs Jamalizadeh said in her letter that the suspension related to that investigation. At the time of the suspension, Mrs Jamalizadeh was aware that Ms McCulpha had known of the potential disciplinary investigation since July the previous year. When asked whether there had been any suggestion that Ms McCulpha had done anything that might interfere with an investigation in the six months before her suspension, Mrs Jamalizadeh said she could not recall. There has been no evidence before us of any such interference and we find it likely Mrs Jamalizadeh had no reason to think there had been at the time she decided to suspend Ms McCulpha. Mrs Jamalizadeh was asked whether she had considered moving Ms McCulpha to another school rather than suspending Ms McCulpha. She said 'it was not considered appropriate at the time' but said she could not remember why. We found her evidence vague on this matter. Looking at the evidence in the round we find it more likely than not that Mrs Jamalizadeh did not consider moving Ms McCulpha to a different school rather than suspending her.
173. We find it more likely than not that Mrs Jamalizadeh suspended Ms McCulpha as a knee-jerk reaction solely because Ms McCulpha was facing allegations that might amount to gross misconduct. That is consistent with the reference in the letter of suspension to the 'seriousness of the above allegations' and Mrs Jamalizadeh's initial response when asked at this hearing about the reason for suspension. It is also consistent with the fact that the suspension was never reviewed.

Alleged protected disclosures 15, 16 and 17

174. On 13 January 2022 a letter was sent from Ms McCulpha to the respondent. The letter was written by Mr Bulman. This is said to contain disclosure fifteen.
175. This letter contained an allegation that Mrs Jamalizadeh had bullied Ms McCulpha in that she 'chose to PREEMPT the final outcome of the Grievance Process and then falsely accused me on three listed accounts without any factual evidence available to you and then went on and bullied me for a second time by suspending me on you own theoretical, prejudged, opinionated evidence.' It is that allegation that is said to be disclosure 15.
176. It also contained other allegations, including about Ms Jones' investigation into her second and third grievances.
177. On 17 January 2022 Mr Bulman sent a letter in his own name addressed to Mr Hegarty. This is said to contain disclosure sixteen. Unlike other communications said to contain protected disclosures, this letter was not said to be sent by Ms McCulpha and was not in her name. There is no suggestion Ms McCulpha asked Mr Bulman to send this letter and we find that she did not.
178. On 20 January an email was sent from Ms McCulpha's email address to Ms Coe. The email was written by Mr Bulman.
179. This email, amongst other things:
- 179.1. Said Mrs Jamalizadeh had bullied Ms McCulpha by making false allegations towards Ms McCulpha with no supporting justifiable evidence and suspending Ms McCulpha before the final outcome of the grievance is known.
- 179.2. Said Ms Jamaleizadeh and other Senior/Executive employees had 'made catastrophic errors of judgment throughout the past eighteen months of which the factual collated evidence against them is overwhelming But intentionally IGNORED by the involved Members of Staff.' This was described as victimisation and bullying.
- 179.3. Said that Mrs Jamalizadeh had failed to provide a copy of Ms Jones' report because she 'doesn't want to face the truth'.
- 179.4. Said 'they chose to close ranks with one another and collectively try to produce false accounts of occurrences via the creation of falsified documentation but in doing so they have left a trail of evidence behind them that clearly identifies the victimisation and bullying of an individual NPCAT employee, namely myself. These outlined corruptive actions that have been occurring for approximately 18 months now are totally unacceptable and are in fact totally against the Trust's own rules and procedures.'
- 179.5. Said that in the last week Ms McCulpha had 'received further bullying tactics ...by members of the HR team and also Mrs Jamalizadeh, due to their intentional act of IGNORING FACTUAL CONCERNING COMMUNICATIONS FROM ME AND THEN AT THEIR OWN CHOICE AND DISCRETION THEY CHOOSE TO IGNORE ME AND THEREBY FAIL 100% IN THEIR DUTY OF CARE TOWARDS MYSELF AS AN EMPLOYEE. Intentionally ignoring someone is in fact BULLYING.'
180. Those were said to amount to disclosure seventeen.

181. In the email Mr Bulman referred, again, to involving 'numerous external third parties' the purpose of which was said to be 'to resolve and hold to account the involved senior and executive employees who have failed to abide by the Trust's own rules at my personal expense of suffering...'

Appeal against second and third grievance outcome; claimant's insistence that disciplinary investigation be postponed; claimant's sick leave

182. On 23 January 2022 Ms McCulpha appealed the second and third grievance outcome.
183. On 24 January 2022 Ms McCulpha was told that the disciplinary investigation was being led by Ms Eddies, a headteacher from another school. Ms Eddies told Ms McCulpha she wished to meet with her to discuss the allegations on 2 February 2022.
184. A reply was sent to that letter, ostensibly from Ms McCulpha, on 30 January. In that reply it was said that the grievance process had not yet concluded and that 'by pre-empting the final outcome of my grievance, the involved staff are in fact bullying me by the utilisation of this non-compliant procedure. The meeting outlined within your correspondence is therefore null and void until further notice.'
185. On 2 February 2022 Ms McCulpha was invited to a grievance appeal hearing.
186. As part of the investigation into allegations about Ms McCulpha's conduct at the Christmas dinner, Ms Porritt (Trust Business Manager) and Ms Coe both gave short statements dated 4 February 2022.
187. Subsequently, Mr Macaulay gave a short written statement dated 9 March 2022 as part of the investigation into the allegation that Ms McCulpha had made vexatious allegations. In that statement he described what he said was the impact on him of the allegations Ms McCulpha had made against him.

Alleged protected disclosure 18

188. A further letter dated 4 February 2022 which Mr Bulman sent in his own name to the respondent is said to contain disclosure eighteen. There is no suggestion Ms McCulpha asked Mr Bulman to send this letter.

Alleged protected disclosure 19

189. On 9 February 2022 Ms McCulpha began a period of sickness absence.
190. On 17 February 2022 Ms McCulpha sent a letter to Mrs Eddies in which it was said it would be inappropriate to go ahead with a disciplinary investigation meeting 'at this point in time' due to Ms McCulpha being unwell and signed off as sick by her doctor due to stress related issues associated with her employment. It was said that Ms McCulpha did not feel in a position to provide a written statement at that point in time, as had been suggested by Ms Eddies, as she was unwell at present and 'the allegations haven't been particularised'.
191. This is said to be disclosure nineteen.

Grievance appeal hearing and alleged protected disclosure 20

192. On 28 February Ms McCulpha was invited to a rescheduled grievance appeal hearing to take place on 17 March 2022. In preparation for that meeting Mrs Jamalizadeh prepared a management report in accordance with the respondent's policy.

