EMPLOYMENT TRIBUNALS

Claimant: Mr M Steward

Respondents: Oxfordshire County Council (1)
Sarah Tomlin (2)
~~Sarah Bridge (3)~~

Heard at: Reading **On:** 23-26 March & in chambers 27 March & 7 May 2026

Before: Employment Judge Anstis
L Farrell
F Wright

Representation:
Claimant: Mr R Magara (solicitor)
Respondent: Mr L Wilson (counsel)

RESERVED JUDGMENT

1. The claimant's claims against the third respondent are dismissed on withdrawal, and the third respondent is removed as a party to this case. To the extent that those claims are also alleged against the first respondent under para 8.1 of the list of issues set out in the appendix to the claim, they are also dismissed on withdrawal.

2. The claimant was subject to unlawful detriments because of protected disclosures. The unlawful detriments are the provision of two unsatisfactory/negative references.

3. The claimant's other claims are dismissed.

REASONS

A. INTRODUCTION

1. Mr Magara accurately summarises the dispute between the parties in the first two paragraphs of his closing submissions on behalf of the claimant:

> *"The claimant was employed by the First Respondent at Langford Village Community Primary School ("the School") as a Site Manager from 10 July 2023 until his resignation on 5 December 2023 with notice. His employment terminated on 20 December 2023. He brings claims for whistleblowing detriment.*
>
> *The respondent defends the claims, denying that the claimant was subject to any detriment as alleged as a result of making any protected disclosures."*

2. There are no claims in respect of constructive dismissal.

3. The second respondent was the headteacher of the school at the relevant times, and the third respondent was the school business manager, to whom the claimant reported.

4. The list of issues we are working to for this claim appears in the appendix to these reasons. Those at para 8 are struck through on the basis that they were withdrawn by the claimant in his closing submissions. One effect of this withdrawal was agreed by the claimant to be that there remained no outstanding claims against the third respondent, hence the first element of our judgment.

5. By the end of the hearing, except for those alleged protected disclosures in italics in paras 2.1.1(a) and (b), the respondent accepted that the claimant had made disclosures in the terms alleged. However, it remained the respondent's position that even though these disclosures were made they did not, for various reasons, amount to protected disclosures.

6. There remain the alleged detriments at paras 8.2 & 8.3 (said to have been carried out by the second respondent and for which the first respondent is said to have been vicariously liable) and 8.4 (which except for 8.4.6 are in respect of the claimant's grievance, for which only the first respondent is said to be liable, the second respondent having played no relevant part in the handling of the grievance).

B. THE FACTS

Initial matters and the new fire procedure

7. The role described as "site manager" might in earlier times have been called "caretaker". The claimant was responsible for maintaining and cleaning the fabric of the school, whether by hands-on work himself or by management of contractors. This would include relevant record keeping. At the time he joined the school the claimant had around six years experience as a site manager at a different school, albeit in a somewhat different context – the other school being one that spanned both primary and secondary sites, and operating under an academy trust rather than a local authority.

8. The claimant's contract of employment started on 10 July 2023, but it seems he took some informal steps in visiting the school and making recommendations before then.

9. The first matter of note is described by the second respondent in her witness statement in the following terms:

> *"On 13 July 2023, the Claimant reviewed the school's Fire & Evacuation Procedure, despite this not being part of his role, and submitted an amended version proposing substantial changes, including alternative evacuation routes, different assembly points, and revised staff responsibilities. He was advised that any such suggestions would require proper consideration, particularly as the existing procedure had been in place for several years, was reviewed after each practice drill, and had been approved annually by Oxfordshire County Council Health & Safety."*

and

> *"The Fire Procedure … was reviewed annually and approved through the appropriate processes. The Claimant took it upon himself to rewrite the procedure using a template from a previous school. On 18 July 2023, he circulated this unapproved version to all staff electronically and placed printed copies in communal areas, causing confusion and disruption. This had not been shared with or discussed by the wider Senior Leadership Team (SLT), who would be responsible for managing any actual evacuation, which was extremely dangerous. Staff may have attempted to follow the unratified procedures in a real emergency, creating unprecedented risks and undermining the health and safety of the school. He was instructed to remove the documents, as any new procedures or policies must be properly prepared, reviewed, and formally ratified before circulation."*

10. The third respondent talks of the incident in much the same way:

> *"The Claimant reviewed the Fire & Evacuation Procedure and on 13th July sent an amended document which included significant amendments such as different evacuation routes, assembly points and changes to individual responsibilities.*
>
> *The Claimant was advised that we needed time to review his suggestions, that the existing procedure had been in place for several years, approved annually by OCC Health and Safety, and was subject to ongoing review following each practice drill. I was surprised that with only two days experience of working at the school, the Claimant felt he had the appropriate understanding of school routines to be able to fundamentally change such a key procedure without proper consultation. It was also evident that he had adapted a procedure from his previous*

school as the terminology and references used were not applicable in our setting."

11. This sets the tone for much of the second and third respondent's evidence, to the effect that right from the start the claimant was a liability, a loose cannon who took things into his own hands that were none of his business, and insisted on his own way. This developed into criticism of the claimant later badgering or even harassing the second and third respondent, and a suggestion by the respondents that the claimant was uncomfortable or unwilling to take instruction from women. The tone of the second and third respondent's witness statement is to the effect that the claimant's employment was a complete disaster from the start, with the claimant taking on activities outside his role, failing to address things which were his role, acting disruptively and confrontationally even to the extent of putting the second and third respondent in fear.

12. We will have to consider this, particularly in the context of the later references that were provided for the claimant, but we note at this stage that there was very little, if any, documentary evidence from the respondents to back up this view of matters. Because of that we questioned during the hearing the scope of the respondents' disclosure, particularly given that it seemed highly likely that matters such as the fire procedure controversy would have been subject to written communication or documentation.

13. Disclosure produced by the respondents during the hearing put a different light on the fire procedure controversy. It shows, as the respondents say, that the claimant took it upon himself to review and amend the "fire evacuation policy". He provided his redrawn policy to the third respondent by email on 13 July 2023, concluding his covering email with the following:

"Please let me know if you require any amendments.

