EMPLOYMENT TRIBUNALS

Claimant: **Ms Alys Bryant**

Respondent: **New Directions Education Limited**

Heard at: **Cardiff** **On: 1, 2 & 3 October 2025**

Before: **Employment Judge S Jenkins**

Representation:
Claimant: Mr M Puar (Counsel)
Respondent: Mr O Lewis (Counsel)

JUDGMENT having been sent to the parties on 3 October 2025, and reasons having been requested by the Claimant in accordance with Rule 60 of the Employment Tribunal Procedure Rules 2024:

REASONS

Background

1. The hearing was to deal with the Claimant's complaint of detriment on the ground of having made protected disclosures, brought by way of a Claim Form issued on 20 February 2025, following early conciliation with ACAS between 9 December 2024 and 20 January 2025.

2. I heard evidence from the Claimant on her own behalf, and from David Lewis, Child Safeguarding Officer, on behalf of the Respondent.

3. I considered the documents in a hearing bundle spanning 330 pages to which my attention was drawn, and I considered the parties' representatives' closing submissions.

Issues

4. The issues to be determined had been discussed at a preliminary hearing before Employment Judge Russell on 15 May 2025, and were as follows:

1. Time limits

1.1. The parties agree the claim was presented in time. (Subject to an application in respect of 3.1.1, below.)

2. Protected Disclosure

2.1. Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

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

2.1.1.1. On 9 September 2024, verbally confirm by telephone to the Respondent that Teacher A approached her at the Eisteddfod on 7 August 2024 in an aggressive and threatening manner; and

2.1.1.2. On 10 September 2024, the Claimant wrote to the Respondent to express her concerns in relation to Teacher A's behaviour towards young male students, who the time of the disclosure was engaged as a supply teacher at School A.

2.1.2. Did they disclose the information?

2.1.3. Did they believe the disclosure of information on 9 & 10 September 2024 was made in the public interest

2.1.4. Was that a reasonable belief?

2.1.5. Was the Claimant's disclosure of 10 September 2024 made through the appropriate channels (ERA s.43c)

2.1.6. Did they believe it tended to show that:

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

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

2.1.6.3. A criminal offence has been committed, is being committed or was likely to be to be committed.

2.1.7. Was that a reasonable belief?

2.2. If the Claimant made a qualifying disclosure, it was a protected disclosure because it was made to the Respondent.

3. Protection from detriment (Employment Rights Act 1996 section 47B)

3.1. Did the Respondent do the following things:

3.1.1. Fail to adequately investigate the Claimant's concerns around Teacher A;

3.1.2. Terminate the Claimant's contract on 11 September 2024;

3.1.3. Report the Claimant to the Education Workforce Council on 21 November 2024, after the Claimant contacted the Respondents to request documents in relation to her potential claim.

3.2. By doing so, did it subject the Claimant to a detriment?

If so, was it done on the ground that they made either or both protected disclosures above at 2.1.1.1 and 2.1.1.2?

5. That list of issues identified three alleged acts of detriment, one of which was noted by Judge Russell as requiring permission in order to be included by way of amendment of the original Claim Form. The list also identified that if that additional detriment fell to be considered, the question of whether it had been presented in time would also need to be considered.

6. In the event, that amendment application was considered at a preliminary hearing before Employment Judge Harfield on 25 June 2025, and was refused. Only two alleged acts of detriment therefore fell to be considered at this hearing, and no time limit issues arose in respect of them.

7. The list of issues also noted that remedy matters would be considered if the claim was successful, and the notice of this hearing recorded that it would consider liability and, if required, remedy. However, I noted that the Claimant

had indicated in her schedule of loss that she was pursuing personal injury compensation if her claim was successful. I therefore indicated at the outset of the hearing that we would deal with liability only. If the claim was successful, a separate remedy hearing would need to be scheduled, allowing time for expert medical evidence to be obtained, although, in the event, in view of my decision on liability, that was not required.

