



EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: XY

Heard: in Sheffield on 7,8,9,12,13,14 and 15 January and 11 February 2026

Before: Employment Judge Ayre
Mr T Fox
Mrs J Lee

Representation

Claimant: Damian Robson, solicitor (in a personal capacity)

Respondent: Harry Wiltshire, counsel

JUDGMENT having been sent to the parties on 20 February 2026 and written reasons having been requested in accordance with Rule 60 of The Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Background

1. The claimant issued this claim on 20 March 2024 following a first period of ACAS early conciliation that started on 29 September 2023 and ended on 10 November 2023. A further period of early conciliation started on 19 March 2024 and ended on 30 April 2024.
2. A Preliminary Hearing took place on 18 October 2024 before Employment Judge James. At that hearing there was a discussion about the claims the claimant is bringing, the case was listed for a five day final hearing in April and May 2025, and case management orders were made.
3. A second Preliminary Hearing took place on 28 and 29 April 2025. At that hearing:

- 3.1. The Tribunal found that the claimant was disabled due to anxiety and depression from 23 October 2023.
- 3.2. The disability discrimination claims that predated 23 October 2023 were dismissed.
- 3.3. An application made by the respondent for an anonymity order and restricted reporting order was considered and granted;
- 3.4. An application made by the claimant to amend his claim was considered and refused;
- 3.5. A list of issues was identified;
- 3.6. The case was listed for this final hearing; and
- 3.7. Case management orders were made.

The hearing

4. The first day of the hearing was a reading day and the parties did not attend.
5. The third day of the hearing took place by Cloud Video Platform due to adverse weather. The claimant and his representative had technical issues and were able to join the hearing and see and hear others present in the hearing. Others present in the hearing could not see them, however. The parties were invited to make representations as to whether we should continue with the hearing. The claimant, his representative and the respondent were all happy to proceed, and it was the unanimous decision of the Tribunal that we should do so.
6. The seventh day of the hearing, and the morning of the eighth day were in chambers.
7. There was an agreed bundle of documents running to 628 pages. An additional document (a missing page from the respondent's grievance procedure) was added to the bundle by consent at the start of the third day of the hearing.
8. We heard evidence from the claimant, and on his behalf from Damian Robson, solicitor and friend. The claimant also produced a witness statement for Mike Jones, former teaching assistant. Mr Jones did not attend the hearing to give evidence, and his statement did not directly address the issues that we have to determine. We have read it but placed no weight upon it.
9. For the respondent we heard evidence from:
 - 9.1. Tracey Rowe, Director of Advanced HR
 - 9.2. C, Head Teacher of Z
 - 9.3. F, retired teacher and volunteer school governor

9.4. G, former member of the Management Committee of Z ; and

9.5. E, Service Director (Legal and Democratic Services) at XY.

Consideration of whether to continue the Anonymity Order and Restricted Reporting Order

10. At the Preliminary Hearing in April 2025 Employment Judge James made the following Orders:

RESTRICTED REPORTING ORDER

An Order prohibiting the publication in Great Britain, in respect of these proceedings, of identifying matter in a written publication available to the public or its inclusion in a relevant programme for reception in Great Britain. 'Identifying matter' in relation to a person means 'any matter likely to lead members of the public to identify the complainant or such other persons (if any) as may be named in the Order.

ANONYMISATION ORDER

An Order that there shall be omitted or deleted from any document entered on the Register, or which otherwise forms part of the public record, including the Tribunal's hearing lists, any identifying matter which is likely to lead members of the public to identify any of the persons specified as being either a party to or otherwise involved with these proceedings.

Both Orders apply to five named individuals and two named organisations and were to remain in force until 15 January 2026 unless revoked earlier.

11. Employment Judge James also directed that the Tribunal at the final hearing would consider whether the orders should be continued or not.

12. At the start of the second day of the hearing we discussed briefly whether the Restricted Reporting Order and Anonymisation Order should be extended or not. It was agreed that that question would be considered at the conclusion of the evidence.

13. A member of the press attended the hearing and was provided with a copy of the Restricted Reporting Order and Anonymisation Order. She asked to make submissions on the question of whether the Orders should be extended and was permitted to do so. She was asked to send any written submissions to the Tribunal by 4pm on Tuesday 13 January 2026 and informed that she would also be able to make oral submissions.

14. On the third day of the hearing the Tribunal ordered that the Anonymisation Order should apply to the claimant also. Before doing so we gave the parties and the journalist the opportunity to make representations. Both parties were in favour of the anonymisation order being extended to cover the claimant. The journalist told the Tribunal that she had been able, through a simple internet search, to link the claimant to the school at which he worked. All parties were keen to avoid the identification of the school, and the school was already covered by the Restricted Reporting Order.

15. At the end of the hearing the Restricted Reporting Order and Anonymisation Order were extended for the reasons set out separately.

The issues

16. A list of the issues to be determined at the hearing was set out in the Record of the Preliminary Hearing before Employment Judge James on 28 and 29 April 2025, save that the question of disability has already been decided.
17. At the start of the hearing the parties confirmed that the issues for consideration in this hearing were those set out in the Record of the Preliminary Hearing. During closing submissions however, the claimant withdrew thirteen of the seventeen allegations of discrimination.
18. The provisional timetable for today's hearing, which was set at the last Preliminary Hearing, did not allow time to deal with matters of remedy, and the parties had not addressed remedy in their evidence. It was agreed at the start of the hearing that questions of remedy will, if necessary, be dealt with on another occasion and that this hearing would deal with liability only.

Time limits

19. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 21 December 2023 may not have been brought in time.
20. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? In particular:
- 20.1. Was ACAS Early Conciliation commenced within three months of the act to which the complaint relates?
- 20.2. If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- 20.3. If not, was there conduct extending over a period?
- 20.4. In relation to any failure to do something, when did the respondent decide not to do that something; alternatively, when did the respondent do an act inconsistent with doing that something; or if there was no inconsistent act, by what date might the respondent reasonably have been expected to do it?
- 20.5. Was ACAS Early Conciliation commenced within three months of the end of that period/decision/inconsistent act/date?
- 20.6. If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period/decision/inconsistent act/date?

- 20.7. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? In particular:
- 20.7.1. Why were the complaints not made to the Tribunal in time?
 - 20.7.2. Is it just and equitable in all the circumstances to extend time?
21. Were the whistleblowing detriment complaints made within the time limit in section 48 of the Employment Rights Act 1996? In particular:
- 21.1. Was ACAS Early Conciliation commenced within three months of the act complained of?
 - 21.2. If applicable, was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained of?
 - 21.3. If not, was there a series of similar acts or failures and was ACAS Early Conciliation commenced or was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
 - 21.4. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - 21.5. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period thereafter?

Unfair dismissal

22. Was the claimant dismissed? Did the following things happen:
- 22.1. Did the respondent subject the claimant to overbearing supervision? For example, Mrs B, the Assistant Head, and C his line manager, during a 90 minute discussion behind closed doors in or about March 2019?
 - 22.2. Did C send an email questioning the claimant's work preparation for lessons on 3 September 2019 and cc this email to Mrs B?
 - 22.3. Did the respondent subject the claimant to covert surveillance? The claimant says he was informed by the caretaker on or about 5 September 2019 that managers had asked that spyware be placed on his computer.
 - 22.4. Did C and Mrs B confront the claimant in his classroom in November 2019 and comment negatively on aspects of his teaching despite all pupils taught by the claimant passing their exams?
 - 22.5. Was the claimant told in front of several female staff by Tina Metcalfe (science teacher) in November 2019 that the teaching staff had to undertake additional training in marking English due to the claimant not marking work properly?