193. On 6 March an email was sent from Ms McCulpha's email address to the respondent's HR department. This was said to contain disclosure twenty. This email was not drafted by Ms McCulpha. It reads as though it may have been drafted by Ms McCulpha's legal adviser.
194. Ms McCulpha's case is that this was a protected disclosure because in this email she said the respondent had been preventing her from gaining testimony from her witnesses, denying her the opportunity to meet and/or talk with them. We find that is not what was said in the email. Rather, Ms McCulpha said:

'Arrangements need to be made prior to a more appropriate date for the forthcoming Appeal Hearing for myself to attend school to meet with appropriate witnesses and relevant parties due to them being inextricably linked to the previously referred to allegations.'

195. On 7 March 2022 Ms McCulpha's solicitors, Irwin Mitchell, began communicating with the respondent. They said they did not believe it was appropriate or reasonable for the Trust to expect Ms McCulpha to prepare for the grievance appeal hearing when she was unfit to do so. They also said her suspension 'significantly hinders her ability to speak to and collate testimony from relevant parties in respect of her grievance appeal (which is inextricably linked to the allegations being made against her)'. They asked that the grievance appeal meeting be postponed. They also asked that in advance of the grievance appeal hearing Ms McCulpha be given the opportunity to attend the school premises to allow her to speak to the following individuals: Ms Hogarth; Mr Law; Ms Muttrie; Ms Eilbeck; Ms Sherwood; Ms White and Mr Macaulay. They said that if that approach was not acceptable they asked that the Trust liaise with the named individuals as part of the grievance appeal. They did not suggest Ms McCulpha's suspension was, in itself, inappropriate, except to the extent that it meant she was unable to speak to Ms Sherwood and others.
196. The respondent replied to Ms McCulpha on 15 March saying that although they would not allow Ms McCulpha to come into school to meet with staff, they could consider approaching staff on her behalf but would need to understand the relevance of the named individuals to the grievance appeal. They asked Ms McCulpha to explain what evidence she thought the individuals could provide and also asked certain questions to better understand the grounds of appeal. They also asked Ms McCulpha to let them know when she was well enough to attend a grievance appeal hearing. A similar letter was sent to Ms McCulpha's solicitor on 24 March.
197. In light of Ms McCulpha's solicitor's correspondence the grievance appeal meeting was postponed. This had the knock on effect of delaying the outstanding disciplinary investigation because the respondent had given way to Ms McCulpha's insistence that the disciplinary investigation be suspended pending the conclusion of the grievance appeal.
198. Neither Ms McCulpha nor her solicitors responded to the respondent's request for clarification until 10 May 2022. On that date Irwin Mitchell sent a letter to the respondent. They answered the respondent's questions about the grounds of appeal. With regard to the individuals Irwin Mitchell said Ms McCulpha wanted to ask questions of they said the following.

198.1. Ms McCulpha wanted to speak with Ms Hogarth because she wanted Ms Hogarth to accompany her to the 'impending disciplinary proceedings'.

198.2. Ms McCulpha wanted to ask Mr Law, Ms Muttrie, Ms Eilbeck, Ms White, Ms Sherwood and Mr Macaulay questions relating to the missing perfume and the investigation that followed, including the investigation into Ms McCulpha's grievance. They provided a list of the questions they said Ms McCulpha wanted answered.

198.3. The questions Irwin Mitchell asked Ms Sherwood to answer were as follows:

i. Was Ms. Sherwood ever interviewed as part of the investigation into Ms. Eilbeck's missing perfume?

ii. Did Ms. Sherwood provide our client with a witness statement dated 4 May 2021?

iii. Did Ms. Sherwood sign this statement in our client's presence?

iv. Did Ms. Sherwood make any attempts to bring this testimony to the attention of the School? If so, who and when and what was their response? If not, why not?

v. Has Ms. Sherwood seen an email from an email account [with the address provided] to Ms. White, dated 21 October 2020 (timed 15:05) advising that Ms. Sherwood did not see Ms. Eilbeck drop her perfume in the School car park as set out:

'Following the meeting this morning I would like to confirm that I never spoke to Joanne on the 4th September regarding the perfume. At no point did I see Clair Eilbeck drop the perfume in the car park nor have I ever told Joanne that I witnessed any such incident.'

vi. Did Ms. Sherwood send this email? If yes, why?

vii. If no, does anyone else have access to Ms. Sherwood's School email account? If yes, who?

198.4. The questions Irwin Mitchell asked Mr Macaulay to answer included, but were not limited to, the following:

vii. In particular, is Mr. Macaulay aware of Ms. Sherwood's witness statement dated 4 May 2021 and its contradiction to a purported email sent by a 'Moly Sherwood' on 21 October 2020?

viii. Has Mr. Macaulay ever spoken to Ms. Sherwood about the discrepancy, seeking direct testimony from Ms. Sherwood regarding which statement is true?

ix. If no, why not? Is it not of great concern to Mr. Macaulay that these contradictory statements exist?

x. Has Mr. Macaulay carried out any investigation into any alleged unauthorised access to Ms. Sherwood's work email address? If no, why not?

199. On 21 July 2022 the Mr Farquhar sent a reply. He said that when the pending disciplinary process is reinstated Ms McCulpha would be afforded her statutory right to be accompanied by a work colleague or trade union representative and Ms McCulpha's request for Ms Hogarth to perform that role would be communicated to Ms Hogarth in due course. He expressed doubt as to the relevance to the grievance appeal of many of the questions asked, particularly those asked of Mr Law, Ms Muttrie and Ms Eilbeck. He said that, nevertheless, he would put the questions to

the relevant individuals and ask them to answer the questions and their answers would be taken into account insofar as they were relevant. In saying that he made the following points, amongst others.

- 199.1. Many of the questions related to the content of the evidence that witnesses gave to Middlesbrough Council during the original disciplinary process, regarding allegations of theft, which the respondent was not a party to. The purpose of this grievance process was not to reinvestigate the disciplinary allegations.
- 199.2. The Trust had already dealt with Ms McCulpha's concerns about the alleged conduct of Trust staff (Miss White, Mr Law, Ms Muttrie and Ms Eilbeck) during the grievance and appeal process which took place between September 2020 and March 2021.
200. Ms McCulpha's fit note expired on 31 July 2022. This was during the school holidays.
201. On 28 September 2022 Irwin Mitchell submitted a Data Subject Access Request on behalf of Ms McCulpha. At the same time they suggested they and the respondent have discussions with a view to resolving the dispute. Consequently the respondent suggested they temporarily postpone the grievance appeal and disciplinary processes.
202. On 17 January 2023 the respondent shared numerous documents with Ms McCulpha in response to her Data Subject Access Request (DSAR).