Law

8. The legal principles I had to take into account were as follows.

Protected disclosures

9. Section 43B of the Employment Rights Act 1996 ("ERA") provides as follows:

"*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."

10. Section 43C ERA provides that a qualifying disclosure is made if made to the worker's "*employer*", and section 230(4) ERA provides that "*employer*" means, "*the person by whom the…worker is (or, where the employment has ceased, was) employed*".

11. In deciding whether a disclosure is protected by law therefore, a Tribunal has to have regard to:

- Whether there has been a disclosure of information.
- The subject matter of disclosure in accordance with Section 43B(1)(a) to (f) ERA 1996.
- Whether the Claimant had a reasonable belief that the information tended to show one of the relevant failures in Section 43B ERA 1996.
- Whether the Claimant had a reasonable belief that the disclosure was in the public interest.

12. In *Williams v Brown* (UKEAT/0044/19/OO), the Employment Appeal Tribunal ("EAT") noted, at paragraph 5, that unless all conditions are satisfied there will not be a qualifying disclosure, and that in any given case any one or more of them may be in dispute, but in every case, it is a good idea for the Tribunal to work through all of them.

13. With regard to disclosure of information, the EAT, in *Cavendish Munro Professional Risks Management Limited -v- Geduld* [2010] ICR 325, drew a distinction between the making of an allegation, which would not be said to disclose information, and the giving of information in the sense of conveying facts. However, the Court of Appeal in *Kilraine -v- London Borough of Wandsworth* [2018] ICR 1850, noted that the two categories are not mutually exclusive, and that the key guidance from *Geduld* was that a statement which was devoid of specific factual content could not be said to be a disclosure of information.

14. With regard to reasonable belief, I needed to be satisfied that the information tended to show a relevant failure in the reasonable belief of the worker, i.e. in this case the Claimant. The EAT, in *Korashi -v- Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4, directed that that involved applying an objective standard to the personal circumstances of the discloser. The EAT also noted, in *Darnton -v- University of Surrey* [2003] ICR 615, that the claimant does not need to be factually correct and need only demonstrate that they have a reasonable belief.

15. With regard to public interest, I was mindful of the guidance provided by the Court of Appeal, in *Chesterton Global Limited -v- Nurmohamed* [2017] EWCA Civ 979, that noted that the following matters would be relevant:

    15.1. The numbers in the group whose interests the disclosure served.
    15.2. The nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed.
    15.3. The nature of the wrongdoing disclosed.
    15.4. The identity of the alleged wrongdoer.

Detriment

16. A claim of detriment under section 47B ERA involves two elements; there must have been a detriment, and that must have been "on the ground" of the disclosure, i.e. there must be a causative connection.

17. "Detriment" is not defined within the ERA, but the House of Lords, in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, noted, in relation to similar claims under the Equality Act 2010, that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his or her disadvantage. The court noted that an unjustified sense of grievance cannot amount to a detriment, but emphasised that whether a Claimant has been disadvantaged is to be viewed subjectively. The Court of Appeal confirmed the same test applies in relation to detriments in protected disclosure cases in the case of *Jesudason v Alder Hey Children's NHS Foundation Trust* [2020] IRLR 374.

Causation

18. In relation to the question of whether detriment is "on the ground of" the disclosure, the Court of Appeal in *Manchester NHS Trust v Fecitt* [2012] ICR 372 noted that section 47B "*will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower*" (paragraph 45).

19. Again, the House of Lords had previously examined similar provisions within the Equality Act 2010 where treatment was required to be "by reason that". In *Chief Constable of West Yorkshire v Khan* [2001] ICR 1065, Lord Nicholls noted that the test of assessing whether treatment had arisen "by reason that", involved questioning, "*why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason?*". The Court of Appeal in *Jesudason* endorsed that approach and I bore it in mind, changing "alleged discriminator" to "alleged causer of a detriment".

20. In any detriment claim, section 48(2) ERA provides that it is, "*for the employer to show the ground on which any act, or deliberate failure to act, was done*".