- 22.6. Did Tina Metcalfe make a complaint to the school's exam officer in May 2021, falsely alleging that the claimant had given a pupil answers to an assessment used to determine GCSE science grades, despite the claimant not being present when this assessment took place?
- 22.7. Were pupils unreasonably communicated with by other teaching staff in relation to the claimant's performance? For example, in February 2022, during a geography lesson did C ask a pupil if the claimant was a good teacher?
- 22.8. Did XY's Whistleblowing Officer, E, dismiss the claimant's concerns in an email dated 16 February 2023, in which the claimant raised the issue of numerous staff having long-standing relationships with Mrs B and her husband?
- 22.9. Did XY's Whistleblowing Officer, E, fail to consider or address the claimant's concerns about his own mental health, which were explicitly raised in an email dated 16 February 2023?
- 22.10. Did the then headteacher, D, visit the claimant's home on 5 June 2023, whilst he was signed off work due to stress and anxiety, with the primary purpose of persuading him to return to work?
- 22.11. Did XY's Whistleblowing Officer, E, fail to consider or act upon the claimant's concerns about the handling of his grievance, which the claimant raised during a telephone conversation with E on 5 December 2023?
- 22.12. Was the claimant told by XY's Safeguarding Board during a telephone conversation on 22 December 2023 that there was nothing they could do regarding Mrs B making false allegations to the police about the claimant, despite the claimant explaining that these allegations were having a severe impact on his mental health?
- 22.13. Was the claimant accused of a safeguarding issue relating to a tennis match with a male agency teacher in December 2022 by Mrs B, due to him allegedly making sexually inappropriate comments in a PE lesson when a tennis ball hit the agency worker colleague in the groin?
- 22.14. In December 2022 did the then Head, D, ask the claimant to apologise to a Teaching Assistant after the above incident to 'make it go away'?
- 22.15. Was the claimant's grievance, submitted on 19 July 2023, (1) dealt with in a prejudicial, unfair and unreasonable manner, and result in an unfair and prejudicial outcome? (2) Was the claimant made to feel he had raised inappropriate concerns about Mrs B, were his concerns trivialised, and was he questioned inappropriately? (3) In the grievance appeal, was the claimant described as having an obsession with Mrs B and her partner/spouse?
- 22.16. Was the claimant told by a school governor, F, on 14 September 2023, during the grievance process, that he would have considered resigning when he recognised that he had a mental health condition?

- 22.17. Was a complaint made by Mrs B to the police that the claimant was demanding money by menaces from Mrs B, leading to a visit from the police to his home address in December 2023?
- 22.18. Was the claimant told by XY's whistleblowing officer, E, in December 2023, that the claimant was no longer to contact XY about the safeguarding concerns he had raised about Mrs B?
23. Did that breach the implied term of trust and confidence? In particular:
- 23.1. Did the respondent behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and
- 23.2. Did the respondent have reasonable and proper cause for doing so?
24. Was the breach a fundamental one? (A breach of the implied term of trust and confidence is by definition a fundamental breach).
25. Did the claimant resign in response to the breach? Was the breach of contract a reason for the claimant's resignation?
26. Did the claimant affirm the contract before resigning? Did the claimant's words or actions show that he chose to keep the contract alive even after the breach?
27. If the claimant was dismissed what was the reason or principal reason for dismissal – i.e. what was the reason for the breach of contract? Was the reason that the claimant made a protected disclosure? If so, the dismissal will be unfair.
28. If the reason for the dismissal was not a protected disclosure, was it a potentially fair reason?
29. Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

Protected disclosure

30. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? In particular:
- 30.1. What did the claimant say or write? When? To whom? The claimant relies on the following disclosures:
- 30.1.1. Emails sent to the respondent's whistleblowing officer on 26 January and 16 February 2023, alleging that Mrs B was married to and living with a convicted paedophile, who had been convicted of 19 counts of sexual offences against primary school aged girls.
31. Did the claimant disclose information?

32. Did the claimant believe the disclosure of information was made in the public interest?
33. Was that belief reasonable?
34. Did the claimant believe that it tended to show that:
- 34.1. A person had failed, was failing or was likely to fail to comply with any legal obligation;
 - 34.2. The health or safety of any individual had been, was being or was likely to be endangered; and/or
 - 34.3. Information tending to show any of these things had been, was being or was likely to be deliberately concealed?
35. Was that belief reasonable?
36. If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

Protected Disclosure Detriment

37. Did the respondent do the things set out in paragraphs 22.16, 22.17 and 22.18 above?
38. By doing so, did it subject the claimant to detriment?
39. If so, was it done on the ground that the claimant made a protected disclosure?

Harassment related to sex / disability

40. Did the respondent do the following things:
- 40.1. In relation to sex, the things set out at paragraphs 22.1, 22.13 and 22.14 above; and
 - 40.2. In relation to disability, the thing set out at paragraph 22.15(3) above?
41. If so, was that unwanted conduct?
42. In relation to the allegations at paragraphs 22.1, 22.13 and 22.14 above, did that conduct relate to sex?
43. In relation to the allegation at paragraph 22.15(3) above, did that conduct relate to disability?
44. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the

claimant?

45. If not, did it have that effect, taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect?

Direct sex or disability discrimination

46. Did the respondent do the following things:

46.1. In relation to sex, the things set out at paragraphs 22.1, 22.13 and 22.14 above; and

46.2. In relation to disability, the thing set out at paragraph 22.15(3) above?

47. Was that less favourable treatment? Was the claimant treated worse than a hypothetical comparator was treated?

48. If so, in relation to the allegations at paragraphs 22.1, 22.13 and 22.14 above, was it because of sex?

49. In relation to the allegation at paragraph 22.15(3) above, was it because of disability?

50. If disputed, did the respondent's treatment amount to a detriment?

Findings of fact

51. The following findings of fact are made on a unanimous basis.

Background

52. The claimant was employed by the respondent to work as a class teacher at school Z from 1 January 2019 until he resigned with immediate effect on 22 December 2023.

53. The claimant taught small classes of pupils, many of whom had special health or educational needs and who were vulnerable. He was a good performer and there was no evidence before us of any capability issues.

54. From the time the claimant began working at Z, the Assistant Head Teacher was Mrs B. She was also the deputy designated safeguarding lead. She is married to and lives with Mr B who was, many years ago, convicted of sex offences involving minors. Mr B has served a prison sentence and been rehabilitated. He remains on the sex offenders' register but has not reoffended.

55. Mrs B has been employed at the school for a number of years. She declared her husband's conviction and steps have been taken by various authorities to protect the children at the school from any potential risk that may be posed by her relationship

with Mr B. Mrs B's ongoing employment at school Z has been approved and validated by a number of agencies, including :

55.1. XY;

55.2. The Local Authority Designated Officer (LADO);

55.3. Ofsted;

55.4. Social services;

55.5. Probation services; and

55.6. The police.

56. Mrs B was interviewed by Ofsted as part of its validation process and Ofsted has granted specific consent for her to work at Z.

57. Z has in place a risk assessment for Mrs B which is reviewed regularly. That risk assessment is designed to protect the children from any potential risk posed by Mrs B's relationship with her husband. In addition, Mrs B is a safeguarding specialist herself.