If this is okay I will email all staff to read and also hard copies will be available in reception foyer, front office, staffroom, portacabin, kitchen and all classrooms."

14. The third respondent replied to this on 17 July 2023. Given the nature of the respondents' witness statements one might have expected this reply to be (perhaps more politely phased) that the policy was none of his business and his draft was completely inappropriate and useless. In fact, the reply starts:

"This looks great – and long overdue."

15. It continues in similarly constructive vein, asking a handful of questions, which the claimant addressed later that same day.

16. After this response, the second respondent replies to the claimant on his proposals, saying:

"I think this is great and as Sarah already said, long overdue."

17. She goes on to suggest "*one adjustment*". By the end of the day the claimant replies saying:

> *"All amended and attached. Are you happy for me to send to all staff and post copies on notice boards etc?"*

18. There is no documented reply to this. As far as we can tell the claimant did eventually issue the new procedure, which may have caused some confusion, but there is no sign in this contemporary correspondence of the disquiet expressed by the second and third respondent in their witness statements. If, for instance, he was ever told that "*any such suggestions would require proper consideration*", that was not done in the correspondence we have seen, which seems entirely in favour of and supportive of the claimant's new procedure. Saying that *"This had not been shared with or discussed by the wider Senior Leadership Team (SLT), who would be responsible for managing any actual evacuation, which was extremely dangerous."* is at best a misleading partial truth. As we saw, but only through late disclosure by the respondents, the new procedure had been shared and discussed with both the second and third respondent, who offered a handful of comments and amendments but in general enthusiastically received it. It is a cause for concern that the account given by the second and third respondents of this incident was substantially contradicted by documents which ought to have been disclosed by them far earlier than on our prompting during the hearing.

19. The account given by the respondents' witnesses in their witness statements contains strong criticism of the claimant, of which there is no sign in the contemporary documents – indeed, the documents themselves contain only praise of the claimant's work on the procedure.

The first alleged protected disclosures

20. The claimant's first set of alleged protected disclosures are set out at para 2.1, and are said by him to have been made in September 2023 in the course of a face to face meeting with the third respondent. As previously noted, it is only paras 2.1.1(a) and (b) that the respondents say were not, as a matter of fact, said by the claimant. These are:

> *"(a) The First Respondent had not completed a fire drill for approximately 2 years.*
>
> *(b) The fire evacuation policy was out of date (2018) and was not suitable for the premises."*

21. In his witness statement the claimant says that during that meeting

> *"I had a conversation with Sarah Tomlin where I raised concerns that the fire evacuation policy was dated 2018 and that there were no trained fire wardens. On an inset day in September 2023, they eventually trained staff members as fire wardens. I also redrafted their entire fire evacuation policy when I first started working there. They refused to accept this and continuously delayed addressing the issue ... They also kept delaying the fire drills which I continually asked to be done, and on checking they hadn't had a fire drill for about 2 years."*

22. While maintaining that there was nothing wrong with the first respondent's fire precautions and that *"The Claimant did not say to me at any time during the period of time to which his claim relates that he was raising an issue under* [the whistleblowing policy]" the third respondent does not give any particular account of this discussion with the claimant. A finding that there have been protected disclosures on these matters is, of course, not dependent on us finding that there was, in fact, a failing on the part of the first respondent, or that the disclosures had been made under any particular procedure.

23. It is not easy to match what the claimant says in his evidence with paras 2.1.1(a) and (b). He says that he found on checking that there had not been fire drills for two years (we note it was the respondents' position that there were regular fire drills, and if records showed there had been no fire drills that was a problem with record keeping, not with a lack of fire drills) but he does not say that he told the third respondent that. He identifies that the fire evacuation policy dates back to 2018, but not that that means it is out of date or not suitable for the premises. Given this, we find that the alleged protected disclosures at paras 2.1.1(a) and (b) were not said by the claimant. This may not be of particular significance, given the respondent's acceptance that all the other matters were raised, and no particular detriment seems to depend on that alleged protected disclosures.

Other events in September 2023

24. Before resumption of the school year, on 4 September 2023 there was an INSET day, for which staff were notified that "*all staff are required in school all day*". The claimant was at work that day in the school, but undertook his own work and did not attend the INSET day. On 13 September 2023 the third respondent wrote to the claimant to say: "*For future information, when INSET day training for all staff is scheduled you should assume that it includes you unless otherwise informed.*"

25. The first respondent recruited an assistant for the claimant. This person was known as the "janitor". The second respondent describes the matter this way:

> *"From the commencement of his employment on 10 July 2023, the Claimant repeatedly insisted that the Site Manager role could not be carried out by one person. He frequently approached me, often as soon as I arrived on site, pressing for the appointment of an additional janitor and specifically promoting a former colleague for the role. I made it clear*

that the post had always operated as a single-person role and that no budget existed to support any expansion.

Despite this, the Claimant continued to raise the issue in a persistent and pressurising manner. His behaviour went beyond a reasonable professional discussion and became intrusive, inappropriate, and increasingly odd given the clear direction already provided, falling well outside the scope of his role.

After conducting a budget review, it was agreed that the school could recruit a fixed-term janitor. It became apparent that the Claimant wished to be involved in all aspects of the recruitment process, including contacting his former colleague and wanting to sit on the interview panel. He was advised that this would be inappropriate due to a clear conflict of interest. Subsequently, he was overheard expressing dissatisfaction with this decision to the HR Administrator."

26. There is nothing in the documentary evidence to suggest that in raising this matter the claimant had behaved in a manner that was "*intrusive, inappropriate and increasingly odd … falling well outside the scope of role*". If he had, it seems surprising that the response of the second respondent was not to take any action to correct the claimant, but instead to grant the claimant what he was seeking.