Rescheduled grievance appeal hearing

203. On 2 February 2023 Ms McCulpha was invited to a rescheduled grievance appeal hearing to take place on 28 February 2023. It is clear that whatever discussions had taken place between the respondent and Irwin Mitchell, they had not led to a resolution.
204. On 3 February 2023 Ms McCulpha was provided with the answers individuals had given to the questions asked by Irwin Mitchell on 10 May 2022. Ms Sherwood's responses were dated 18 January 2023. She had not answered the first question (ie Was Ms. Sherwood ever interviewed as part of the investigation into Ms. Eilbeck's missing perfume?). In response to the other questions asked Ms Sherwood said:
- 204.1. *'I categorically did not provided their client with a witness statement dated 4 May 2021'.*
- 204.2. *'I did not sign any statement in the presence of their client. Because the statement was first brought to my attention by the academy. This statement was categorically not written or signed by myself.'*
- 204.3. *'I have seen the email sent from [the email address stated in the question]. Yes I did send the email.'*
205. On 14 February 2023 Irwin Mitchell wrote to the respondent saying Ms McCulpha was not satisfied that the respondent had carried out a reasonable search in response to the DSAR request and said:
- 'the scheduled grievance appeal hearing cannot go ahead in absence of the missing documents/correspondence being provided to our Client in good time.'*

206. The respondent understood Ms McCulpha's position to be that she would not attend the grievance appeal hearing on 28 February and so they rescheduled the grievance appeal hearing to take place on 24 April 2023. The respondent told Ms McCulpha of the rescheduled hearing date on 24 March 2023 and asked her to provide the Trust with the name of her requested companion by 10am on Monday 17 April 2023. Ms McCulpha did not provide the name of a desired companion.
207. On 21 April 2023 Ms McCulpha's solicitors wrote saying Ms McCulpha would not be able to attend any grievance appeal hearing until she had received what were described as '1. Full and proper responses to the questions submitted to NPCAT on 10 May 2022; and 2. A full and reasonable response to her DSAR submitted on 28 September 2022.' The respondent emailed Ms McCulpha the same day saying that the grievance appeal hearing would be going ahead as scheduled.
208. The respondent decided not to postpone the grievance appeal hearing and it went ahead on 24 April 2023. Ms McCulpha did not attend. The grievance appeal was considered by a panel chaired by Mr Hughes. Also on the panel were Jamie Brown and Maureen McCullagh from the respondent Trust. Mrs Jamalizadeh attended as did Mrs Duffy from HR, Ms Jones (by video) and Ms Wilson from Berry Education as clerk to the panel. The panel considered what Ms McCulpha's solicitors had said about the reason for Ms McCulpha's absence and Mrs Duffy assured the panel that text messages the solicitors had suggested had not been provided had been sought but were not held. The panel decided to go ahead with the hearing in Ms McCulpha's absence given how long the appeal had been ongoing and previous postponements.
209. The grounds for Ms McCulpha's appeal included that the investigating officer, Ms Jones:
- 209.1. had used 'non-compliant procedures';
 - 209.2. was not impartial;
 - 209.3. had produced "corruptive/fraudulent" documentation;
 - 209.4. intentionally ignored factual evidence;
 - 209.5. had contradicted herself in the report; and
 - 209.6. had refused/failed to appropriately answer questions.
210. Mrs Jamalizadeh had prepared a Management Appeal Report ahead of the hearing, which she referred to and provided an overview of. The panel asked her a number of questions, which she answered. They also asked Ms Jones a number of questions. After deliberating, the appeal panel unanimously decided to uphold the decision made by Mrs Jamalizadeh in respect of Ms McCulpha's grievances. They were unpersuaded by Ms McCulpha's allegations that there had been a conspiracy between Ms White, Mr Macaulay and Mr Thwaites and considered there was no credible evidence that witness statements had been falsified.
211. Mr Hughes, with support from Mrs Duffy, wrote a long letter explaining the panel's decision. That letter, dated 12 May 2023, was sent to Ms McCulpha. In that letter the panel explained, amongst other things, that:

- 211.1. The panel found that statements collected by Ms Jones had been signed by employees (some electronically); the only statement which was not signed was Ms McCulpha's own statement; Ms Jones had said she read the statement back to Ms McCulpha during the hearing and she had not objected to it at the time; Ms McCulpha had subsequently been given every opportunity to revise her statement and she was asked to sign it but did not do so; the fact that the statement was not signed did not indicate that the process followed was flawed;
- 211.2. Ms Sherwood's evidence and alleged statement was investigated and the findings in respect of this statement's veracity were confirmed in Grievance 2.
- 211.3. The panel did not consider that the instruction to Ms McCulpha not to speak directly to colleagues to carry out her own investigations and/or conduct any form of cross-examination as to the evidence that was given to the investigating officers in respect of either the disciplinary or grievance and grievance appeal processes was unreasonable or evidence of non-compliance. Questions raised on behalf of Ms McCulpha as matters which she felt needed to be investigated were put to specific colleagues as requested and a response was provided. The panel noted that Ms McCulpha was not satisfied with the responses but pointed out that the employees she had put questions to had provided statements on multiple occasions about their involvement in the matters outlined in the above summary timeline; Ms McCulpha had already had an opportunity to challenge the credibility of the witnesses and the accuracy of their statements in respect of the allegations of theft and in respect of the alleged bullying and harassment. The panel was satisfied that the witnesses had given a full account of their recollection of the events which took place almost 3 years previously and has co-operated with the investigation processes. In any event the panel considered that Ms McCulpha's line of questioning was not relevant to the grounds of the appeal.
- 211.4. The panel was satisfied that Ms Jones was an independent, very experienced and impartial external party. They reached that conclusion having considered what Ms Jones and Mrs Jamalizadeh said about Ms Jones' previous involvement with the Trust and the reason she was chosen to conduct the investigation (as Ms McCulpha had made allegations against the Trust's senior personnel, it was considered important to engage external support to carry out the investigation; Ms Jones was chosen to conduct the investigation because she had previously conducted an investigation on behalf of NPCAT and the work produced was high quality).
- 211.5. The panel was satisfied that Ms Jones had conducted a thorough investigation, had considered all of the available evidence to reach her findings, and that her findings were clearly reasoned. Having spoken to her and reviewed her credentials, the panel could see no reason why, and no evidence to support the allegation that, Ms Jones would risk her professional career and reputation by producing 'fraudulent or corruptive documents' as had been alleged by Ms McCulpha and nor did the panel consider there was any evidence that Ms Jones chose not to review documents to cover up wrongdoing.

Alleged removal of name and photo from website

212. Ms McCulpha alleges that the respondent removed her name and photo from the school's website and that she noticed this on 2 May 2023. We find that Ms McCulpha's name was not removed from the respondent's website. However, when Ms McCulpha visited the website on 2 May 2023 her photo did not appear

next to her name. Based on the evidence we heard from the respondent's witnesses, and the fact that Ms McCulpha did not remove Ms McCulpha's name from the website, we find it more likely than not that Ms McCulpha's picture not appearing was due to a technical error rather than a decision to remove the photograph. We are satisfied that Ms McCulpha's photograph was not deliberately removed from the school's website.