58. The claimant has known about Mr B's convictions since February 2019. He raised no concerns about any potential safeguarding risk during the first four years of his employment at Z.

59. The majority of the staff at school Z are female, but this is the norm both in education and in schools similar to school Z. At the time of the claimant's employment there was a male Deputy Head and other male members of staff, although the workforce was predominantly female.

60. From 2019 until September 2021 the claimant reported to C, with the exception of a period of time in 2020 during which C was on maternity leave.

Issue 1 : Alleged overbearing supervision including a 90 minute discussion behind closed doors

61. The claimant told the Tribunal that he had raised concerns with C about negative comments being made in school about men, and that having raised those concerns he was called into a book scrutiny meeting with C and Mrs B, during which C and Mrs B spent ninety minutes questioning his ability to set and mark work. He suggested that they had been trying to find fault and subjected him to hostile questioning.

62. We also heard evidence from C on this issue. She said that book / work scrutiny is part of the school's quality assurance programme and that all members of teaching staff are subject to it. The claimant was not the only one subjected to a book/work scrutiny and he and others were given advance notice of the observation. In March

2019 all teaching members of staff at Z were subject to book/work scrutiny. The feedback from the scrutiny was shared with the Senior Leadership Team and teachers were given individual feedback verbally.

63. There was before us in evidence a document produced by C summarising the feedback on the claimant, and on three female members of teaching staff. The feedback on the claimant was very positive.
64. The claimant suggested that the book/work scrutiny amounted to overbearing supervision. There was no evidence that that was the case.
65. There was no evidence before us to suggest that the claimant was subjected to any more supervision than any other member of staff. C was very complimentary about the claimant's performance and described him as a teacher who met all of his targets and teaching standards.
66. We prefer C's evidence on this issue, which was consistent with the documentary record of the supervision and which was not really challenged in cross examination. We do not accept that the claimant was subjected to a 90 minute discussion behind closed doors. We note also that the claimant made no complaint about this incident until several years later.
67. The claimant alleged that he was subjected to overbearing supervision because of his sex, and in the alternative, that the supervision amounted to harassment related to sex. In cross examination however he accepted that the alleged overbearing supervision was not because he was a man.

Issue 2 : Email sent by C allegedly questioning the claimant's work preparation

68. On 3 September 2019 C, who was at the time the claimant's line manager, sent an email to the claimant which was copied into Mrs B. In the email C wrote:

"Please can you upload your planning to the server ASAP. This should have been done yesterday.

Could you also send timetables for [] and [] lessons (via email) including which adults will be attending with them to myself and Mrs B by the end of the week.

Just to confirm [] is happy to collect [] Tuesday and Wednesday's at 3pm. You will need to take over from which ever staff member is accompanying [] to the lesson once all of your class have gone home. Grandma is going to be collecting []...."

69. The reason this email was sent was because the claimant's planning should have been uploaded to the school's server the day before but had not been. The email was only sent to the claimant because he was the only member of staff not to have uploaded his planning on time. The email does not question the claimant's work preparation for lessons but merely reminds him to do something that he should have done and had not done. It was copied to Mrs B, but specifically referred to her in the email so there is nothing untoward in that.

Issue 3 : Subjecting the claimant to covert surveillance

70. In 2019 the claimant and his wife set up their own business, a company called FitWins. In the summer of 2019 C was approached separately by two teaching assistants who told C that the claimant's lessons were shorter than expected and that they had seen the claimant working on his new business using his school laptop and mobile telephone. C was also contacted by the parent of a pupil, who was a member of the school's management committee. The parent said they had been told by their child that the claimant was 'always working on his new business'.
71. C spoke to the school's caretaker who also supported the school with ICT issues, and asked him if there was any way of seeing what the claimant was doing on his laptop. The caretaker replied that the school could check the claimant's history, but this did not happen.
72. C reported her concerns to D who contacted the school's HR advisors for advice.
73. It was subsequently decided that, rather than accuse the claimant of carrying out work on his personal business during school hours, in the future all staff should be required to turn their laptops so that they were facing the class, to avoid any suggestions that they were doing anything inappropriate on the laptops.
74. On 5 September 2019 C sent an email to all staff in the following terms:
- "New Safeguarding initiative*
- Hi all,*
- As part of a new safeguarding initiative it is now a requirement for all adult laptops/computers to be positioned in a way that the screen can be seen at all times. This might mean changing the position of your desk. Your laptops/computers should have the screen displayed towards the class...."*
75. In the meantime the caretaker had spoken to the claimant, without being asked to, and told him to be careful of what he was doing with FitWins because if any spyware were to go on to his laptop, it would be possible to see what he was doing.
76. The claimant interpreted this as meaning that the school was going to put spyware onto his laptop. In fact, this was not the case. When interviewed later about this incident, as part of the grievance process, the caretaker said that he had not been asked to put spyware on the claimant's computer and had not done so.
77. We find that the respondent did not subject the claimant to any covert surveillance at any point during his employment.

Issue 4 : Confronting the claimant in his classroom

78. The claimant alleged that in November 2019 C and Mrs B confronted him in his classroom and commented negatively on aspects of his teaching despite all pupils taught by him passing their exams. He did not adduce any evidence in support of

this allegation. There was no evidence before us of the claimant having complained about the alleged incident until years later.

79. C gave evidence that the alleged incident did not happen, because by that time she had been told by the then head teacher, D, not to carry out any further meetings with the claimant because the claimant had complained about her.

80. C's evidence was not challenged and is accepted by the Tribunal. It was clear from C's evidence that she rated the claimant as a teacher. We find on the evidence before us that C and Mrs B did not confront the claimant in his classroom in November 2019 and comment negatively on aspects of his teaching.

Issue 5 : Comments re additional training in marking English

81. The claimant alleged that in November 2019 a science teacher told him in front of several female staff that the teaching staff had to undertake additional training in marking English due to the claimant not marking work properly.

82. Again, the claimant did not adduce any evidence in support of this allegation.

83. C gave evidence that in November 2019 the school had been informed by an exam board that there were inconsistencies in the marking of exam papers within the school. The exam board recommended that staff undergo training to reduce inconsistencies. The head teacher, D, instructed all staff to undergo training. The training took place one evening after school and was attended by 8 members of staff including the claimant. The claimant was not blamed for the training at any point.

84. C's evidence on this issue was not challenged and we accept it. The claimant made no complaint about this issue until his Employment Tribunal claim.

85. We therefore find that the claimant was not told in front of several female staff that teaching staff had to undertake additional training in marking English due to the claimant not marking work properly.

Issue 6 : Complaint to the exam officer about assisting a pupil

86. The claimant alleged that in May 2021 the same science teacher made a complaint to the school's exam officer, falsely alleging that the claimant had given a pupil answers to an assessment used to determine GCSE science grades, despite the claimant not being present when the assessment took place.

87. The claimant said in his witness statement that after he had been informed of the allegation he had spoken to the Deputy Head about it and that the Deputy Head had confirmed that he had not been in the room during the assessment so could not have helped the pupil.

88. C's evidence was that no complaint had been logged in May 2021 and that if a complaint had been made, it would have had to be logged with the Joint Council for Qualifications as suspected malpractice. There was no evidence before the Tribunal

of such a complaint being logged.

89. On 11 May 2021 the claimant wrote to the then head teacher, D, raising a formal grievance about what he described as “*spurious allegations by and long-term harassment by*” the science teacher. The grievance is detailed and runs to 4 pages. The claimant complains at length about the science teacher, but not about any other members of staff. In the grievance the claimant wrote that:

“I wish to outline that this grievance is no reflection on the management or leadership within [Z]....