27. Whatever the rights and wrongs of that, the respondents also say that the claimant agreed a different shift pattern with the janitor to the one that had been agreed on recruitment. The second respondent's witness statement addresses it in the following terms:

"On 17 September 2023, the Claimant's line manager brought to my attention that the Claimant had implemented a 'site team timetable' and had agreed with [the janitor] *that he would not work a split shift, despite this having been agreed at* [the janitor]*'s interview. The Claimant had established a shift pattern, alternating which end of the day each staff member would work, to be updated on a fortnightly basis. This arrangement was introduced without the prior knowledge or approval of me as the Headteacher. The Claimant stated that this had been agreed with* [the janitor] *prior to* [the janitor] *starting the role; however, this was inaccurate, as* [the janitor]*'s role and hours had been clearly advertised and discussed by me during the interview process. The Claimant did not acknowledge that implementing this timetable was beyond the scope of his authority, demonstrating a belief that his role had more responsibilities than it had and did not recognise that maintaining consistent personnel is essential for the smooth running of the school. When requested, the Claimant was asked to provide a copy of the fortnightly shift pattern, but this was not consistently provided, often*

leading to staff not knowing which site team member to approach and when."

28. In common with other supposed misbehaviour by the claimant, nothing was done about this by the respondents (other than a passing reference in the consultation referred to below), and (apart from that consultation) nothing in respect of this alleged misbehaviour was documented, either at the time or later.

October 2023 - the EPS referral

29. It is on the 1 October 2023 that we see the first, and only, documented suggestion that the second and third respondents were having problems with the claimant. The second respondent raised a ticket with the school's HR advisors. She says she did so for the following reasons:

> *"Specific concerns included his questioning of Senior Leadership Team (SLT) directions, making comments such as "it is not my head that will roll" when differences of opinions were discussed, altering his and his team's working patterns without authority, failure to attend mandatory training, and attempts to play members of the leadership team against one another.*
>
> *Examples include:*
>
> - *Cleaning contractors reporting that they no longer wished to work alongside him due to his rude and abrupt manner and telling them they had to finish earlier than contracted due to him needing to leave work on time.*
> - *Repeatedly questioning instructions to arrange the legionella tank cleaning during the October half-term, until I had to direct this task and even then, he delegated the task to the janitor despite being directed to manage it himself.*
> - *The Claimant reported a leaking tank in the loft and insisted on using his preferred plumber to carry out a full tank replacement, which was unnecessary and would have incurred significant costs. When asked to provide photographs for assessment, he refused to enter the loft. The school's regular contractor later confirmed that the issue was minor and only required a simple washer replacement, completed at no charge. Had the Claimant's advice been followed, the school would have faced substantial call-out fees, unnecessary tank draining and removal, and a potential school closure, resulting in major disruption and significant financial impact."*

30. The referral was in the following terms:

"Difficulty with this member of staff being rude to staff and visitors. Questioning direction. Line managers almost needing to second guess. Making changes to own shift pattern and that of staff he line manages. Not attending required training. Continual questions of the SLT direction. Hindering progress in areas of focus. Playing line manager and HT off against each other, questioning to see if the answer remains the same etc ... How to line manage this member of staff, how to review the three month probation, what are the school's options if this is not working?"

31. The second respondent received a response by email, including the following:

"The concerns raised relating to the employees behaviours and conduct should be managed under the disciplinary policy, I have attached a copy. If the employee has under 6 months service then they are still subject to the probationary period, I have also attached the policy that relates to this. As the policy shows during the probationary period the employee is expected to demonstrate suitability for the job in terms of conduct and professional capability. The school needs to demonstrate that the employee has received individual counselling, advice and training to ensure that the employee meets the required performance and conduct standards. The requirements of the role should relate directly to the job description, contract of employment, policies and terms and conditions. As illustrated in section 3 of the policy if the employee is failing to reach the required standards of performance then they should be asked to attend a formal review meeting with the headteacher or their line manager. The employee would have the right to be accompanied by a trade union representative or work colleague. The employees performance should be formally reviewed at 3 months service (but can be earlier if felt appropriate) and the following should be covered:·

The employee's performance to date should be discussed with him or her.

If there are any issues then any areas should be outlined where improvement is necessary.

Appropriate support should be identified. ·

A summary of the points covered in the review should be given in writing to the employee and a copy kept on the personal file for future reference. It's important that the employee is encouraged to make an active contribution highlight any difficulties. If you consider that the concerns raised are major then it may be necessary to move to a final review period for improvement and following this a decision can be which is outlined in paragraph 5 of the policy. If you consider that you are at that stage please let EPS know as we can advise you and you may be allocated a caseworker to support you with the process. In normal

> *circumstances there would be a 5 month review meeting, and the employees performance would be reviewed again …"*

32. The second respondent did not take any of the actions recommended by the HR advisors, nor did she take any action at all in respect of the claimant's supposed misbehaviour.

33. The third respondent's witness statement mentions her having scheduled a performance review with the claimant, but the effect of this statement was immediately undermined by it being apparent that the same "performance review" was being scheduled with all of those reporting to her, apparently as a result of a review and reorganisation of various job duties.

October 2023 – the health and safety audit

34. The third respondent was off sick from 9 October to 6 November 2023. During her absence the claimant reported to the second respondent.

35. On 16 October 2023 the school was subject to its annual health and safety audit from the first respondent.

36. The person who conducted the audit gave evidence that "*it was generally a good audit*", subject to points about water provision and Legionella prevention, which she was later satisfied had been addressed by the school.

37. The claimant was not a participant in the audit, but was called upon at a point to provide records. The auditor says this about their encounter:

> *"… the Claimant started to question me in an abrasive manner, this happened again when I stated that his metal cabinet for storing chemicals was not a flam store and did not meet the requirements. The Claimant disagreed with my advice, and he became assertive and questioning of my knowledge, I answered his questions, but it was apparent in his manner that he wasn't happy. He became more forthright, stood up straighter and his voice became louder, but not shouting. His questions became shorter but more frequent. I did presume at the time this was because I was female telling a male about what is seen as a predominately male occupation (Caretaker). Although I personally didn't find it was upsetting as I have come across similar behaviour in the past, but in my opinion his reaction was gender-related."*

38. Nothing was said of this at the time, and no action was taken by any respondent about it.

November 2023 - emails

39. The third respondent says this in her witness statement:

> *"The Claimant would send numerous emails, the contents of which would often overlap, making them difficult to keep track of. Most emails were responded to within 1 working day. School's use of e-mail stipulates that urgent matters or emails are followed up in person as is the norm in many professional settings. The number of emails significantly increased following my period of absence from November 2023 onwards."*

40. This was in keeping with the general theme of the respondents' evidence that the claimant was disruptive and badgering of the second and third respondent, refusing to take direction from women.