21. Section 48(2) however, does not mean that, once a claimant asserts that he or she has been subjected to a detriment, the respondent must disprove the claim. Rather, it means that once all the other necessary elements of a claim have been proved on the balance of probabilities by the claimant — i.e. that there was a protected disclosure, there was a detriment, and the respondent subjected the claimant to that detriment — the burden will shift to the respondent to prove that the worker was not subjected to the detriment on the ground that he or she had made the protected disclosure.

Findings

22. My findings of fact relevant to the issues I had to determine are set out below. In the event, there was very little that was in factual dispute between the parties, but where there was any dispute I resolved it on the balance of probability.

23. The Respondent is a company which deals with the recruitment of teaching staff. My understanding is that it deals with recruitment of both permanent and temporary staff, but it is its role as a supplier of temporary or "supply" staff that is relevant in this case.

24. The Claimant, a modern languages teacher, became registered with the Respondent in February 2016. It was common ground that her relationship with the Respondent was not that of an employee for the purposes of the ERA, but was one of a worker.

25. The Claimant's unchallenged evidence was that she had worked in over 25 different secondary schools over the period of time during which she was registered with the Respondent, without any concern about her conduct having been raised.

26. One of the schools at which the Claimant worked regularly was School A, and she started work there around February 2019. Some three years later, in February 2022, the Claimant met Teacher A, who was also a supply teacher at the School, albeit supplied by a different agency.

27. The Claimant and Teacher A initially became friends, and Teacher A told the Claimant that he had been dismissed from a previous school at which he had worked because boys at that school had reported him for inappropriate, sexually charged behaviour. Teacher A denied that he had behaved in that way, and the Claimant was initially supportive of him.

28. However, later in 2022 several of Teacher A's actions and comments led the Claimant to change her view of him, and to consider that his dismissal from the previous school had been an appropriate step, and to her being concerned about the impact of Teacher A's behaviour on boys in their current school.

29. In February 2023 therefore, the Claimant sent an anonymous letter to the School's senior leadership team, raising concerns about Teacher A's behaviour. Soon after that, Teacher A's behaviour towards the Claimant suggested to her that he was aware that a complaint had been made about him, and that she had made it.

30. A few weeks later, in March 2023, the Claimant became aware that Teacher A was going to be supervising detention, where he could potentially be alone with just one male pupil, and she therefore went to the School's Safeguarding

Officer to report her concerns. Soon after that, Teacher A was dismissed. Teacher A must clearly have been aware that the Claimant had been behind the complaint about him, because he approached her and delivered what the Claimant described as a "*prolonged rant*" at her at the time.

31. Whilst no direct evidence was put before me, it appeared to be accepted that the concerns about Teacher A's behaviour had been investigated by the School and the relevant local authority, and that no action was taken against him. The Claimant herself confirmed that she had approached the Education Workforce Council ("EWC") but had not gone as far as submitting a formal complaint to it about Teacher A.

32. In relation to the local authority, its Designated Officer for Safeguarding contacted Mr Lewis, the Respondent's Child Safeguarding Officer, in April 2023 regarding the Claimant, noting that the Respondent was understood to be her employer. Within the hearing bundle was an email from that Designated Officer to Mr Lewis, on 19 April 2023, in which se noted that the Claimant had made contact with the local authority's Safeguarding Team, and had raised concerns about Teacher A. The Designated Officer noted that the School had been asked to check in with the Claimant and provide some reassurance to her that the concerns she had raised had been dealt with.

33. The Officer noted that, as the Respondent was the Claimant's employer, she had thought she would check in with Mr Lewis to see if the Claimant had brought any concerns to his attention, or if the Respondent, as an organisation, had any concerns. The Designated Officer noted that there "*was some concern regarding the tone and content of the email*", i.e. the Claimant's email to the local authority, but Mr Lewis was not aware of the content of that email. Mr Lewis, being aware of the steps that must be taken whenever allegations are made against those working with children, was satisfied that any allegations against Teacher A had been dealt with appropriately.