I can confirm that I was with pupil X in the presence of during the time period from 1.45 to 2.00 pm approx (other than when left the room for a brief 2-3 mins) and that no malpractice occurred. I did not, as [] has suggested ‘give [] all the answers to the paper.’

90. The claimant reiterates in the grievance that his only complaint was against the science teacher. After receiving the grievance, the head teacher spoke to the claimant about it. The claimant subsequently withdrew the grievance.
91. This complaint demonstrates that the claimant understood how to raise grievances and was willing to do so if he felt it necessary.
92. During his evidence to the Tribunal the claimant accepted that he had spoken to the student during the examination to try and help him, as he described it, get started with the examination. He told the student that he had to ‘put an X in the box that he thought was the right one’. The student asked him what a conical flask was, and the claimant replied, ‘haven’t you used one’. The claimant also accepted in his evidence that he had been present with the student alone in the room for a few minutes.
93. The claimant’s evidence on this issue is not credible and has changed over time. In the grievance he raised in May 2021 he said he was in the room with the pupil for 15 minutes (with the Deputy Head). In his witness statement and in the list of issues he said he hadn’t been in the room at all at the time of the assessment. Under cross examination however he accepted he had been in the room but only for 2-3 minutes,.
94. We prefer the respondent’s evidence on this issue. We find that the claimant tried to help the student to get started with the exam but did not give him answers. It was, in these circumstances, understandable that the science teacher, who was not in the room so could not have heard the nature of the help the claimant was giving to the student, was concerned that he was giving the student answers.
95. In the event no formal complaint was made and the issue was resolved informally when the head teacher discussed it with the claimant.

Issue 7 : Asking a pupil whether the claimant was a good teacher

96. The claimant alleged that pupils were unreasonably communicated with by other teaching staff in relation to the claimant’s performance, and that in February 2022 C asked a pupil if the claimant was a good teacher

97. In his witness statement the claimant said that C had observed him teaching a lesson on 4 March 2022, and that during the lesson she began asking pupils questions about his ability as a teacher. He said that C asked one pupil if the claimant was a good teacher, and that at the end of the lesson the pupil had approached him and said, 'I'm worried about you....C doesn't like you and I'm worried you're going to get sacked'.
98. The claimant said that he had spoken to the head teacher, D, and complained about this. He also said that he had not been given any feedback on the lesson.
99. C's evidence was that in February 2022 the senior leadership team decided to carry out formal lesson observations of all teachers and wrote to the staff informing them that this would happen. Lesson observations are a normal event for teachers at this and other schools.
100. C observed a geography lesson taught by the claimant on 4 March 2022. During the observation she asked questions of the pupils, which is normal practice. She did not spend particularly long with any individual pupil. She did not ask any pupil about the claimant's performance and the questions were framed to see if the pupils could remember what they had been learning.
101. C accepted that she may have asked pupils whether they enjoyed geography lessons, but she did not ask them whether they thought the claimant was a good teacher.
102. After the observation C gave the claimant positive feedback on what she had seen. There was a medical emergency during the lesson as one of the pupils had a seizure. The claimant managed this situation very professionally, and C told him as much.
103. C also prepared a written feedback document which she gave to the claimant's line manager who, by that time, was the Deputy Head of the school. In the feedback C wrote that the lesson was well prepared and structured, that there had been disruptions due to the health needs of a pupil which were well managed, and that the classroom was extremely calm, with good behaviour. There were no areas for development or follow up identified, and C concluded her comments with:
- "Thank you so much for letting me observe your lesson. Overall there were some strong positives, the relationships in the classroom with pupils, the calm atmosphere and your ability to manage interruptions and disturbances so that learning was not affected...."*
104. We prefer C's evidence on this issue to that of the claimant. She was a credible and consistent witness and her account was supported by the written feedback she prepared at the time. The claimant did not hear the conversation between the pupil and C, and was reliant on what he said the pupil had told him after the event.

Issue 8 : Dismissing concerns raised in an email of 16 February 2023

105. The claimant alleged that XY's whistleblowing officer, E, dismissed concerns that he raised in an email dated 16 February 2023 in which the claimant raised the issue of numerous staff having long standing relationships with Mr and Mrs B.
106. On 25 January 2023 the claimant, Mrs B, and others were part of an interview panel which was due to interview candidates for the position of head teacher, as the current head teacher, D, was due to retire. The interview panel, which comprised at least five people, were all in a room waiting for the interviews to start.
107. Earlier that morning a local authority had featured in the national news in connection with serious safeguarding failings. The claimant began talking about the issue to Mrs B and said that the Local Authority Designated Officer should be held to account for what had happened. Mrs B told the claimant that there was a different LADO in place now, and that the claimant should be careful.
108. The claimant then said, 'I will say what I like' and Mrs B replied that she did not appreciate the way he had spoken to her. Mrs B was the Assistant Head of the school at the time and the claimant was a classroom teacher.
109. The claimant stood up, threw his cup in the sink, and walked out of the room. Before leaving he said words to the effect of 'maybe we should talk about your husband' and suggested that the LADO should look into Mrs B's relationship with her husband. The other people present in the room heard this comment,
110. Mrs B then left the room to tell the head teacher, D, what had happened. D carried out an investigation. She interviewed all of those present on 25th including the claimant.
111. Mrs B perceived the claimant to be aggressive during the exchange. Another member of staff who was present said, when interviewed by D about the incident, that he did not perceive the claimant to be aggressive, but described the situation as 'easily the worst atmosphere that I have experienced while at Z'.
112. In his interview the claimant accepted that he had said 'let's talk about Mrs B's relationship with her husband' . He was asked three times by D if he thought his comment was appropriate and professional and did not reply. He was then asked if he was prepared to apologise and refused to do so. He then brought up other incidents which he described as bullying, and the issue of his own mental health.
113. On 25 January 2023, after the incident, the claimant contacted E, who is XY's whistleblowing officer, to raise concerns about Mrs B working at Z whilst also living with a convicted sexual offender. He also told E that he was worried that he was being targeted at work as a result of raising safeguarding concerns and raised the issue of relationships between teachers at the school and Mr B.
114. After the telephone conversation E sent an email to himself as an aide memoire. In the email he wrote:

“[Mrs B]

[Z]

[Mr B]

A number of former colleagues of [Mr B] now employed at the school

[Claimant] – teacher at the school....

Wants to be treated as a whistleblower”

115. The claimant followed up on his conversation with E with an email on 26 January in which he wrote:

“...The main concerns I have is that Mrs B, Assistant Head at Z, is working with children whilst also living with a convicted sexual offender....She....has access to information about children, which raises concerns about her relationship with her husband who is a convicted paedophile....I am concerned that safeguarding measures are not in place to prevent collusion with her husband....

Unfortunately, I have concerns that raising this issue, given the gravity of it, will cause serious reprisals for me in school. I have been aware of this and suffered reprisals as a result that have been overlooked and dismissed....

Since making my statement to you over the phone, I am feeling some anxiety having made this disclosure, and would like to minimise the stress involved for my own mental health. Is it possible that I will be updated accordingly about what might happen next? I am feeling tremendous stress currently.

I just want to work and help children in their learning and make sure they are safe, and try to work in a professional environment.”