41. As we have noted before, it was surprising that if that was the case there was no documentary evidence of it having happened, nor of any action being taken about it at the time. That was particularly so given this criticism of sending "numerous emails", which, if it happened, would surely have been apt for demonstration by producing those emails. There were, however, in the respondents' disclosure and the bundle that we had for this hearing, no emails that would meet the description given by the third respondent.

42. Our enquiries about this during the hearing were met with some further disclosure from the respondent, but the most emails we could see from this in a single day were three, on 3 October 2023, timed at 10:47, 10:55 & 12:31, in each case with the claimant reporting to the third respondent on various purchase orders for materials or contractors. On questioning the third respondent about what was wrong with these communications it was not clear what, if anything, her objection to this was. She accepted that the claimant may have been erring on the side of formality, but also agreed that ultimately all purchase orders would go through her. There was a suggestion that these might not in fact properly be called purchase orders, but it remained unclear what could be considered to be wrong about this sequence of emails. There was nothing in the documentary evidence to support the contention either that the claimant "*would send numerous emails, the contents of which would often overlap, making them difficult to keep track of*" or that "*The number of emails significantly increased following my period of absence from November 2023 onwards.*" The respondents have never suggested that they deleted or otherwise disposed of such emails, so if they had existed they should have been available for disclosure.

9 November 2023 – the second alleged whistleblowing disclosures

43. The claimant had indicated he wanted a meeting with the third respondent to discuss outstanding matters. On 8 November 2023 the second respondent sent an email to him saying:

> *"Can you send through a list of the things that you wish to discuss at a meeting so that Sarah and I can have a discussion around any actions."*

44. The claimant replied the following day, saying:

> *"Please see attached report, as requested, with details of issues that require attention as soon as possible."*

45. The "*attached report*" contains under "*issues/points for discussion*" the matters described at para 2.2 of the list of issues. While the respondents accept that those things were written in the report, they do not accept that they amounted to protected disclosures. We will address that point later. The anticipated meeting did not happen.

December 2023 – the claimant's new role and resignation

46. Matters came to a head in early December 2023.

47. In early November 2023 the claimant learned that another local school was looking for a site controller, but paying more than he was earning at the time. He attended an interview for that role on 1 December 2023 and it seems he was offered the job very shortly after that. On the evening of 5 December 2023 he submitted his resignation (giving four week's notice), saying:

> *"Thank you for giving me the opportunity to work in this position for the past five months, however, I have decided it is not a role I can continue with at this time."*

48. The claimant asked to leave early, and it was agreed his employment would end on 20 December 2023.

13 December 2023 – the first reference

49. Given the withdrawal of the earlier alleged detriments, the first, and key, detriment in this case is that at para 8.2 of the list of issues:

> *"an unsatisfactory/negative reference was provided to* [the claimant's new school] *on 13 December 2023 verbally and in writing by the Second Respondent on behalf of the First Respondent"*

50. A reference had been requested by the school the claimant had been offered a job at. This was in the form of a questionnaire.

51. We were told that on 13 December 2023 the second respondent telephoned the head of the new school to ask about the format of the reference. Apparently satisfied as to this, she prepared the response to the reference, which she then gave to the third respondent to forward to the claimant's new school. It was the third respondent's position that she had seen the reference before sending it and would have intervened in it had she seen any administrative errors in it, such as incorrect dates of employment. Finding no such corrections to be necessary, she emailed the reference to the new school.

52. The reference asks various questions, to which a range of four tick box answers can be offered: “strongly agree”, “agree”, “disagree” and “strongly disagree”. Each question also contains a space for “comments”.

53. These are the responses given by the second respondent:

Person Specification and Job description criteria	Strongly agree	Agree	Disagree	Strongly disagree	Comments
The candidate meets the requirements of the job description and person specification			x		
The candidate is highly competent in all elements of the relevant standards.			x		
The candidate’s achievements and contribution to the school are substantial and sustained.				x	
The candidate has excellent professional knowledge.				x	
The candidate has undertaken a broad range of professional development.				x	
The candidate has established excellent working relationships with colleagues. By this they are able to motivate, lead and support colleagues.				x	
The candidate has established excellent and appropriate working relationships with pupils.				x	
The candidate has developed good working relationships with parents				x	
The candidate is able to exercise appropriate classroom control and management of pupil behaviour					N/A
The candidate has taken part in a range of extra-curricular activities				x	

54. It is the consensus amongst the members of the tribunal panel that we have not in our professional experience previously seen such a comprehensively negative reference.

55. Later that afternoon, after the reference had been prepared and sent, the second respondent was approached by two members of staff. They wanted to

let the second respondent know about what they considered to be poor behaviour by the claimant. The second respondent asked them to put this in writing, which one of them did by email later that day. The following is taken from that email, and we accept this is indicative of what they told the second respondent at the time:

> *“•* *Mark has said he is leaving and has had his resignation letter written for 3 weeks (since half term) and that he has a job at* [the new school].
>
> • *Mark has explained to me for weeks that the school "needs a kick up the arse" because we breach so many regulations and he has tried relentlessly to raise it and it's been denied.*
>
> • *Mark says* [the janitor] *is going with him. I spoke to* [the janitor] *and* [the janitor] *says he's not going with Mark because the school doesn’t have a job for him so he is staying put.*
>
> • *"That Sarah Bridge needs getting rid off. I’ve never met a nastier piece of work than her. "SLT in this place is awful and the deputy heads should not be DSLs. The trouble is, Sarah Bridge and Sarah Tomlin are too friendly so they will never sort this school out."*
>
> • *Mark expresses how much he does not want to be in this school, daily to me in my classroom or when I arrive in school as I am usually first one in.*
>
> • *He has spoken openly to SL about his feelings as she is in the classroom next to me.*
>
> • *He has mentioned situation with JM and myself this morning regarding SB and complaint. (13.12.23)*
>
> • *He has spoken about Fire regulation policies and how he put one together in July, it was sent out and then he was told to take it down by SB and since then it's been refused.*
>
> • *"I’ve asked for weeks for a meeting with SB and all I’ve had is shitty emails and silence from her." He said he managed to get a meeting with SB which was meant to be 20 mins but ended up being 2 hours because he had so much to say and bring up.*
>
> • *"*[the janitor] *has been here as long as I have and only met SB this week. He didn't know who she was."*
>
> • *"SB should not be running this place. They asked me if I can do the tiling myself, so all sorts of jobs and I suggest that someone comes in to do them and they don't do it."*