34. Mr Lewis checked in with the Claimant's Account Manager at the Respondent, and, following that, he spoke again to the local authority's Designated Officer. She informed him that she had spoken to the School, and that they had had a conversation with the Claimant to reassure her about the process that had been followed. She also told Mr Lewis that she was confident that the conversation between the Claimant and the School had been robust, and that no further action was needed at that time. Mr Lewis recorded that the Designated Officer had told him that there was no need for the Respondent to discuss the matter directly with the Claimant, but that that was a matter for them. Mr Lewis did not speak with the Claimant at that time.

35. In June 2023 however, Mr Lewis was contacted by the Claimant's Account Manager, who noted that she had contacted him and told him that she had found out that Teacher A was working in another school, and that she was concerned about his suitability to work with children. Mr Lewis informed the Account Manager that the Claimant's concerns had been dealt with by the earlier school and by the safeguarding authority, although the Respondent had not been privy to the details as Teacher A had no connection to it. Mr Lewis told the Account Manager that he was satisfied that the matter had been dealt with by the appropriate bodies, and there was nothing further the Respondent could do in relation to the matter, due to the imposition of a safeguarding process when the matter had been initially raised. He informed the Account Manager that he should advise the Claimant that she should not continue to make accusations regarding an individual when the matter had been dealt with, and that she should not do anything which could impact on her professional reputation.

36. Mr Lewis subsequently provided the Account Manager with wording to be included in an email to send to the Claimant in response to the concerns she had raised. That noted that the Respondent was satisfied that the concerns the Claimant had raised with the Local Authority had been dealt with appropriately, and that the Respondent's Safeguarding Team, i.e. Mr Lewis, had advised that the Claimant should now accept that her concerns had been dealt with and move on. The wording further noted that the Respondent could not enter into a discussion about school staff who had no connection with it, as they did not hold any information on them and it would not be appropriate to do that. The wording concluded by noting that the Respondent urged the Claimant to consider her actions carefully, and avoid doing or saying anything which might compromise her own professionalism, and that the Respondent considered the matter closed and would not enter into any further discussions with her on it.

37. The Account Manager did not simply send the email as Mr Lewis had indicated, but had a further call with the Claimant, in which he passed on the information set out in Mr Lewis's proposed draft email to the Claimant. The Account Manager and the Claimant continued the conversation beyond Mr Lewis's wording, and the transcript of the conversation within the hearing bundle indicated that the Account Manager appeared to have sympathy with the situation the Claimant was in.

38. The event that ultimately led to the termination of the relationship between the Claimant and the Respondent took place at the National Eisteddfod in Pontypridd on 7 August 2024, which the Claimant attended together with her mother and young niece. Teacher A was also present and the two encountered each other in the early afternoon.

39. The version of the exchange between the Claimant and Teacher A set out in the Claimant's Claim Form varied slightly from that set out in her witness statement. In both documents the Claimant confirmed that Teacher A approached her and said, "*There she is, the old bitch*", and that he also referred to everyone at the school he currently worked at as saying that the Claimant was "*completely nuts*". The Claim Form referred also to Teacher A having noted that the police, when considering the Claimant's complaint about him, had been "*laughing at how ridiculous it was*", but that was not included within the Claimant's witness statement. Both documents also recorded an exchange between the Claimant's mother and Teacher A in which the Claimant's mother said, "*Leave my daughter alone*", to which Teacher A responded, "*Oh yes, I hear the entire family is nuts*".

40. The Claimant's Claim Form then recorded that the Claimant then called Teacher A, in a snap response, "*paedo*". In her witness statement she modified that slightly to say that she called him a "*paedophile*". When it was subsequently put to the Claimant by Mr Lewis that she had said "*paedo*" however, she agreed. In the circumstances, I considered that the version set out in the Claimant's Claim Form, produced over six months prior to her witness statement, was likely to be more accurate.