116. In the email the claimant included links to press reports of the conviction of Mr B.

117. E replied to the claimant’s email on 1 February in an email in which he thanked the claimant for his email and telephone call, and wrote:

“I have logged your contact as a Whistleblow & as far as I am concerned the protections contained with XY’s Whistleblowing policy will apply. I have raised your concern, anonymously, with a senior member of the Children’s Directorate and they are looking into the matter and gathering information. I will endeavour to keep you well informed of any outcomes, however you will appreciate that that may be difficult as I can not share other people’s personal information with you.

I hope that the steps that we have taken and the knowledge that I have not shared your information will give you some comfort.”

118. E treated the claimant’s email as a protected disclosure and referred it to a senior member of the Children’s Directorate with a request that they look into it. He did not disclose the name of the claimant to the Children’s Directorate or to the school.

119. On 26 January 2023 the claimant began a lengthy period of sickness absence. He did not return to work at any time prior to his resignation in December 2023.

120. The claimant wrote again to E on 16 February. In that email he asked for an

update on the investigations into his concerns. He also wrote that:

"I am feeling extreme stress as there are other issues related to this matter, regards collusion between four members of staff that either worked with Mr Bor subsequently came from the school and know Mr B well or have benefitted from cronyism and nepotism due to their relationship with Mr B and/or Mrs B. It seems very worrying that they are employed at a school together that isn't 'round the corner' or in the same town. I am aware that I am likely to be ostracised and am very vulnerable for raising concerns and have been given some support from a Whistleblowing organisation regards this. They have suggested I may need to report my concerns to the DfE, but am hesitant to do so."

121. On 22 February E replied to the claimant thanking him for his email and stating that: *"We continue to investigate the matter you made us aware of. I should be clear however that our investigation is limited to the employment of Mrs B, awareness of Mr B and assurances around that issue. We are not considering the other issues which you have now raised."*

122. E sent a further email to the claimant on 10 March setting out his conclusions on the concerns raised by the claimant. His email included the following:

"...I want assure you that your concerns have been handled in line with the Council's Whistleblowing Policy and should in no way lead to any negative reprisals for you. I have not shared your identity with others. Thorough enquiries have been made into the issues. I can confirm that the outcome of those enquiries is that I am assured that both [XY] and [] (including their respective Local Authority Designated Officers) and the school were fully aware of the circumstances pertaining to Mr B's criminal record, Mrs B's employment at the school and associated safeguarding risks. I can also confirm that I am satisfied that appropriate and robust safeguarding measures are in place in this regard and that these are (and will continue to be) regularly reviewed.

Nevertheless can I thank you for raising your concerns with XY and I hope you are reassured by my findings and response."

123. The claimant did not contact E again after receiving this email on 10 March until December.

124. It is clear from the aide memoire written by E at the time, and from E's evidence to the Tribunal, that the issue of the relationship between teachers at the school and Mr B was discussed on 25 January when the claimant called E. We find that E did consider the issue regarding the recruitment of staff when the claimant raised it in their conversation on 25 January. However, E concluded that the issue should not be investigated as in his view there was no evidence of wrongdoing provided by the claimant. In addition, in E's experience it is common practice for former colleagues to follow each other to new places of work.

125. E therefore decided that the issue of recruitment was outside the scope of the whistleblow and should not be investigated. Unfortunately however, when he told the claimant he would not be investigating the recruitment / collusion issue he did not

explain why.

Issue 9 : Failure of E to consider or address concerns about the claimant's health

126. In both of the emails sent by the claimant to E on 26 January 2023 and 16 February 2023 the claimant raised the issue of his mental health.

127. E made no mention of the claimant's health in any of the emails he sent to the claimant or in his witness statement. There was no evidence before the Tribunal to suggest that E had considered or addressed the claimant's concerns about his mental health. We find that he did not do so. E's focus was on the whistleblowing concerns raised by the claimant.

Issue 10 : Visit to the claimant's home on 5 June 2023

128. The claimant complained that the then head teacher of the school, D, visited his home on 5th June 2023, whilst he was signed off work due to stress and anxiety, with the primary purpose of persuading him to return to work.

129. The claimant did not give any evidence on this issue. C's evidence was that the claimant had school property at his home address that was needed, and that the head teacher, D, contacted him to arrange to meet him to collect the property and catch up.

130. Arranging to meet staff at home like this is normal practice. D wanted to recover property that the claimant had and to encourage him to come back to work because he was a valued member of teaching staff, and if he returned to work before the summer holidays, he would be paid during the holidays.

Issue 11 : Failure by E to consider or act upon concerns about the grievance

131. On 5 December 2023 the claimant telephoned E to raise concerns about the panel that had been appointed to hear his grievance appeal. He said that he believed that the process was not fair or independent, in particular because G had been appointed to the panel and had a prior professional relationship with Advanced HR who had advised Z on the grievance process.

132. E told the claimant that his concerns needed to be addressed through the grievance process and through his solicitor, as it was not something that could properly be addressed through the whistleblowing process. By that time E was aware that the claimant had instructed a solicitor and been through the ACAS early conciliation process with a view to bringing an Employment Tribunal claim. E was the head of XY's legal team and it would have been inappropriate for him to discuss the grievance, which forms part of these proceedings, with the claimant.

133. E took no further action in relation to the complaints made by the claimant about the grievance process, other than to instruct a member of his team to write to the claimant informing him not to make any further contact other than in relation to whistleblowing matters.

134. On 11 December 2023 a member of E's team wrote to the claimant's solicitor in the following terms:

"Dear Sirs

Further to my previous email, I am instructed that your client contacted [E] directly last week to discuss the ongoing employment matter and has made a further attempt to contact [E] today. We do not consider that this is appropriate in the circumstances and we therefore ask that he refrain from contacting [E] any further to discuss the claim.

Should [the claimant] wish to make a further whistleblow then he can of course contact [E] in that regard.

Kind regards"

Issue 12 : Comments by the Safeguarding Board on 22 December 2023

135. The claimant alleges that he was told by XY's safeguarding board during a telephone conversation on 22 December 2023 that there was nothing they could do regarding Mrs B making false allegations to the police about the claimant, despite the claimant explaining that these allegations were having a severe impact on his mental health.

136. This allegation is based upon the premise that Mrs B made false allegations about the claimant to the police and relates to comments recorded in a report made by the police of a call with Mrs B on 10 December 2023. The note of that call records that Mrs B told the police that the claimant *"has been repeatedly making malicious complaints to their work about her. She stated that [the claimant] has made it known to other colleagues that he is in a lot of debt and when he has made these complaints about [Mrs B] he had demanded upwards of £90,000 off of her to help him clear his debts. [Mrs B] stated there is no reason for the suspect to be making these complaints other than to make attempts for his own financial gain. We discussed this and agreed on Words of advice for now...."*

137. We do not find that the comments made to the police by Mrs B on 10 December were deliberately false. The claimant accepts that in July 2023 his solicitor had written to the respondent setting out settlement terms. In addition, by the time of the conversation with the police, ACAS early conciliation had taken place. We find, on balance, that it is most likely that Mrs B was aware of this and that was what she was referring to when speaking to the police.

138. E's evidence to the Tribunal, which we accept, was that on 22 December 2023 the claimant contacted XY's Safeguarding Adults department which is separate to the safeguarding board. We find that the person the claimant spoke to advised him that he should raise any health concerns to his therapist or GP, and that any legal concerns should be reported by calling the police on 101 or 999.