Disciplinary investigation restarted

213. As Ms McCulpha had now exhausted the grievance procedure the respondent restarted the disciplinary investigation into the allegations about falsifying the statement she claimant to have been signed by Ms Sherwood, making vexatious allegations and breach of trust and confidence and the other allegations concerning Ms McCulpha's alleged conduct at the Christmas dinner in December 2021. In relation to Ms McCulpha's alleged conduct at the Christmas Dinner in December 2021 Ms Eddies already had the accounts and statements given by Ms Burnett, Ms Stephenson, Ms Porritt and Ms Coe.
214. Ms Eddies met with Ms McCulpha as part of her investigation on 23 June 2023. A Ms Hicks took notes.
215. Before the meeting Ms McCulpha had asked to be accompanied by one of five named work colleagues. One of the individuals was not in work and therefore not available to accompany Ms McCulpha. The HR team relayed Ms McCulpha's request to the other four individuals but they all declined Ms McCulpha's request.
216. After the meeting Ms Eddies sent her notes of the meeting to Ms McCulpha giving her the opportunity to amend them. The notes were amended by Ms McCulpha and/or Mr Bulman on 7 July 2023. Ms Eddies said she did not accept Ms McCulpha's additions accurately reflected what she had said in the meeting. Therefore she declined to make the amendments that had been suggested but agreed to include the unsigned notes in the investigation report
217. By the time Ms McCulpha had returned the notes and sent in this documentation it was approaching the end of term and the school holidays. Ms Eddies was Headteacher of a different school and, we accept, had other responsibilities that she needed to attend to. Ms Eddies was then on annual leave over the remainder of the Summer, returning to work in September 2023.
218. Ms Eddies completed her disciplinary investigation report on 11 September 2023. She did not reach any conclusions of her own as to what had happened. With regard to the allegation that there had been deliberate falsification of records, Ms Eddies said that the panel 'will need to conclude whether, on the balance of probability, it is more or less likely that the submitted statement was not signed by Moly Sherwood and is therefore not a true reflection of what Moly Sherwood said ... '.

Disciplinary hearing and dismissal

219. On 15 September Mr Burns sent a letter to Ms McCulpha requiring her to attend a disciplinary hearing on 26 September to answer to the allegations she had previously been informed about. Those allegations were described in the following terms:
 - Making vexatious allegations against Trust Officers which amounts to gross misconduct
 - Deliberate falsification of records which amounts gross misconduct

- Breach of trust and confidence
 - Allegation of using inappropriate/unprofessional language in a school
220. In that letter Mr Burns told Ms McCulpha that Ms Sherwood and Ms Hicks would be attending as witnesses. A copy of Ms Eddies' report was enclosed.
221. On 20 September Ms McCulpha submitted a response to the disciplinary investigation report and a three page statement dated 20 September. We find that it is more likely than not these documents were written by Mr Bulman. The response contained an allegation that Ms Sherwood had been 'influenced, persuaded, bribed (possibly by some form of reward/inducement for example) or coerced ... to now act in favour of Trust officers.'
222. The disciplinary hearing took place on 26 September 2023. The hearing was conducted by a panel chaired by Mr Burns. The other members of the panel were a Ms Dalby and a Mr Coates. Ms Eddies attended as did Mrs Duffy from HR. A notetaker was present.
223. Ms Sherwood attended despite no longer working in the school. At the hearing she said:
- 223.1. she had not signed the statement Ms McCulpha had produced;
 - 223.2. the signature on it was not hers; and
 - 223.3. she spells and signs her name with one 1 L not the 2 used in the signature.
224. Ms Sherwood also said things that appeared to contradict the contents of the statement produced by Ms McCulpha in her name:
- 224.1. She said she had in fact sent the email dated 21 October 2020 in which she acknowledged having had a meeting that morning; whereas the statement produced by Ms McCulpha said 'I have not been interviewed by anyone.'
 - 224.2. She said 'At no point did I see Claire Eilbeck drop the perfume in the car park nor have I ever told Joanne that I witnessed any such incident'.
225. What Ms Sherwood said at the hearing was consistent with what she had told Ms Jones the previous year when Ms Jones was investigating Ms McCulpha's second and third grievances and with what she had said in response to questions put by Irwin Mitchell.
226. Ms Eddies asked Ms Sherwood if she had ever been bribed or coerced by Trust Officers to change her email/statement. She replied that she had not.
227. Ahead of the hearing Ms McCulpha had said she had heard Ms Sherwood tell a child at the school that she signed her name in different ways. Ms Sherwood was asked about this but said she did not recall any such conversation.
228. Ms McCulpha was given an opportunity to question Ms Sherwood at the disciplinary hearing but chose not to do so. When asked to explain at this hearing why she had not asked Ms Sherwood any questions Ms McCulpha simply said 'I did not think it was relevant at that time.'
229. Ms Hicks also attended part of the disciplinary hearing. She had taken notes at the meeting between Ms McCulpha and Ms Eddies on 23 June 2023. Ms Hicks said the notes she had produced of that meeting were accurate and that the version later produced by Ms McCulpha was not.

230. During the meeting Ms McCulpha became upset and so they took a break. When they returned Ms McCulpha was allowed to have her Aunt (who had been waiting outside) present as support.
231. Ms McCulpha was given an opportunity to put her case and the panel asked her and Ms Eddies questions. Ms McCulpha was asked to explain how the May statement (in Ms Sherwood's name) had come to be written and Ms McCulpha said she had spoken to Ms Sherwood and then spoke to Mr Bulman; Mr Bulman wrote out the statement and gave it to her for Ms Sherwood to sign, then Ms Sherwood signed the statement. Ms Eddies also asked Ms McCulpha some questions. In answer to questions Ms McCulpha confirmed she had no evidence that the Trust had bribed any staff members. When asked what evidence she had of 'fraud' Ms McCulpha referred to differences in statements taken by Mr Thwaites in his disciplinary investigation and statements taken by Mr Macualay in his grievance investigation (both of which concerned the perfume theft allegations in 2020), and 'bullying'. Ms Eddies and Ms McCulpha were given an opportunity to summarise their cases. Then Mr Burns asked Ms McCulpha if there was anything further she wished to add. She said there was not. Mr Burns then told Ms McCulpha that the panel would not be able to make a decision that day because of the volume of information they had to consider.
232. Ms McCulpha has alleged in these proceedings that she feels the time the hearing took (around 2 hours and 10 minutes in total including breaks) was not adequate time to discuss all of the issues in hand. However she did not say that at the time and we find she could have done so if she wished. We find it likely that the reason Ms McCulpha did not do so was that she did not have anything else she wanted to say.
233. Two days later, on 28 September 2023, Ms McCulpha was told that the outcome of the disciplinary hearing was that her employment was terminated. The reasons were set out in that letter. The panel members had concluded that there was not enough evidence to prove that Ms McCulpha had used inappropriate/unprofessional language in school and that allegation was not upheld. However the panel members did uphold the other allegations. In this regard, the panel members believed the following:
- 233.1. The panel members believed it was more likely than not that (a) Ms Sherwood had not signed the statement that Ms McCulpha submitted with her grievance to Mr Hegarty dated 4th May 2021; and (b) Ms McCulpha had deliberately falsified that document. The panel members considered this to be fraudulent conduct by Ms McCulpha and that it amounted to gross misconduct.
- 233.2. In the letter dated 25 May 2021 addressed to Mr Hegarty, Ms McCulpha had alleged that Mr Macaulay and Ms White had produced a false statement from Ms Sherwood. The panel members believed that this allegation was false, that Ms McCulpha had known it was untrue at the time she made it, and that the reason she made the allegation was to get Ms White and Mr Macauley into trouble. The panel members believed that, therefore, this was a vexatious allegation and that it amounted to gross misconduct.
- 233.3. The panel members believed both of those two matters amounted to a serious breach of trust and confidence.