41. At the Eisteddfod on the day in question, the Claimant reported the incident to a security guard, and subsequently spoke to the Eisteddfod's head steward. She subsequently submitted a formal complaint to the Eisteddfod, and the incident was also reported to the police.

42. The indications from the documentation within the hearing bundle were that the police investigation had been closed without action. The Eisteddfod replied formally to the Claimant's complaint much later, in March 2025, having been told by the police that they should not investigate matters whilst their investigation was ongoing. The Eisteddfod's ultimate conclusion was that both sides had acknowledged that they had used completely inappropriate words whilst referring to each other, and that such verbal attacks were not acceptable on the Eisteddfod site.

43. On 9 September 2024 the Respondent received an email from the school at which Teacher A then worked, informing the Respondent that one of its employees, i.e. the Claimant, had confronted and verbally abused one of the school's staff on the Eisteddfod field in Pontypridd during the first week of August. The complaint went on to note that the alleged abuse involved the Claimant and her mother approaching the member of staff i.e. Teacher A (who was not at that time named), and shouted abuse, "*paedo, paedo*" at him repeatedly.

44. The email further noted that, although the matter was outside of school times and grounds, the school believed that the conduct was a cause for concern,

and that any concerns over child safeguarding should be followed through official channels. It further noted that the school's understanding was that the Claimant's concerns stemmed from unproven allegations which had occurred in the past, and which had been investigated fully with no actions or recommendations having been taken. It was also observed that making repeated false accusations was a serious matter, and that it was believed that the matter had been reported to the police. The email concluded by asking the Respondent to ensure that the Claimant realised that such conduct was in direct contradiction to the EWC Professional Conduct Guidelines.

45. The email was referred to Mr Lewis as the Head of Safeguarding at the Respondent, and he emailed the school on the same day to ask if any more information could be provided, specifically the name of the victim of the alleged abuse from the Claimant. The school replied shortly afterwards, noting that the member of staff wished to remain anonymous, and Mr Lewis confirmed that he would consult with the Claimant that afternoon.

46. Mr Lewis had that conversation with the Claimant on the afternoon of 9 September 2024, and a transcript of it was in the hearing bundle. Mr Lewis opened the conversation by noting that a concern had been raised about something that had happened in the Summer holidays, and asked if the Claimant had any idea what that could be. The Claimant replied that she knew exactly what it was, and that it had occurred at the Eisteddfod when Teacher A had come up to her and called her a bitch. Mr Lewis recalled that Teacher A was the person who had been the subject of discussions the Claimant had had with her Account Manager the year before.

47. Mr Lewis then outlined the content of the allegation, that the Claimant and her mother had shouted at the person concerned and had called him "paedo" repeatedly. The Claimant's initial response was, "*Yeah, yeah I did, because he came right up to me*". She went on to explain the background relating to the concerns that she had raised about Teacher A in early 2023, and she then explained the altercation at the Eisteddfod on 7 August 2024. She confirmed that, at the end of her exchanges with Teacher A, she had said "*Go away paedo, you paedophile, go away*".

48. Mr Lewis asked the Claimant to put her version of events in an email for him to consider, and he confirmed that in an email he sent to the Claimant a short while later, in which he extracted a particular paragraph from the complaint. In that email, Mr Lewis also noted that, during their conversation, the Claimant had shared a lot of information about what must have been a very stressful situation for her and her family. He noted that, if the Claimant wished to respond to the concern, she could email her observations or her account by the morning of 11 September 2024. He commented that he understood

that the incident may have been reported to the police, so that any account the Claimant provided could help if he needed to respond to them.

49. Mr Lewis concluded his email by noting that, in their conversation, the Claimant had referred to teacher A as a paedophile and had confirmed that she had called him a "paedo" during the incident. He noted that, whilst he would not wish to be critical, he would advise against that in the future, and he did not wish to see the Claimant do anything which might compromise her own professional wellbeing.