- *"They spent £375 on Air Fresheners and I was fuming when I found out - we have toilets that are broken and can't even afford antibacterial soap."*

- *"When I joined, I put together mine and* [the janitor]*'s rota as he works different hours to me and SB denied all knowledge of it when she was the one who verbally accepted it and then went back on her word."*

- *"I have been collecting every piece of evidence against her and this place because they did this to* [the previous site manager]*." - He has told me that this is on his personal laptop that he is copying all evidence of emails etc onto. He is going to put in a complaint against SB.*

- *"I've spoke to teachers, parents, other people at different schools and they all say the same about this place."*

- *When* [a representative of the first respondent] *was at school yesterday, he was told by you to leave it to yourself and yet he made sure he was at reception at the same time as the guy. He then realised that he knew him from going to school with him and his words to me this morning were "I made sure Sarah heard me being familiar with him and saying how are the family, how's Aylesbury? just to piss her off"*

- *Every time Mark mentions this situation, he keeps saying that he knows of other people in the school who are going through the same situation/feel the same way as he does - but he never elaborates on who it is and I have never once asked who. I can only assume it is someone close to him / someone in the admin office maybe?"*

56. The claimant learned of the bad reference almost immediately after it was received by the new school, and was provided with a copy of the reference by the new school. As a result of the reference, not, it seems, without some hesitation, the claimant's job offer was withdrawn.

The third alleged protected disclosures

57. The following morning the claimant made his third alleged protected disclosures.

58. It is accepted by the respondents that he provided the information set out at para 2.3, said to be his third protected disclosure, but not that this in fact amounted to a protected disclosure.

Garden leave

59. The second respondent says:

> *"On the morning of 14 December 2023, a staff member reported that the Claimant intended to unlock the school gates and then call in sick for the remainder of his notice period. I immediately contacted the Head of School Improvement, who referred me to an HR Adviser. Acting on HR's direct advice … the Claimant was placed on garden leave with immediate effect to protect the school from further malicious behaviour, safeguard access to school systems, and ensure the continued smooth and secure operation of the school."*

The grievance

60. The claimant raised a grievance on 19 December 2023, the day before his employment was due to end. For reasons we will come on to, we do not need to consider this (or the process adopted by the first respondent in respect of the grievance) in any detail.

The second reference

61. With his original job offer having been revoked, the claimant looked again for work and soon received another job offer from a local school. He was successful in being offered the role in January 2024. A reference was requested in the same form as the previous reference, and the same reference as before was put forward by the second respondent, but this time the new employer was not deterred and the claimant took up that role.

C. THE LAW

Protected disclosures

62. A "protected disclosure" is (s43A Employment Rights Act 1996):

> *"a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H"*

63. A "qualifying disclosure" is (s43B(1)):

> *"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 …*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject …*
>
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered"*

64. It being accepted by the respondents that (subject to the two alleged protected disclosures that we found did not occur) there has been a disclosure of information, the question we have to address is whether in the reasonable belief of the claimant this was made in the public interest and tends to show one or more of the matters identified above.

65. If there has been disclosure of information, then (Williams v Michelle Brown UKEAT/0024/19, cited in Nicol v World Travel and Tourism Council [2024] EAT 42:

> *"ii) The worker must believe that the disclosure is made in the public interest;*
>
> *iii) The belief in the disclosure being in the public interest must be reasonably held by the worker;*
>
> *iv) The worker must believe the disclosure tends to show one or more of the matters listed in s43B(1)(a)-(f) ERA; and*
>
> *v) The belief in the disclosure tending to show matters in s43B(1)(a)-(f) ERA must be reasonably held by the worker"*

Protection against detriment

66. Section 47B gives protection against detriment, both from an employer and from co-workers:

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

The link between protected disclosures and any detriment

67. Under s48(2):

> *"On* [a complaint of whistleblowing detriment] *it is for the employer to show the ground on which any act, or deliberate failure to act, was done."*

68. Thus if the claimant has shown a protected disclosure and detriment, "*it is for the employer to show the ground*" on which that detriment was done. A failure by the employer to do so will not inevitably or automatically lead to a decision

that the detriment was on the grounds of the protected disclosure, but we may in appropriate circumstances draw such an inference (Ibekwe v Sussex Partnership NHS Foundation Trust UKEAT/0072/14).

69. Considering whether something was done "*on the ground of*" a protected disclosure requires consideration of the mental processes (whether conscious or unconscious) of the relevant respondent or its agents, with the question being whether the disclosure materially influences (in the sense of being more than a trivial influence) the treatment of the whistleblower (NHS Manchester v Fecitt [2012] IRLR 64). It follows that to satisfy s48(2) the respondent must show that the protected disclosure did not materially influence the detrimental treatment – either at all or in more than a trivial way.

Knowledge of disclosure

70. It must follow from this that for something to be done "*on the ground that the worker has made a protected disclosure*" – whether unconsciously or consciously – the relevant decision maker must know be aware in some way or another that there has been a protected disclosure (although, of course, not necessarily that something technically fulfils the definition of a protected disclosure). Indeed, in Nicol at para 82, Sheldon J went further than that, finding that for there to be liability, the person alleged to be liable:

> *"… ought to know at least something about the substance of what has been made: that is, they ought to have some knowledge of what the employee is complaining or expressing concerns about."*

D. DISCUSSION AND CONCLUSIONS

Protected disclosures?

71. Given that information has been disclosed, we must then assess the questions asked in Williams: did the claimant believe that the disclosure was made in the public interest? If so, was such a belief reasonably held? Did the claimant believe that the disclosure tended to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which they were subject and/or that the health or safety of any individual has been, is being or is likely to be endangered, and was that belief reasonable?