234. It was apparent from Mr Burns' evidence to us that the panel members were also concerned about numerous other allegations Ms McCulpha had made against many other people. However those concerns were secondary to the two matters referred to above.
235. Those two matters were not of equal weight in the panel members' minds when deciding to dismiss Ms McCulpha, as was evident from Mr Burns' responses to questions at this hearing. Of those two matters, the belief that Ms McCulpha had falsified the statement she said had been signed by Ms Sherwood weighed much more heavily than the belief that Ms McCulpha had made a vexatious allegation.
236. The principal reason the panel decided to dismiss Ms McCulpha was the belief that Ms McCulpha had fabricated the statement she said had been signed by Ms Sherwood.
237. In reaching the conclusion that Ms McCulpha had falsified the statement, the panel rejected Ms McCulpha's claim (or that of Mr Bulman) that Ms Sherwood had been bribed or coerced to sign the statement.
238. Mr Bulman has maintained the position in these proceedings that Ms Sherwood was or may have been bribed or coerced to give untrue evidence at the disciplinary hearing. However, there is no remotely cogent evidence of that; it is nothing more than speculation. In support of this allegation it has been suggested that it was 'odd' that the email Ms Sherwood said she had written was dated 21 October 2020 because that predated the conversation Ms McCulpha alleged she had with Ms Sherwood on 30 April 2021 and 4 May 2021. There was nothing 'odd' about that at all. Ms McCulpha had stated during the council's disciplinary investigation and her grievance appeal in the Autumn of 2020 that Ms Sherwood had spoken to her on 4 Sept 2020. It was in response to that allegation by Ms McCulpha that Mr Thwaites and Mr Macauley were said to have met with Ms Sherwood on 21 Oct 2020 to discuss what Ms McCulpha had said, following which meeting Ms Sherwood was said to have written the email. We find as a fact that nobody at the respondent Trust bribed or coerced Ms Sherwood or put any pressure on her to change her evidence as alleged.
239. In the letter informing Ms McCulpha of her dismissal, Mr Burns also referred to the fact that Ms McCulpha had been given a written warning previously. However, having heard Mr Burns' evidence on this matter we find that the panel would have dismissed Ms McCulpha even if she had not been given this warning previously. They considered that fabricating the statement was sufficient reason on its own to dismiss Ms McCulpha. The existence of the warning was not a material consideration in the decision to dismiss.
240. Although the respondent terminated Ms McCulpha's employment without notice, the Trust did pay Ms McCulpha 12 weeks' pay in lieu of her notice period. We accept the evidence we heard that this was the respondent's usual practice even in cases of gross misconduct. It does not undermine the evidence of Mr Burns that the panel believed Ms McCulpha's actions to amount to gross misconduct.
241. Ms McCulpha alleges in these proceedings that the decision to dismiss her was predetermined. In our view, the fact that in July 2021 the respondent suggested that Ms McCulpha leave in return for a payment lends some, albeit limited, support to that contention. That is evidence that, certainly at that time, there were senior people at the Trust who thought it would be beneficial to the Trust if Ms McCulpha were to leave. Furthermore, the fact of Ms McCulpha's suspension

could be considered evidence of a desire to remove Ms McCulpha from the school. However, none of the members of the disciplinary panel were involved in those decisions. What is more, the decision to dismiss was entirely in keeping with the evidence of very serious misconduct that the panel had before them is the evidence given by Ms Sherwood. We reject the submission that the fact that the panel reached a decision within 48 hours of the hearing is evidence of predetermination: it was ample time to reach a decision. Furthermore, the fact that the respondent did not dismiss Ms McCulpha in the earlier covid disciplinary proceedings and the fact that the respondent agreed to Ms McCulpha and her solicitors' requests to delay the disciplinary investigation for various reasons both undermine Ms McCulpha's submission that the respondent been determined to end Ms McCulpha's employment. Having considered the evidence in these proceedings as a whole, including that given by Mr Burns, we are satisfied that the outcome was not predetermined.

Appeal against dismissal

- 242. On 10 October 2023 Ms McCulpha appealed against her dismissal.
- 243. Mr Burns prepared a management response to the appeal dated 16 October. Mr Bulman prepared for Ms McCulpha a statement with a list of questions for the appeal panel.
- 244. The disciplinary appeal hearing took place on 7 November 2023 chaired by Mr Hughes. Other members of the panel were Mr Shipley and Mr Duffy, both members of the respondent Trust.
- 245. We are satisfied that the minutes we were referred to are an accurate record of what was said in the appeal, a note of the hearing having been by a notetaker from an outside firm, which the respondent had used in the past without any concerns being raised about accuracy, and who would appear to have no reason to misrepresent what was said. Ms McCulpha was given an opportunity to present her case. Of the questions Mr Bulman had written down we find she only asked two of them. We say that because that is what the minutes show. We reject the allegation made in these proceedings that Ms McCulpha was not allowed to ask the questions she had written down in advance.
- 246. Ms McCulpha has alleged the appeal was unfair because there were additional people present at the appeal whom Ms McCulpha had not been expecting. However, she has been unable to describe these individuals in any way. We find that the only people present were those detailed in the minutes.
- 247. The appeal was unsuccessful and Ms McCulpha was informed of this, and the reasons for the decision, by letter of 13 November 2023.
- 248. Ms McCulpha says that the appeal was predetermined and a sham. We do not accept that was the case. We found Mr Hughes to be a compelling witness. We find the appeal panel considered what Ms McCulpha said with care and reached its decision only after hearing what Ms McCulpha had to say.

Ms McCulpha's belief as to disclosures being made in the public interest

- 249. On of the issues we have to determine in order to decide whether Ms McCulpha made any protected disclosures is whether, when she disclosed whatever information she did, she genuinely believed the disclosure was made in the public interest. In this regard the question is whether, at the time she disclosed the information, she believed the disclosure served not just her own personal or

private interests but some wider interest. It is not a question of whether Mr Bulman believed that to be the case, but whether Ms McCulpha did.