Issue 13 : PE lesson involving a tennis match

139. The claimant alleged that in December 2022 Mrs B accused him of a safeguarding issue relating to a tennis match with a male agency teacher and that it was alleged that he made sexually inappropriate comments.
140. In December 2022 the claimant was teaching a PE lesson together with teaching assistants, one of whom was a male agency worker. The claimant was the teacher in charge of the lesson. During the lesson, which was an indoor tennis session, a tennis ball almost hit the male teaching assistant in the groin, following which there was laughter and the male teaching assistant commented that he did not want any more children.
141. A female teaching assistant, who was also present in the lesson, was uncomfortable about the incident and approached C after the lesson to raise concerns. She told C that she felt very uncomfortable and wished to report her concerns about the male agency worker. C told her to speak to the head teacher, D.
142. The teaching assistant put her concerns about the male teaching assistant in writing to the head teacher and the concerns were reported to the agency that engaged the individual. The agency wanted to report their employee (the male teaching assistant) to the LADO.
143. There was no complaint made about the claimant, nor any suggestion that he was involved in a safeguarding issue. The only mention of the claimant in relation to the incident was that the teaching assistant told D that she was upset that the claimant had not stopped the inappropriate behaviour by the agency member of staff, as the claimant was in charge of the lesson.
144. At no point was the claimant himself accused of a safeguarding issue, nor was there ever any suggestion that the claimant may be reported to the safeguarding authorities. The school did not make any report about the incident to the LADO.
145. The issue of the PE lesson was considered as part of the claimant's grievance, and in the grievance appeal outcome the appeal panel concluded that:

"...it was evidenced that the safeguarding concern was not about your conduct. Your female colleague KH was upset after the incident, being two men playing tennis against herself and a female pupil and the way it was handled. You stated that you couldn't understand why a female could have felt intimidated in this situation and that nothing happened. The panel were concerned that you could not consider anyone else's feelings and you had no sensitivity towards this...."

Issue 14 : Request to apologise to a teaching assistant

146. After the incident in the PE lesson in December 2022 the head teacher D spoke to the claimant to get his version of what had happened during the lesson. She told the claimant that she didn't think he had done anything wrong. She did however ask whether the claimant would consider apologising to the female teaching assistant because she was upset. The claimant initially said he would not apologise but subsequently did so.

147. The reason why D asked the claimant to apologise was because she wanted to try and nip the incident in the bud and avoid it escalating, and she thought that an apology from the claimant, who was the teacher in charge of the lesson, might appease the female teaching assistant. During the investigation into the claimant's grievance D was told that the claimant alleged that there had been a malicious and vindictive allegation against him. D explained that the female teaching assistant was upset about the incident and that, when she'd asked her what she wanted the teaching assistant replied, 'an apology'.
148. The male teaching assistant had his contract terminated after the incident, and there was no suggestion by D that the claimant had done anything wrong. D's approach to managing this incident was successful because no formal complaint was made.
149. After the event, D gave the claimant a bottle of wine. The reason she gave him the wine was nothing to do with the PE lesson incident, but because the claimant had told her that his FitWins business was 'going down the pan' and that he was stressed. As a gesture of goodwill, she gave the claimant a bottle of wine and told him to go home and relax.

Issue 15 : The claimant's grievance

150. On 19 July 2023, at the end of the summer term when the school was about to break up for the summer holidays, the claimant raised a formal grievance. In his claim to the Tribunal, he made three separate complaints about the way in which his grievance was dealt with:
- 150.1. He alleged it was dealt with in a prejudicial, unfair and unreasonable manner, resulting in an unfair and prejudicial outcome;
- 150.2. He claimed that he was made to feel he had raised inappropriate concerns about Mrs B, that his concerns were trivialised, and that he was questioned inappropriately; and
- 150.3. He complained that in the grievance appeal he was described as having an obsession with Mr and Mrs B.
151. The claimant's solicitor sent the formal grievance to D on 19 July 2023. The grievance letter is headed "*Formal Grievance: Sex Discrimination and Detrimental Treatment Following Public Interest Disclosure (whistleblowing)*" and begins "*I am writing to formally lodge a grievance....*"
152. The grievance runs to 10 pages and makes a number of complaints, including about:
- 152.1. A 'culture of discrimination';
- 152.2. A 'false, malicious and vindictive allegation' (relating to the PE lesson incident);

- 152.3. 'Several years of targeted, systematic harassment, including sex discrimination ,and bullying over a prolonged and sustained period';
- 152.4. 'Bullying and harassment' by the science teacher;
- 152.5. 'An attempt by C to install spyware on my computer';
- 152.6. Being often blamed for issues he had not caused and often accused of doing things that he hadn't done; and
- 152.7. 'The most unprofessional and vindictive lesson observation I have ever experienced'.
153. The claimant also enclosed with his grievance a copy of the grievance he had raised against the science teacher in May 2021. He mentioned in the July 2023 grievance that Mrs B *"is aware that I know her husband is a convicted paedophile...and this is one reason why I have been targeted."* He also referred to another member of staff telling him that she knew Mr and Mrs B very well and used to go out drinking with them.
154. At about the same time as the claimant's solicitor submitted a formal grievance, he also put forward without prejudice settlement terms to the respondent.
155. The claimant's grievance was acknowledged by the head teacher, D, the following day. She wrote to the claimant explaining that she had forwarded the grievance to F, the chair of the management committee, who would make the necessary arrangements for a formal hearing.
156. On 28 July F wrote to the claimant acknowledging receipt of the grievance and stating that *"As the document is headed formal grievance, I will conclude that you do not wish to explore the informal process of resolution."* Although during the Tribunal hearing the claimant suggested that the respondent should have considered dealing with his grievance informally first, he did not express that view at the time. There was no evidence before the Tribunal to suggest that the claimant was unhappy at the time with his grievance being treated formally rather than informally.
157. F suggested to the claimant in his email that the grievance process should start after the school summer holidays as the school had broken up on 21 July. He explained that he would be in contact again in September to arrange a formal grievance meeting.
158. On 17 August the claimant replied to F's email. He wrote that *"Given my current mental health I would prefer that the grievance process does not become protracted and would prefer that a meeting is held sooner, if possible, including in the school holidays..."* The claimant also asked if, as a reasonable adjustment, he could be accompanied at the grievance hearing by his legal representative, Damian Robson.
159. F replied to the claimant on 6 September inviting him to a meeting on 14 September 2023. He explained in his email that *"As you have expressed that you*

do not wish to go through the informal stage this means that no investigation has taken place as such the formal stage must hear your grievance and if necessary, undertake the investigation. Therefore, I will hear your formal grievance and then, if necessary, interview other parties involved to determine an outcome." The claimant was therefore informed in advance of the grievance meeting that there would be no separate investigation process followed. He was legally advised at the time, and neither he nor his solicitor raised any complaint about the respondent using the formal grievance process.