50. The Claimant subsequently provided a response to the complaint, by way of an attachment to an email she sent to Mr Lewis late on 10 September 2024. In that, she summarised the exchange with Teacher A at the Eisteddfod up to the point when Teacher A had called her "*a bitch*", and had referred to the Claimant's family as "*nuts*". She did not go on to comment about her response. The Claimant then went into further detail about what she had observed about Teacher A's behaviour in 2022 and 2023.

51. Mr Lewis subsequently prepared a report in relation to the Claimant. It was not entirely clear when that report was created as it was not dated. It referred however, to the Claimant having been notified by telephone and email on 11 September 2024 that the Respondent would not be offering her any further work, so it must have been completed at the earliest on that day.

52. In the report, Mr Lewis summarised the complaint that had been received, that he had then considered that complaint, the content of his conversation with the Claimant on 9 September, and the Claimant's account on 10 September. In his conclusion, he noted that it was clear that the Claimant had concerns about Teacher A, and that, although the Claimant may not have been happy with the outcome following the concerns she had raised in 2023, it was clear that they had been dealt with appropriately by the local authority. He noted that the Claimant asserted that the incident at the Eisteddfod had been initiated by Teacher A, and commented that that may well have been the case. He noted however, that in the telephone conversation that he had had with the Claimant, she had confirmed that she had called Teacher A a paedo and a paedophile during the incident.

53. Mr Lewis then recorded his recommendation, which was that it was clear that the Claimant had called Teacher A a paedo and a paedophile on a number of occasions during the incident at the Eisteddfod on 7 August 2024. He commented that, in his professional opinion, the Claimant's actions amounted to unacceptable professional conduct, and were not the behaviours the Respondent expected from its candidates. He confirmed that it was his professional opinion that the Respondent should reject the Claimant's registration and not offer her further work. He commented further

that the Respondent should consider referring the incident to the EWC on the basis of unprofessional conduct.

54. Whilst the recommendation suggested that the matter was to be put to others within the Respondent's organisation for approval, it appeared that the decision not to offer the Claimant further work was Mr Lewis's alone.

55. As I have noted, on 11 September 2024 Mr Lewis telephoned the Claimant, and there was again a transcript of that call in the hearing bundle. During that conversation, Mr Lewis noted that, having considered everything, the Respondent had decided that they would not be offering the Claimant any further work. He commented that referring to somebody as a paedophile and calling them a paedo was not really in line with the way a teacher should be behaving, and therefore they would not be offering her any more work.

56. Mr Lewis sent an email to the Claimant shortly after the conversation, confirming the decision, noting that the reason was the Claimant's, "*confirmation that you referred to someone as a paedophile and repeatedly called them a paedo during an incident which occurred while you were visiting the National Eisteddfod in Pontypridd on August 7th 2024*". He concluded by saying that, in the Respondent's view, that was not the behaviour they expected of their education workers and was unacceptable.

57. Some two months later, on 21 November 2024, the Claimant contacted her pay contact at the Respondent to enquire about pay matters, and it appeared that, during that conversation, she referenced making a form of complaint to an ombudsman about the Respondent. Later that afternoon, Mr Lewis emailed the Claimant, unaware of the Claimant's earlier contact, noting that the Respondent had made a referral to the EWC that day, following their decision to reject her registration. He commented that the referral was required as a result of that rejection. He indicated in his oral evidence, which I saw no reason to doubt, that it took him time to put that report together as he only works part-time, had other duties to attend to, and needed to transcribe the various calls.

58. Mr Lewis confirmed in his oral evidence that that referral was required within such circumstances by virtue of section 37 of the Education (Wales) Act 2014. That section provides, inter alia, that where an agency has terminated the arrangement it has with a candidate on grounds involving unacceptable professional conduct then the agency must provide the EWC with such information as may be specified in Regulations made by the Welsh Ministers. No evidence was put before me about such Regulations, but Mr Lewis was of the view that, in circumstances where the Respondent's relationship with a teacher was terminated by reason of concerns about the teacher's professional conduct, it had an obligation to report the matter to the EWC.