250. In this case, all of the allegations and complaints made that are said to amount to protected disclosures were personal in character. They related to a number of issues but the common theme is that they all concerned the way Ms McCulpha perceived she had been treated by various individuals and her wish to be allowed to return to her cleaning duties at the school and (latterly) to have the suspension lifted and to clear her name.
251. When being questioned by Ms Corby Ms McCulpha accepted that, when sending or handing over the various letters and emails and other documents said to contain protected disclosures she was not thinking about the public interest.
252. We do not consider that anything that what was said in the various emails, letters and other documents in which the relevant disclosures were said to have been made contradicts Ms McCulpha's own evidence given on cross examination that she was not thinking about the public interest. Those documents do not lend any real support to her case that she believed the disclosures served not just her own personal or private interests but some wider interests. We say that for two reasons:
- 252.1. Firstly, because those documents were written by Mr Bulman and not Ms McCulpha. Having heard what both Ms McCulpha and Mr Bulman said about the way the documents were prepared we consider the documents are not reliable evidence of what Ms McCulpha herself believed.
- 252.2. Secondly, there is very little in the documents that indicates that even the author believed the disclosures served any wider interest beyond Ms McCulpha's personal interests. There are some allusions here and there to the fact that the school was effectively a public body, serving the local community, and the importance of its leaders, therefore, acting with integrity and also setting a good example to children. There are also repeated references to contacting OFSTED, the press and wider media and MPs. However, the context in which those references appear indicate they were made in the hope that the threat of involving third parties might persuade the respondent to give the claimant what she wanted, rather than because the author genuinely believed that disclosure served some wider interest. That the allusions to third party involvement were made as leverage to strengthen Ms McCulpha's case to be returned to her cleaning duties at the school is also supported by the absence of any evidence that either Ms McCulpha or Mr Bulman did involve Ofsted, the press or any MPs. Indeed on 16 September 2021 Ms McCulpha told Ms Jamalizadeh, in effect, that the respondent could avoid her involving third parties if it gave her what she was asking for, a position that was also alluded to in other communications such as alleged protected disclosure 8.
253. Nor does Ms McCulpha's witness statement contradict her evidence that, when she made the disclosures said to amount to protected disclosures, she was not thinking of the public interest. Paragraph 170 of Ms McCulpha's witness statement purports to address the question of the public interest. It reads as follows:

'Due to the fact that the Respondent is responsible for educating children, employs large numbers of staff amongst their 38 catholic academy schools, are meant to abide by their guiding principles, including truth and honesty, whilst also abiding by their own policies, procedures and expected standards of behaviour. It is in the public interest to become aware of the volume of corruption and fraud, dishonesty and also the utilisation of external investigating officers, knowingly taken on board to produce false documentation. This is in order to to allow senior, executive and administrative employees to utilise and/or produce false reports and actively victimise, bully, harass and discipline; innocent employees. Including destroying peoples life long reputations such as my own, whilst unjustly keeping an innocent employee out of sight, reach and contact with their witnesses and workmate colleagues for a period of 22 months; and all against medical advice.'

254. However, Mr Bulman's statement contains an identical paragraph. What is contained in that paragraph is not, in our view, reliable evidence as to what Ms McCulpha believed, still less is it reliable evidence of what Ms McCulpha believed at the time she made the relevant disclosures.
255. Looking at the evidence in the round, we find that, at the time she sent or handed over the various documents said to contain protected disclosures Ms McCulpha did not believe the disclosures served any wider purpose than her own personal or private interests.

Conclusions

Did Ms McCulpha make any protected disclosures?

Alleged protected disclosures 16 and 18

256. We address first alleged disclosures 16 and 18.
257. These were both letters sent by Mr Bulman to the respondent, written and sent in his own name. Ms McCulpha did not ask Mr Bulman to send these letters.
258. Whatever information may have been disclosed in these letters, the disclosures were not made by Ms McCulpha. Therefore they cannot have been protected disclosures within the meaning of that term in ERA 1996 s43A.

The other alleged protected disclosures

259. We have found that, at the time she sent or handed over the various documents said to contain protected disclosures, Ms McCulpha did not believe the disclosures served any wider purpose than her own personal or private interests.
260. It follows that she did not believe the disclosures were made in the public interest.
261. Therefore whatever information was disclosed in these letters, emails and documents, the disclosures cannot have been protected disclosures within the meaning of that term in ERA 1996 s43A.

Whistleblowing detriment claims

262. As we have concluded that Ms McCulpha did not make any protected disclosures, it follows that all of her complaints that she was treated detrimentally because she made such disclosures must fail. Those complaints are not well founded.

Unfair dismissal

Automatic unfair dismissal

263. The complaint that the dismissal was automatically unfair fails because we have concluded that Ms McCulpha did not make any protected disclosures.

Ordinary unfair dismissal

264. In respect of the 'ordinary' unfair dismissal claim Ms McCulpha's case set out in her claim form is that her dismissal was unfair for the reasons outlined at paragraphs 91 to 94 of the grounds of claim in her first claim. That part of the grounds of claim reads as follows:

91. Ms McCulpha was dismissed by the Respondent with effect from 28 September 2023 on the grounds of gross misconduct. Ms McCulpha contends that the dismissal was both substantively and procedurally unfair. In particular, Ms McCulpha contends that:

91.1. She had not been given a genuine opportunity to be accompanied at the disciplinary hearing.

91.2. The Respondent failed to procure meaningful responses to questions asked of Ms. White, Ms. Eilbeck, Ms. Muttrie and Mr. Law, sent to Mr. Farquhar by Ms McCulpha's legal representatives on 10 May 2022.

91.3. The Respondent did not allow Ms McCulpha to speak to any of her colleagues during the investigation process and/or disciplinary process to determine whether their testimony was genuinely theirs.

91.4. The Respondent had presented misleading and conflicting evidence as part of the three grievances and disciplinary process in order to discredit Ms McCulpha's testimony (and offered no clarity in this regard despite various requests by Ms McCulpha) which led to unfair allegations of vexatious statements being made.

91.5. The Respondent took less than 48 hours to reach a decision to dismiss, which Ms McCulpha avers was pre-determined in any event, in a bid to protect other more senior members of the Respondent.

91.6. The Respondent failed to carry out a fair investigation and did not consider all of Ms McCulpha's evidence presented to it by Ms McCulpha as part of her three grievances presented (and subsequent appeals).

91.7. The Respondent reached a decision as to guilt despite there being no grounds on which to form such a reasonable suspicion.

91.8. The Respondent dismissed Ms McCulpha purely because it wanted to dismiss her from her employment rather than there being genuine grounds on which to terminate Ms McCulpha's employment fairly.

91.9. The Respondent reached a decision that falls outside the band of reasonable responses open to it as an employer (not least because prior

to her dismissal, Ms McCulpha did not have any live disciplinary warnings on her personnel file in relation to her conduct).