160. F also informed the claimant, in his email of 6 September, that the claimant had the right to be accompanied at the meeting by either a trade union representative or a work colleague, but that the respondent's grievance policy did not allow for him to be represented by a qualified solicitor
161. On 8 September the claimant wrote to F confirming that he would be attending the grievance meeting and asking to be accompanied by a friend who was also an official from a trade union. There was no evidence before us of the claimant receiving any response to this email.
162. The grievance meeting took place on 14 September 2023. The claimant was accompanied by a friend at the meeting.
163. The meeting was chaired by F. Tracey Rowe from Advanced HR was also present to provide HR support. Notes were taken of the grievance meeting, but they were not typed up, nor were they sent to the claimant for his approval. The notes of the meeting were of very poor quality. They do not even record the start or finish times, and no explanation has been provided by the respondent as to why they weren't typed up.
164. The claimant made a covert recording of the grievance meeting. Neither that recording nor a transcript of it were before the Tribunal, with the exception of a very short exchange between F and the claimant at the end of the meeting.
165. After the grievance meeting had taken place F carried out investigations and interviewed a number of people. Those interviewed were the male Assistant Head at the school, the caretaker, C, Mrs B and D. Detailed notes were taken of each of those interviews and sent to the person interviewed for approval. The notes were not sent to the claimant for him to comment on prior to a decision being made on the grievance.
166. On 9 October 2023 F wrote to the claimant attaching the grievance outcome and proposing a meeting to go through the findings, with a view to finding a resolution. The claimant declined to attend a meeting due to his ill health.
167. The grievance outcome is detailed, running to some 8 pages. It sets out F's conclusions on the issues raised by the claimant. None of the claimant's complaints were upheld. F concluded that:

"I believe that you have on many points not been in possession of the full facts and

as such have reacted in a manner where you believe that members of SLT are deliberately creating events aimed towards you. I have not found this to be the case, I have however found a reasonable explanation of each of the events you describe which have been consistently reiterated to me by the leadership team.

I am very mindful that you are absent due to ill health and as such I would like to discuss with you the outcome and give you the opportunity to ask questions and look together at a way forward. I hope that you will engage in this meeting with me."

168. On 24 October 2023 the claimant submitted an appeal against the grievance outcome. The appeal runs to eight pages and includes a number of serious allegations, as well as emotive language. It states that, in the claimant's view, the respondent has 'completely disregarded' the claimant's evidence, complains that the grievance from 2021 had been disregarded, that the male agency worker had not been interviewed, and challenges the findings in the grievance outcome.
169. The claimant also complained about what he considered to be delays in the grievance process over the school holidays, that "*I found it highly offensive that it was suggested that 'this sounds to be like a campaign against Mrs B!' during a grievance interview*" and wrote that "*I am a teacher with genuine safeguarding concerns regarding a DSL in a school living with a convicted paedophile who was sent to prison.... The DfE have also requested that I make a referral regarding this.*"
170. The claimant said that he found part of the grievance outcome "*highly defamatory*" and that the male agency worker would like to be interviewed.
171. On 31 October F wrote to the claimant inviting him to an appeal hearing and informing him that the appeal would be heard by a panel of three governors.
172. One of the governors who heard the appeal, G, was appointed as a governor solely for the purposes of the appeal. The reason for this was that there were insufficient existing governors who were not members of staff or parents. The respondent considered it inappropriate, given the nature of the matters raised in the appeal, for a member of staff or a parent to sit on the appeal panel, and therefore appointed governors who were not staff or parents, and who had not been involved in the original grievance. There were only two such governors, and as 3 were required, G was appointed as a governor for the purposes of the appeal process.
173. G had a professional relationship with Advanced HR, as he had his own consultancy business and had worked with Advanced HR in the past. He was not employed or engaged by them and is an experienced school governor who has dealt with many disciplinary and appeal hearings in the past. The respondent considered it preferable for an independent person to be involved in the appeal.
174. The claimant complained that G was not independent because of his relationship with the HR company that was advising the school. G has his own consultancy business, and is an experienced school governor, but has a working relationship with the HR company.

175. An appeal hearing took place on 13 November. The claimant was accompanied at the meeting by a friend. The meeting was a lengthy one which lasted all day, with breaks. Witnesses were called and interviewed, and the claimant had the opportunity to put questions to them.
176. At the start of the hearing the vice chair of the management committee, who was one of the governors appointed to hear the appeal, asked the claimant about his health. The claimant said that he was very anxious and extremely depressed. He was then asked if he was okay to be at the meeting, and replied, "Yes, *fine*". He was reminded that if he wanted a comfort break or adjournment he just needed to ask.
177. At one point during the meeting G suggested that the claimant was being aggressive in his tone. The claimant replied that he was speaking with pride, and that this was emotive for him. The claimant spoke at length during the appeal hearing and was questioned. Many of the questions were put by Tracey Rowe, who had provided HR advice to the grievance hearing.
178. A number of witnesses were called to give evidence, and the claimant had the opportunity to question them: the school caretaker/ICT advisor, the male Deputy Head, Mrs B, C, and D. The male agency teacher (who had not been working at the school for some time) did not attend the hearing, although the claimant said he had been trying to contact him.
179. On 17th November 2023 G wrote to the claimant setting out the conclusions of the appeal panel. The outcome letter is detailed and runs to almost 9 pages. It contains the following:

"It was clearly evidenced to the panel that upon having full knowledge of [Mrs B]'s personal situation, a full due diligence process had been undertaken by the school in respect of safeguarding. Validation has been provided by the following:

1. *The employer....*
2. *....*
3. *LADO....*
4. *Ofsted*
5. *Social Services*
6. *Probation Services*
7. *South Yorkshire Police.*

It was confirmed that a full risk assessment was in place in the school for [Mrs B] and measures have been put in place. This includes, assessment about working from home, ensuring laptops have been made secure, [Mr B] never to be allowed on school premises and no information from school to be taken into [Mrs B]'s home.

....the school has no concerns about [Mrs B]'s practice.

The panel deem that there is no requirement for the employer to inform staff of confidential personal information of this nature, and whilst you are correct in saying that all school staff are responsible for safeguarding, it is the management's

responsibility to ensure that the correct measures are put in place. You felt that someone should have reassured you of this however, there is no evidence that you have raised these serious concerns with the management and ultimately you have no right to know the confidential detail. The panel is satisfied that the management have acted appropriately in respect of safeguarding pupils and [Mrs B]'s personal situation....

Your Desired Outcome

1. *You request that the safeguarding risks are dealt with immediately. The panel does not consider that there are any safeguarding risks and that significant measures and risk assessments are in place (and have been for many years)...."*

180. The claimant's grievance appeal was not upheld. The panel recommended that a meeting take place between the claimant and the school to discuss the way forward, with a view to facilitating a return to work for the claimant.

181. The appeal hearing lasted a full day which, given that the claimant was off work sick, was a long period of time. There was no evidence of adjustments being made for the claimant's health other than breaks. That being said, there was no evidence to suggest that the claimant asked for a postponement of the hearing on health grounds, or that he had asked for any additional adjustments to be made.

182. The minutes of the appeal hearing are lengthy and detailed but end abruptly part way through the claimant giving his closing statement. They do not appear therefore to be a complete record of the appeal hearing. The Tribunal also notes that Tracey Rowe appears to have played a significant role in the grievance appeal meeting, despite the fact that she effectively ran the original grievance meeting.

183. The claimant alleged that he was made to feel that he had raised inappropriate concerns about Mrs B, that his concerns were trivialised, and that he was questioned inappropriately.

184. There was no evidence before the Tribunal to support this allegation. The respondent clearly took the claimant's grievance and appeal seriously and invested a significant amount of time in considering them. Whilst the respondent, having investigated the claimant's grievance, reached a different view on matters to that of the claimant, it did not suggest that the claimant's concerns were inappropriate. The fact that the claimant was not happy with the outcome does not in itself mean that he wasn't given a fair hearing.

185. We find on the evidence before us that the claimant's concerns were taken seriously and were not trivialised. We also find that the questions put to the claimant were appropriate.