Conclusions

59. Taking into account my findings and the applicable legal principles, my conclusions on the matters I had to determine were as follows.

60. Both parties' submissions focused on the core issues as being (i) whether protected disclosures had been made, and (ii) if so, whether the acts complained of had been on the ground of the disclosures. Whilst not expressly accepted by the Respondent, it did not materially contend that terminating the relationship with the Claimant and reporting her to the EWC were not to be viewed as detrimental, and applying the test in *Shamoon*, it seemed clear to me that the acts complained of were properly to be categorised as detriments.

61. I noted the effect of Section 48(2) of the Employment Rights Act 1996, i.e. that on a complaint of protected disclosure detriment it is for the employer to show the ground on which any act was done. That has similarities with the concept of the shifting burden of proof in discrimination cases, initially established in case law such as *Igen Limited -v- Wong* [2005] ICR 931, and now enshrined in section 136 of the Equality Act 2010. That involves the establishment of facts from which a prima facie case of discrimination can be inferred, which would then switch the burden to the respondent to demonstrate a non-discriminatory reason for the treatment.

62. I noted that the appellate courts have made clear, in relation to discrimination cases, that there may be occasions when it can be appropriate to dispense with the first stage and proceed straight to the second stage, i.e. to the reason why the conduct took place. Notably that occurred in *Shamoon* itself, and also in the EAT decision of *Laing -v- Manchester City Council* [2006] ICR 1519.

63. Whilst the rationale for adopting that approach in discrimination cases appears largely to be to avoid issues arising from the identification of a hypothetical comparator in direct discrimination cases, which clearly does not apply in protected disclosure cases, it nevertheless seemed appropriate for me in this case to look at the second stage, i.e. the causation, the reason why, in detail, as that would effectively "cut to the chase" of the core issue in this case.

64. Before looking at the causation point in detail however, I record briefly that it seemed to me that the concerns raised by the Claimant, in her document of 10 September 2024, were such as to amount to qualifying disclosures.

65. The Claimant did provide factual information in that document about her concerns, and did not simply make a broad allegation. The subject matter of those concerns, the safeguarding of children, could be reasonably believed

by the Claimant as involving criminal offences, a lack of compliance with legal obligations, and/or the endangerment of health and safety, and, as noted in *Darnton*, the Claimant did not have to establish that she was right about her concerns, only that she had a reasonable belief about them.

66. With regard to public interest, clearly the safeguarding of children is in the public interest. Section 43B however requires a claimant to have a reasonable belief that the particular disclosure they are making is in the public interest, and I had a concern that the Claimant in this case only raised the matter as a defence to the complaint made about her, which potentially called into question the reasonableness of her belief in terms of the specific disclosure that she was making.

67. However, I took into account the guidance provided by the EAT in *Okwu -v- Rise Community Action Limited* (UKEAT/0082/19), that, even if matters were raised by way of a defence, in that case to performance concerns, that does not mean that there was not a reasonable belief that the matters were being disclosed in the public interest.

68. In this case, it seemed to me that, notwithstanding that the concerns were raised by the Claimant as background to her explanation for the way she acted on 7 August 2024, they nevertheless were reasonably believed by her to have been in the public interest.

69. The position in relation to the alleged disclosure in the telephone conversation on 9 September 2024, i.e. that Teacher A had approached the Claimant at the Eisteddfod on 7 August in an aggressive and threatening manner, was rather more nuanced. There, the fact that the concerns were being raised as background to the complaint made against the Claimant more acutely called into question the reasonableness of any belief that what she was doing was raising a concern in the public interest, even if it could be accepted that the subject matter of the concern fell within section 43B(1)(a) to (f), which, of itself, was not immediately apparent. However, as I have noted, I was in any event satisfied that the Claimant had made a protected disclosure on 10 September 2024.