72. The claimant gave evidence that he was highly concerned about the issues he was raising, and we do not think that there can be any real doubt that he did so believing that the disclosures showed breaches of health and safety or legal requirements. The clearest and probably most significant disclosure is the second disclosure, in writing. All of this concerns health and safety, and there are headings of "*fire safety*" and "*health and safety*". The claimant does not necessarily reference precise legal requirements, but nor does he have to do so. It is clearly the case that the claimant believed the disclosures tended to show breaches of health and safety.

73. The respondents' challenges to this, such as they were, seemed more to be around whether such a belief was reasonable, and questions of the public interest. As for whether such a belief was reasonable, it is unclear quite what the respondents were relying on in challenging this. It seems to be that these supposed health and safety issues were really non-issues that the claimant could not have reasonably thought to be problems. We do not accept that. It is apparent that there were differences of opinion between the claimant and the respondents as to what work was necessary, or at least what work was immediately necessary. Nothing in our decision should be taken as an indication that the school was in fact unsafe at any time, but that does not mean that the claimant did not at the time have a reasonable belief that his disclosures tended to show breaches of health and safety or legal obligations. We find that the claimant did have a reasonable belief that the disclosures tended to show such breaches.

74. There is then the question of public interest.

75. In a school environment it is not difficult to see that there would be a public interest in disclosures about health and safety. We think the respondents' challenge on this point is that the claimant was simply raising these matters to cause trouble given his poor relationship with the second and third respondent – but we see nothing to indicate that. The disclosures are comprehensive, but broadly speaking made in a constructive tone. They explain what, in the claimant's professional opinion, the problems are and what needs to be done to fix those problems. That this occurred in the context of a difficult relationship with his managers does not mean that they are not made in the public interest. The disclosures at paras 2.1.1(c)-(f), 2.1.2, 2.2 and 2.3 are protected disclosures.

The grievance

76. Paras 8.4.1 – 8.4.5 are alleged detriments in the conduct of the grievance raised by the claimant.

77. We have not dealt with them in any detail for the following reason. The allegations in respect of the grievance are of actions carried out by people other than the second and third respondents. As Mr Magara accepted during closing submissions, there is no evidence to suggest that those addressing the grievance knew anything of protected disclosures raised by the claimant. There is nothing to suggest that the claimant's protected disclosures were known of beyond those they were addressed to. The claimant's grievance itself did not reference or contain details of any protected disclosures, and it was not part of the claimant's grievance that any detriment had been caused by protected disclosures.

78. Mr Magara relied on what he described as a close relationship between the second respondent and those responsible for addressing the grievance, suggesting that it was "*not inconceivable*" that in such a relationship the

whistleblowing disclosures would have been mentioned or relayed onwards by the second respondent – but the second respondent was not questioned as to what she may or may not have relayed, and it being "*not inconceivable*" that such a thing could have occurred is not, even given the terms of s48(2), a satisfactory basis on which we could conclude that it had occurred, and that the treatment of the grievance was motivated consciously or unconsciously by the protected disclosures. We find that there was no link between the protected disclosures and the handling of the claimant's grievance.

The first reference

79. The central and key alleged detriment is the reference given on 13 December 2023. We have no doubt such a reference is, in principle, capable of amounting to a detriment.

80. According to s48(2) it is for the respondents to explain why the reference was given in these terms. These are the reasons given by the second respondent in her witness statement for completing the reference in the way she did:

> *"In the job role, the Claimant was not demonstrating that he could meet the requirements of the job specification and person specification. He did not demonstrate the practical nature of the job description, mainly working on his laptop. For example, he contacted outside contractors without giving full information, such as when he refused to take photographs for the water tank replacement, or obtaining a quote for servicing of doors and potentially incurring a charge for the school in doing so, using* [the janitor] *to do all the practical work, removing tiles from the men's toilets, never completing the job to replace them, poorly fitted blinds.*
>
> *The Claimant did not demonstrate that he was competent in all the relevant standards, we have a catalogue of poor work quality, and he did not seem to like the manual jobs.*
>
> *There were no positive achievements and contributions to the school that could be considered substantial and sustained, for example he even complained when I asked him to stand on the gate in the mornings with me to safeguard the children on site.*
>
> *The Claimant did not demonstrate an excellent level of professional knowledge required for the role of Site Manager. He did not fully meet all aspects of the job description and person specification. For example, he often responded to tasks as though they were larger or more complex than they actually were and made judgments without first inspecting the jobs in question. He also showed a tendency to call out contractors rather than undertaking certain tasks himself. This was contrary to the purpose of appointing* [the janitor]*, whose role was intended to allow two-person jobs to be completed in-house.*

The Claimant did not attend explicitly requested and essential training during the five months he worked at Langford or further his professional development, even reluctant to provide the certificates for training he had completed previously.

The Claimant did not build good working relationships with the parents, children or staff at the school and mainly worked within the bubble of himself, the HR administrator and the janitor that he already worked with previously. He ignored direction to stand on the gate to safeguard, meet and greet our families and we had concerns raised in reference to his approach with contractors e.g. Cleaning Company raising concerns about how they were spoken to and him trying to change their timings to suit him.

The Claimant demonstrated a lack of flexibility in working outside of his preferred hours to support extra-curricular events or school activities such as parents' evenings, discos, or fetes. He frequently altered his own working hours without consulting managers and created his own timetables for himself and [the janitor]*, which made it difficult for the school to track staff attendance and ensure consistent site coverage.*

During the interview, the Claimant was asked whether there would be any scope or flexibility within the role to work overtime to support school events, remain on site for parents' evenings, or assist contractors who could only complete work during holidays or weekends for safety reasons. At that time, he stated that he had previously done so, often waiting for his former headteacher until 10 p.m., and that this would not be an issue.

While such flexibility is not a regular expectation, notice is always given to explore whether overtime can be accommodated. Therefore, the question on the reference form cannot be answered simply with a "yes" or "no," as the Claimant's actions did not consistently demonstrate the flexibility expected for the role."

81. While Mr Wilson pointed out (and we acknowledge) the apparently ambitious scope of the questions being asked (for example, concerning "*excellent professional knowledge*" (our emphasis)) it seems to us that in answering the reference in the way she did, and in giving the explanation she has subsequently give, the second respondent presents the difficult picture that the claimant was entirely failing at his job, but that despite that neither she nor anyone else did anything about it. The only thing that she did do: taking HR advice on underperformance by the claimant, was then not followed up at all by her.