92. *The Respondent's decision to dismiss Ms McCulpha was not fair and reasonable in all the circumstances because the Respondent could not have formed a reasonable belief, following a fair and reasonable investigation, that Ms McCulpha had committed the gross misconduct in question.*
93. *Furthermore, no investigations regarding Ms McCulpha's allegations of misconduct in relation to other members of staff were ever instigated by the Respondent, demonstrative of a reluctance to address wrongdoing within the Respondent or take Ms McCulpha's concerns seriously.*
94. *Ms McCulpha also avers that the disciplinary procedure was pre-determined, evidenced by the removal of her photograph from the School's website in or around May 2023, and appointment of another permanent lunchtime supervisor on 15 May 2023, indicating a decision to dismiss had already been made before Ms McCulpha's dismissal on 28 September 2023.*
265. The original claim was made before Ms McCulpha's appeal against dismissal had been heard. In her grounds of claim in her second case Ms McCulpha avers that the appeal was predetermined and a sham and the appeal process had been unfair because there were additional people present at the appeal whom Ms McCulpha had not been expecting, and she had not been allowed to ask questions she had written down in advance and the appeal panel refused to take a copy of the document she had prepared.
266. When deciding whether a dismissal was unfair, the starting point is to identify the reason for the dismissal or, if there was more than one reason, the principal reason.
267. We have found that the respondent dismissed Ms McCulpha for two reasons.
- 267.1. Firstly, and principally, because Mr Burns and the other two members of the disciplinary panel believed that Ms McCulpha had deliberately falsified the document that she had claimed was a statement signed by Ms Sherwood and submitted with her grievance to Mr Hegarty in May 2021.
- 267.2. Secondly, because Mr Burns and the other two members of the disciplinary panel believed that:
- 267.2.1. in the letter dated 25 May 2021 addressed to Mr Hegarty, Ms McCulpha had alleged that Mr Macaulay and Ms White had produced a false statement from Ms Sherwood;
- 267.2.2. Ms McCulpha knew this allegation to be untrue at the time she made it;
- 267.2.3. the reason she made the allegation was to get Ms White and Mr Macauley into trouble;
- 267.2.4. therefore this was a vexatious allegation.
268. Of those two reasons, the principal reason the panel decided to dismiss Ms McCulpha was the first one we have referred to ie the belief that Ms McCulpha had fabricated the statement she said had been signed by Ms Sherwood. That was a reason related to Ms McCulpha's conduct, which was a potentially fair reason for dismissal within section 98(2) of the Employment Rights Act 1996.

269. Whether the dismissal was fair depends on whether, in the circumstances, the respondent acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing Ms McCulpha. That is a question to be determined in accordance with equity and the substantial merits of the case.
270. In this regard we consider the panel had reasonable grounds for its belief Ms McCulpha had fabricated the statement she said had been signed by Ms Sherwood, in light of what Ms Sherwood herself said when interviewed by Ms Jones, in answer to written questions posed by Ms McCulpha's solicitor, and in the disciplinary hearing itself. The panel's decision that they preferred the evidence of Ms Sherwood to that of Ms McCulpha was a reasonable one given that Ms Sherwood would have no obvious incentive to lie, especially as she was no longer employed by the respondent at the time of the disciplinary hearing.
271. It has been suggested that the evidence Ms Sherwood gave was undermined by Ms McCulpha's evidence of hearing Ms Sherwood tell a child that she signed her name in different ways. The panel's decision that this did not undermine Ms Sherwood's evidence was entirely reasonable given it was the evidence of how Ms Sherwood spelled her name (rather than how she signed it) that was key.
272. The respondent carried out as much investigation as was reasonable before reaching its decision that Ms McCulpha fabricated the statement. In this regard:
- 272.1. Ms Jones interviewed Ms Sherwood as part of her investigation into Ms McCulpha's 2nd and 3rd grievances.
- 272.2. Ms Eddies interviewed Ms McCulpha in June 2023 and took her account and the panel was provided with Ms Hicks' note of that account as well as Ms McCulpha's own annotated version.
- 272.3. The panel heard evidence directly from Ms Sherwood and Ms McCulpha. They also heard evidence from Ms Hicks in relation to the minutes of the interview with Ms McCulpha.
- 272.4. We are satisfied that the disciplinary panel considered what Ms McCulpha had said in the earlier grievance procedures, in so far as it was relevant.
- 272.5. We have found that the decision was not predetermined.
273. Ms McCulpha criticises the respondent for 'not allowing the claimant to speak to any of her colleagues during the investigation process and/or disciplinary process to determine whether their testimony was genuinely theirs'. She also submits that the respondent acted unreasonably by 'fail[ing] to procure meaningful responses to questions asked of Ms. White, Ms. Eilbeck, Ms. Muttrie and Mr. Law, sent to Mr. Farquhar by the Claimant's legal representatives on 10 May 2022.' These criticisms are misplaced. Ms McCulpha was given the opportunity to ask Ms Sherwood questions at the disciplinary hearing itself. Furthermore the respondent had permitted Ms McCulpha, through her solicitors, to put written questions to Ms Sherwood during the earlier grievance appeal process. As far as other individuals were concerned, their evidence was, at most, only tangentially relevant to the question of whether Ms McCulpha had fabricated the May statement purportedly from Ms Sherwood. Even so, the respondent permitted Ms McCulpha to ask written questions of those individuals.
274. Having reasonably concluded that Ms McCulpha had fabricated the statement she claimed had been written by Ms Sherwood, the decision to dismiss Ms McCulpha was within the band of reasonable responses. In this regard the panel

concluded that this in itself was an act of gross misconduct, having seriously damaged the relationship of trust and confidence. That was a reasonable decision and consistent with examples of gross misconduct set out in the respondent's disciplinary policy. We consider it likely that most employers would have reached the same conclusion as to the seriousness of the misconduct.