70. Turning to the issue of causation i.e. whether the Respondent's termination of its contract with the Claimant and its referral of her to the EWC had been done on the ground of any protected disclosures, I noted, as I have already observed, the effect of section 48(2) of the ERA, of putting the burden on the Respondent to demonstrate the reason behind those acts, and that the reason was not any protected disclosure.

71. I took into account the guidance of the Court of Appeal in *Fecitt*, that an act will have been on the ground of a protected disclosure if it was materially influenced, in the sense of being more than trivially influenced, by it.

72. I also noted the guidance from ***Khan*** and ***Jesudason***, that my focus needed to be on "Why did the alleged causer of the detriment, i.e. Mr Lewis, act as he did? What consciously or unconsciously was his reason?"

73. In that regard, I was satisfied that what caused Mr Lewis to terminate the relationship with the Claimant was the fact that she had called Teacher A a paedo and a paedophile in a public place on 7 August 2024.

74. Some of Mr Lewis's evidence suggested that, potentially, there was something more to his decision than that. In his witness statement, he mentioned the point that the Claimant had not shown any remorse for her actions, and that he felt that she would continue to make the allegations. However, when then summarising his view, he noted that he was satisfied that there was a breach of the professional standards that the Respondent would expect, from the point of view of both EWC professional standards and the Respondent's own expectations of its workers.

75. The contemporaneous records also pointed to Mr Lewis's decision as having been driven by his concern that the Claimant had acted unprofessionally by calling Teacher A a paedo at the Eisteddfod on 7 August 2024. His recommendation in his investigation report was that it was clear that the Claimant had called Teacher A a paedo and a paedophile on a number of occasions during the incident at the Eisteddfod on 7 August 2024, and that, in his opinion, the Claimant's actions had amounted to unacceptable professional conduct. That was also the tenor of his conversation with the Claimant on 11 September 2024, when he said, "*We feel that … referring to somebody as a paedophile and calling them a paedo isn't really in line with … the way a teacher should be behaving.*".

76. Mr Lewis's confirmatory email of 11 September 2024 also expressly stated, "*The reason for this decision is your confirmation that you referred to someone as a paedophile and repeatedly called them a paedo during the incident on 7 August 2024*", going on to say, "*In our view this is not the behaviour we expect of our education workers and is unacceptable.*".

77. Also, in his oral evidence during this hearing, when asked by Mr Puar on the Claimant's behalf, to assume that the Claimant's allegations about Teacher A were true, i.e. that Teacher A was a paedophile, and then to consider whether, when the Claimant reacted in the way she had to the verbal attack from Teacher A, that would be sufficient to call into question the Claimant's ability to be a teacher, Mr Lewis responded that the professional code of conduct is to be adhered to, and that to have such an outburst would be unprofessional.

78. Overall therefore, and asking the adapted question Lord Nicholls indicated in *Khan* should be asked, I was satisfied that the reason why Mr Lewis terminated the Respondent's relationship with the Claimant was his concern that the Claimant had demonstrated unacceptable professional conduct at the Eisteddfod on 7 August 2024. That was his conscious and unconscious reason for acting as he did.

79. Turning to the other alleged detriment, the referral of the Claimant to the EWC on 21 November 2024, I was satisfied that Mr Lewis did that because he felt that he was obliged to do so, and not because of any protected disclosure. He referenced in that regard a statutory obligation by reference to Section 37 of the Education (Wales) Act 2014.

80. Mr Puar, in his submissions to me, pointed out that the 2014 Act only requires such information as may be specified in Regulations made by the Welsh Minister to be provided, and that he had been unable to find any such Regulations. He may well be right about that, but the issue for me was the reason why Mr Lewis made the referral, and I was satisfied that he did so because he felt under an obligation to do so, and not because of any protected disclosure the Claimant may have made.

81. Overall therefore, I was not satisfied that the Claimant had been treated to her detriment on the ground of having made protected disclosures, and her claim therefore fell to be dismissed.

Authorised for issue by
Employment Judge S Jenkins
24 October 2025

Sent to the parties on:

27 October 2025
For the Tribunal Office:

Katie Dickson