82. It cannot be disputed that there were difficulties in the relationship between the respondents and the claimant. There are other points of friction and disagreement along the way that we have not cited in this decision – but

ultimately the fact remains that the second respondent did nothing about those difficulties. Another way of putting that, and one we adopt for the purposes of this decision, was that they were not seen by her at the time as being of sufficient concern to require her to take action. We cannot reconcile that with such a bad reference being given.

83. We have noted at relevant parts of our decision where the portrayal by the second and third respondent of the claimant's actions is contradicted by the contemporaneous documents – for instance, on the questions of pestering by email and the fire procedures.

84. The respondents are now describing (in their witness statements and in the second respondent's response to the reference request) the claimant's actions in a much worse way than they actually were or than they were viewed by the respondents at the time.

85. The reference response is not, as the second respondent describes it, an accurate account of the claimant's deficiencies in the role. The second respondent is describing things as worse than they were. If things had been that bad the second respondent would have taken substantial action against the claimant at the time.

86. Because of this we do not accept the second respondent's explanation of the poor reference response. The respondents have not established what the grounds for such a poor reference response were.

87. That does not mean that we automatically find that the reference response was because of the protected disclosures. We must move on to consider whether we can or should infer that it was because of the claimant's protected disclosures.

88. No reason other than that given by the second respondent has been suggested by the respondents.

89. We had wondered whether the poor reference had been prompted by the approach to the second respondent from members of staff on 13 December 2023. A reference given in the aftermath of such an approach would be likely to have been negative. But that is not an explanation put forward by the respondents, nor could it be. The second respondent was approached by the members of staff only after the reference was provided.

90. We have searched in vain for an explanation of the poor reference. The explanation given does not satisfy us. We know that the second respondent was aware of the claimant's protected disclosures. We note that since then both the second and third respondents have given inaccurate accounts of the claimant's performance, and made it out to be worse than it was. In those circumstances we consider we can properly infer that the first and second round of protected disclosures (the third round of protected disclosures had not been

made by that time) were a material cause of the negative reference, and that therefore the first reference was a whistleblowing detriment.

Garden leave and the complaint

91. The morning following the reference we have the alleged detriment of "*the Claimant was put on garden leave and told by the Second Respondent on 14 December 2023 that she had raised a complaint against him*". It is not in dispute that that occurred. The question is, why that occurred, and whether the respondents have established the ground on which it occurred?

92. The second respondent has given her explanation of this. Essentially it was that by that time (in contrast to the question of the reference) she had been approached with the allegations that the claimant had "*threatened to bring the school down*". In those circumstances it is straightforward to see why she put the claimant on garden leave and raised a complaint about it. This was to do with the complaint that had been made against him by others, not any protected disclosures.

The second reference

93. The second reference is identical to the first, and no separate explanation of it has been given. In those circumstances the analysis we have given of the first reference must still apply, despite the fact that by then there had been the complaint against the claimant. There is no indication that the complaint against the claimant led to the second reference when the second reference was no different to the first.

Remedy hearing

94. At the conclusion of the hearing a provisional remedy hearing was listed to take place in person on **Monday 6 July 2026**. Subject to any agreement between the parties as that remedy, that will now proceed.

Approved by Employment Judge Anstis
15 May 2026

Judgment sent to the parties on:
15 May 2026

For the Tribunal:

APPENDIX - The Issues

Protected disclosure

1 Did the Claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996?

2 The Claimant says he made disclosures on these occasions:

2.1 In or around September 2023, he had a face-to-face meeting with the Third Respondent and verbally stated:

2.1.1 The First Respondent was not fire safety compliant because:

a) The First Respondent had not completed a fire drill for approximately 2 years.

b) The fire evacuation policy was out of date (2018) and was not suitable for the premises.

c) 3 fire exits were not operating and could not be opened in the event of a fire.

d) Several fire exits were lacking in maintenance and all needed inspection and servicing.

e) Emergency lighting had failed the recommended 3 hour drop test, all one hour drop tests and the monthly 'flick' tests.

f) The lighting conductors had never been inspected or serviced/maintained.

2.1.2 The First Respondent's bin storage was not compliant because they were not in a secure compound and at a suitable distance away from the school building (and in particular the main boiler room and kitchen).

2.2 On 9 November 2023 the Claimant emailed the Second Respondent and the Third Respondent a report on issues at the First Respondent regarding health & safety and fire safety. The issues included:

2.2.1 The water heaters in the Year 3 Red Kites cupboard, Year 6 Eagles cupboard and Nursery were not operating properly or not working at all.

2.2.2 There was no water (cold or hot) from the nursery toilet sinks.

2.2.3 Actions to prevent legionella forming which were discussed at the Legionella Risk Assessment in February 2022 (i.e. increasing temperatures of the water heaters in reception, Year 1 and Year 2 shared resources as well as removing dead legs in pipes) had not been completed.

2.2.4 All water heaters and thermostatic mixing values (TMVs) needed to be serviced and operating properly in order to prevent bacteria and legionella.

2.2.5 There was a leaking pipe from the header tank in the loft space above the men's toilets which needed to be repaired.

2.2.6 There was a broken double socket in the Year 3 end of the conservatory.

2.2.7 The lighting in the IT area of extension was making a buzzing sound.

2.2.8 Additional sockets were required in the IT area by the server room due to an extension lead being run from a socket several metres away which passed over a doorway.

2.2.9 A number of light bulbs were not working even after bulbs were changed in several rooms.

2.2.10 The majority of emergency lights failed in August 2023, September 2023, October 2023 and November 2023 (every monthly test).

2.2.11 The First Respondent was not compliant and within British Standards.

2.2.12 Some staff members were keeping items such as medical boxes in cupboards which had electrical distribution boards in them despite there needing to be a clear space of one metre between the electrical distribution boards and any storage items.