275. Dismissing Ms McCulpha for this reason alone would have been within the band of reasonable responses open to a reasonable employer. However, this was not the only misconduct the panel found. They also concluded that Ms McCulpha had falsely alleged, in the letter dated 25 May 2021 addressed to Mr Hegarty, that Mr Macaulay and Ms White had produced a false statement from Ms Sherwood, that Ms McCulpha had known this allegation was untrue at the time she made it, and that the reason she made the allegation was to get Ms White and Mr Macaulay into trouble. Although this was not the main reason for dismissal it did influence the panel's decision. Therefore, we have considered whether the panel also had reasonable grounds for believing Ms McCulpha had knowingly, and vexatiously, made a false allegation and have concluded that they did. We also consider that the respondent conducted as much investigation into that matter as was reasonable before reaching that decision. We say that for the following reasons:
- 275.1. The 'false statement' Ms McCulpha alleged Ms White and Mr Macaulay had been involved in producing was that contained in an email dating from October 2020. The panel had evidence from Ms Sherwood herself that she had sent that email. The panel therefore had reasonable grounds for concluding that there was no substance to Ms McCulpha's allegation.
- 275.2. Furthermore, Ms McCulpha's allegation had been scrutinised in previous grievance proceedings and had not been upheld and, when asked what evidence she had that the email had been fabricated Ms McCulpha referred to statements being unsigned but was unable to identify any compelling evidence.
- 275.3. Having decided that Ms Sherwood's email statement dating from October 2020 was genuine and that Ms McCulpha had fabricated the statement dating from May 2021, it was reasonable for the panel then to conclude that the reason Ms McCulpha did that was likely to be that she knew the serious allegation she had made against Mr Macaulay and Ms White was unsupported by the existing evidence and was not true and that it was likely Ms McCulpha's motivation for nevertheless persisting in those allegations was to get those individuals in trouble.
276. Those conclusions were within the range of reasonable conclusions open to a reasonable employer.
277. In these proceedings Ms McCulpha has criticised the earlier disciplinary proceedings into the covid test issue which resulted in Ms McCulpha being given a final written warning. We have found as a fact, however, that the existence of that warning did not materially influence the decision to dismiss Ms McCulpha: this is not case in which Ms McCulpha's dismissal came about due to 'totting up' warnings. Therefore, it is unnecessary for us to examine further the appropriateness of that earlier disciplinary sanction or resolve the disagreement between the parties as to whether or not that warning had expired before Ms McCulpha was dismissed.
278. Ms McCulpha has criticised the process followed by the respondent in dismissing her. One of those criticisms concerns the length of time it took for the matter to

be dealt with at a disciplinary hearing. It certainly did take a long time for that stage to be reached. The respondent first became concerned about this possible misconduct in June 2021. The disciplinary hearing did not take place until September 2023, more than two years later. The ACAS Code says disciplinary matters should be dealt with promptly. This process was by no means prompt. However, in deciding whether that undermines the fairness of the dismissal we must consider the reasons it took so long for the disciplinary matter to be heard. We consider that the delay was largely a consequence of decisions and actions Ms McCulpha and her representatives took, and, in part, due to Ms McCulpha's absence on sick leave. In this regard:

- 278.1. Ms McCulpha wished, and at some points insisted, that her second and third grievances and then appeal against the grievance outcome be dealt with before any disciplinary investigation begin.
- 278.2. However, before those grievance proceedings got properly off the ground Ms McCulpha told the respondent on 26 July 2021 that any communications should be via ACAS or her representative.
- 278.3. The respondent then decided to ask a third party, Ms Jones, to investigate. That was a reasonable decision given the number of people Ms McCulpha had complained about by this stage. Involving a third party inevitably led to some delay that was outside the respondent's control.
- 278.4. When Ms McCulpha's grievance was rejected in January 2022 Mrs Jamalizadeh instigated a disciplinary investigation into the issue that ultimately led to Ms McCulpha's dismissal. Arrangements were made promptly for a Headteacher from another school, Ms Eddies, to investigate and she, in turn, made timely arrangements to meet with Ms McCulpha. However, Ms McCulpha insisted that the disciplinary investigation should not proceed until she had appealed the grievance.
- 278.5. The respondent attempted then to deal with the grievance appeal without undue delay but Ms McCulpha began a period of sick leave and said the disciplinary investigation should not proceed as she was unwell. She did not return from sick leave until the end of the Summer term. By this time Ms McCulpha and her solicitor had said the grievance appeal hearing should not take place until she had been given an opportunity to question certain individuals. Then at the start of the new school term in September 2022 Ms McCulpha's solicitor suggested they and the respondent have discussions with a view to resolving the dispute. At the same time they made a subject access request and their position was that the grievance appeal (and consequently the disciplinary investigation) should not proceed until that had been dealt with.
- 278.6. In early 2023 the respondent tried to reschedule the grievance appeal hearing but Ms McCulpha again resisted, giving as reasons that she believed the subject access request had not been fully complied with and she was dissatisfied with the responses to the questions that had been sent to witnesses.
- 278.7. Eventually the respondent insisted on the grievance appeal hearing going ahead. After the decision was communicated to Ms McCulpha the disciplinary investigation was restarted.
279. The main target of Ms McCulpha's criticisms in terms of delay has been Ms Eddies, who has been criticised for not completing her disciplinary investigation more quickly after interviewing Ms McCulpha on 23 June 2023. The delay in

completing the investigation report was due to a dispute as to the accuracy of the meeting notes, the fact that the end of the school year was approaching and the pressure of Ms Eddie's other responsibilities as a Headteacher, and the fact that Ms Eddie, as a teacher, did not work during the school holidays. We do not consider the delay in completing the report was unreasonable in all the circumstances. Once the report was completed, early in the new school year, a disciplinary hearing was arranged promptly.

280. Ms McCulpha also asserts that she was not given a genuine opportunity to be accompanied at the disciplinary hearing. We do not accept that was the case. The respondent asked all of the colleagues Ms McCulpha suggested but all declined. Ms McCulpha still had the option of being accompanied by a union rep but chose not to. Furthermore during the hearing the respondent did adjust its usual approach when Ms McCulpha became upset by allowing her to have her aunt present for the remainder of the meeting. We are satisfied that the approach the respondent took was within the range of reasonable responses.
281. Nor are Ms McCulpha's criticisms of the appeal well founded. We have found that the appeal was not predetermined or a sham. There were no additional people present at the appeal whom Ms McCulpha had not been expecting, and Ms McCulpha had been allowed to ask questions she had written down in advance.
282. There is one respect, however, in which the respondent did not act reasonably. We have found that the suspension of Ms McCulpha was a knee-jerk reaction and was done solely because Ms McCulpha was facing allegations that might amount to gross misconduct. Contrary to the ACAS Code and the respondent's own policy the suspension was not kept under review but was continued until employment ended.
283. In deciding whether this is significant enough to render the dismissal unfair we must look at whether the overall process was fair, notwithstanding this deficiency. A relevant consideration is whether the fact of the suspension and its duration affected Ms McCulpha's ability to defend herself or present her case. We have concluded that it did not. Ms McCulpha has suggested that her suspension prevented her from speaking with colleagues to ask them questions that might have supported her case. We do not agree with that submission. The experience of the panel is that even when individuals are not suspended during a disciplinary investigation they are usually instructed not to speak with potential witnesses. Indeed Ms McCulpha says this is what she was told in July 2021 several months before she was suspended. Although we do not believe the suspension prejudiced the investigation we do consider it had an impact on Ms McCulpha of the kind described in *Crawford*. That said, it was largely as a consequence of the claimant's actions described above that the disciplinary investigation took as long as it did.
284. Looking at the process as a whole, and determining the matter in accordance with equity and the substantial merits of the case, we are satisfied that the unreasonable suspension of Ms McCulpha was not such as to render overall process unfair. We are satisfied that the respondent acted reasonably in dismissing Ms McCulpha for the reasons it did.
285. Ms McCulpha was not unfairly dismissed.

Employment Judge Aspden

Date 27 June 2025

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Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to Ms McCulpha(s) and respondent(s) in a case.