2.2.13 The fire evacuation policy was incomplete and needed updating urgently.

2.2.14 There was no record of a fire drill being carried out for over 2 years.

2.2.15 The First Respondent had different padlock keys for several gates which was a security and evacuation concern.

2.2.16 There were 3 broken panes of glass in the canopy roof which needed urgent remedial action.

2.2.17 There were several uneven slabs on the First Respondent's pathways which were trip hazards and therefore needed relaying.

2.2.18 Most Velux windows in the extension building of the First Respondent were showing signs of water damage and rot due to leaks.

2.2.19 There was an increase in mould in the Year 5 girls' toilets as well as several other areas where there was water damage

2.3 On the morning of 14 December 2023 at circa 6am, the Claimant forwarded his written list of issues of 9 November 2023 (cited at paragraph 1.2 of the list of issues) along with the below additional points to the Health & Safety Executive, the Second Respondent and the Third Respondent:

2.3.1 The staff room sink did not supply hot water, and Years 1 and 2 were without hot water in their toilets and shared resources.

2.3.2 It was a requirement under the Safety at Work Act 1974 to provide hot and cold water.

2.3.3 Emergency lighting was also a priority and a requirement under the Fire Regulatory Reform (Fire Safety) Act 2005 and Health & Safety at work Act 1974.

2.3.4 The necessity for regular fire drills and a fire evacuation policy were a priority for the First Respondent and a requirement under the Fire Regulatory Reform (Fire Safety) Act 2005.

2.3.5 The First Respondent needed a bin store at least 8 metres away from the First Respondent's buildings.

2.3.6 The slabs along a covered walkway on the First Respondent's premises in front of the extension were very slippery and greasy which needed resolution.

3 Did the Claimant disclose the information?

4 Did the Claimant believe the disclosure of information was made in the public interest?

5 Was that belief reasonable?

6 Did the Claimant believe that it tended to show that:

6.1 The First Respondent was failing or was likely to fail to comply with a legal obligation to which it was subject to. Those obligations being:

6.1.1 In relation to paragraphs 2.1, 2.2.1 – 2.2.5 and 2.3.1 – 2.3.2 & 2.3.5, the Safety at Work Act 1974.

6.1.2. In relation to paragraphs 2.1.1, 2.2.3 – 2.2.14 and 2.3.3 the Fire Regulatory Reform (Fire Safety) At 2005 and Health & Safety at work Act 1974.

6.1.3. In relation to paragraph 2.3.4 the Fire Regulatory Reform (Fire Safety) Act 2005.

6.1.4. In relation to paragraphs 2.2.15 – 2.2.19 and 2.3.6, the Health & Safety at work Act 1974.

6.2 The health and safety of staff, students and third-party users of the First Respondent including parents or contractors was likely to be endangered. The danger being:

6.2.1. In relation to paragraphs 2.1.1, 2.2.1 – 2.2.5 and 2.3.1, the likelihood of increased risk to bacteria leading to illness.

6.2.2. In relation to paragraphs 2.1.2 and 2.3.5, the potential for arson to lead to injury or loss of life.

6.2.3. In relation to paragraphs 2.1.1, 2.2.6, 2.2.7, 2.2.10 – 2.2.14 and 2.3.4, the risk of a fire leading to injury or loss of life.

6.2.4. In relation to paragraphs 2.2.8, the risk of tripping over the wire across the doorway would lead to injury.

6.2.5. In relation to paragraphs 2.2.16, the risk of glass falling and causing injury or death.

6.2.6. In relation to paragraphs 2.2.17 and 2.3.6, the risk of slipping or tripping which could lead to injury.

6.2.7. In relation to paragraphs 2.2.18 – 2.2.19, the risk of rot aggravating or creating respiratory illnesses or other associated conditions.

6.3 Was that belief reasonable?

7. If so, was the Claimant treated to his detriment as claimed at paragraph 8 below? And was that treatment because he had made the protected disclosure?

Detriment (Employment Rights Act 1996 section 48)

8. Did the following acts take place at all / as alleged by the Claimant and, if so, did they amount in law to a detriment:

~~8.1. The Third Respondent acting in a restrictive/obstructive manner so the Claimant found it difficult to do his job;~~

~~8.1.1. Ignoring/refusing the Claimant's requests to order materials/supplies to deal with repairs or maintenance for the Respondent.~~

~~8.1.2. Ignoring/refusing the Claimant's requests for specialists/contractors to be engaged to deal with repairs or maintenance for the Respondent.~~

~~8.1.3. Ignoring/refusing the Claimant's request for the new fire drill policy to be implemented.~~

~~8.1.4. Ignoring/refusing the Claimant's requests for a fire drill to be carried out in the school.~~

~~8.1.5. Refusing to meaningfully involve the Claimant in the health & safety inspection which was carried out by Nicky Jones in late October/November 2023.~~

~~8.1.6. Ignoring/refusing the Claimant's requests for the health & safety report and action plan completed by Nicky Jones from Oxfordshire County Council in or around October/November 2023.~~

~~8.1.7. On 1 November 2023, the Second Respondent requested the Claimant and his subordinate colleague, Paul Wilson to remain on gates once opened in the mornings and afternoons.~~

8.2. an unsatisfactory/negative reference was provided to St Edburg's on 13 December 2023 verbally and in writing by the Second Respondent on behalf of the First Respondent;

8.3. the Claimant was put on garden leave and told by the Second Respondent on 14 December 2023 that she had raised a complaint against him;

8.4. the Claimant's grievance was not dealt with appropriately in that:

8.4.1. A meeting with the Claimant to discuss the grievance was not held.

8.4.2. The Claimant was not given the chance to explain his grievance in further detail or provide further explanation on how he thought it should be resolved.

8.4.3. Mrs Porteous only met with members of the Respondent and thereafter communicated her decision to the Claimant.

8.4.4. The Claimant was not informed of his right to appeal. Mrs Porteous on the face of it simply met with the Second Respondent and assumed that position as the party line to be communicated to the Claimant.

8.4.5. The grievance was not conducted in accordance with the Acas Code of Practice on disciplinary and grievance procedures; and

8.4.6. an unsatisfactory/negative reference was provided to Woodstock CE Primary School on or around 19 January 2024.

8.7 If so, did the Claimant suffer any of the above detriments as a result of any of the protected disclosures in paragraphs 2.1 – 2.3 inclusive of the list of issues.