186. The claimant also alleged that in the grievance appeal he was described as having an obsession with Mrs B and her husband.

187. In the appeal outcome letter, the phrase "*it appears that you are fixated on [Mrs*

B] being a threat because she still resides with her husband” was used. G’s evidence to the Tribunal was that no comment was made at the appeal hearing to suggest that the claimant had an obsession with Mr and Mrs B. He accepted in cross examination that the panel had formed a view that the claimant was fixated with Mr and Mrs B and that a comment about the claimant being fixated on them was made at the appeal hearing.

188. We find that a comment was made at the appeal hearing that the claimant was fixated on Mr and Mrs B, but that the claimant was not told that he had an obsession with them.

Issue 16 : Resignation comment by school governor (F)

189. After the end of the grievance meeting on 14 September, the claimant had a further conversation with F. The claimant recorded that conversation without telling F and a transcript of part of the conversation was before us in evidence.

190. The transcript records that F said to the claimant:

“Otherwise in January, when you had your mental health illness, and you had your problems, my first, what I would have done, and I’m not you...I would have resigned. It would have been a straight line, straight forward. And you chose not to do that because you obviously want some other outcome.”

191. F did not deny making this statement, and told the Tribunal that the reason he made this comment was because he wanted to understand what the claimant wanted from the grievance process, and was trying to be empathetic towards the claimant and the claimant’s situation. His evidence, which we accept, was that he was not seeking the claimant’s resignation and wanted to encourage him to return to work.

192. That being said, the comment was in our view a strange and inappropriate comment to make as it clearly raised the issue of the claimant leaving, which was not something that had been raised by the claimant. At the time the comment was made the claimant was off work sick.

Issue 17 : Complaint to the police by Mrs B

193. In the months leading up to the claimant’s resignation, both Mrs B and the claimant spoke to the police about the other. There were a number of police incident reports before us in evidence.

194. The incident reports record that on 5 October 2023 Mrs B contacted the police to report that she was being targeted at work by the claimant. She told the police about the incident in January 2023 prior to the interviews, and that the claimant had said he *“can say what he wants”* and *“responded lets talk about your husband”*. Mrs B also told the police that the claimant had made a report to the Local Authority Designated Officer and had shared a newspaper article with his union.

195. Mrs B told the police that she believed the claimant was wanting compensation and would be told the following week that he would not receive compensation. She

said she was worried about what he would do next, and that he may go to the papers and bring her and the school into disrepute.

196. The police report records that the officer who spoke to Mrs B concluded that there were no crimes to record, and that the claimant's behaviour did not amount to harassment. The incident was closed within a few hours of the report being made by Mrs B.

197. On 8 October Mrs B contacted the police again. The record of this incident records that Mrs B told the police that this was an ongoing incident from January 2023, that the claimant had been contacting a number of agencies making allegations about her professional conduct and personal life, and that she felt threatened as the behaviour of the claimant and another male was seeking to undermine her professional reputation and relationships with professionals and parents. Mrs B also said that she did not feel safe at the prospect of encountering the claimant and the other male as their actions appeared malicious and unfounded, and that the claimant had said he wanted to tell parents and the Teaching Regulation Authority about information relating to her personal life.

198. This incident was also closed the same day, with the police concluding that they were unable to identify any further information that amounted to a crime.

199. On 7 December 2023 the claimant approached two police officers in public the carpark of an ASDA store. The claimant told them that he wanted to talk to them about sexual grooming at a school and made allegations that there was a paedophile ring at a school where he had worked previously.

200. The police report of the incident notes that:

"The male began by saying he wasn't crazy or had mental health but did not want to give his details as he had worked at the school but had now left, he said he was in litigation with the school and had a solicitor so was expecting a big pay-out, because of this he wasn't really supposed to talk about it. He said was a convicted Paedophile and an ex-School teacher. He said wife was the head of the school and was using her position to employ her friends....He was very erratic showing pictures on his phone of a male and female on Holiday saying the pictures were of and his wife, he knew their address and showed me other pictures of the male and female.... The male appeared to have mental health issues...."

201. The police were concerned that the claimant may be a vulnerable adult who should be referred to the adult safeguarding service. An Adult Safeguarding Alert Form was completed and concluded that a visit should be made to the claimant to assess his mental health and discuss the seriousness of the allegations he was making and the impact that they could have.

202. Mrs B was informed of the incident in the ASDA carpark by the police and the following day her daughter contacted the police again. The police record of the daughter's call with the police notes that "[Mrs B] is being harassed by" the claimant, and that Mrs B had received a call from a Visor Constable who had told her that

PCSOs had filmed the claimant outside ASDA “*shouting about [Mrs B]’s husband being a sex offender and how she was married to him and head of safeguarding and that her husband was part of a grooming gang and she is using her safeguarding knowledge to be a part of the gang*”. Mrs B’s daughter reported that Mrs B was frightened because the claimant knew where she lives.

203. A police officer spoke to Mrs B herself on 10 December 2023. The notes of that conversation record that Mrs B said that the claimant “*has been repeatedly making malicious complaints to their work about her. She stated that the suspect has made it known to other colleagues that he is in a lot of debt and when he has made these complaints about [Mrs B]...he has demanded upwards of £90,000 off of her to help him clear these debts.*”

204. On 11 December 2023 a police officer attended the claimant’s house to deliver words of advice in relation to his behaviour. During the visit the claimant was told not to contact Mrs B and said that he would not do so because there was an ongoing civil dispute about workplace issues (this Tribunal claim) and that he did not want to jeopardise the civil case.

205. The police records note that the police spoke again to Mrs B after visiting the claimant on 11 December and that she was happy to close the investigation now that words of advice had been given to the claimant. They also note that safeguarding advice was given to both the claimant and Mrs B and that they were advised not to contact each other except through solicitors.

206. The claimant alleged that Mrs B told the police that he was demanding money by menaces from her. Mrs B did not give evidence to the Tribunal. The police report states that she told them the claimant was demanding money.

207. Both parties agreed that the claimant’s solicitor had written to the respondent in July 2023 setting out proposed terms of settlement. It is a matter of record that the claimant had by early December 2023 been through ACAS early conciliation.

208. We find on balance that Mrs B did tell the police that the claimant was seeking £90,000 in connection with the complaints he was making about her, and that the police officer believed that the claimant was demanding money from Mrs B personally.

Issue 18 : Instruction not to contact the whistleblowing officer

209. On 5 December 2023 the claimant telephoned E, the respondent’s whistleblowing officer, to raise concerns about the way in which his grievance was being handled. E told him that his concerns need to be addressed through the grievance process and his solicitor rather than through the respondent’s whistleblowing process.

210. By the time of the conversation on 5 December, the claimant had already completed ACAS early conciliation with a view to issuing proceedings, and his solicitor had written to the respondent setting out proposed terms of settlement. As well as being the respondent’s whistleblowing officer, E is also the respondent’s Chief

Solicitor and responsible for the provision of legal advice to the respondent. He considered it inappropriate to comment on on-going legal proceedings against the respondent and to provide advice to the claimant.

211. E asked a member of his team to write to the claimant's solicitor and on 11 December an email was sent to the claimant's solicitor in the following terms:

"Further to my previous email, I am instructed that your client contacted [E].... directly last week to discuss the ongoing employment matter and has made a further attempt to contact [E] today. We do not consider that this is appropriate in the circumstances and we therefore ask that he refrain from contacting [E] any further to discuss the claim.

Should [the claimant] wish to make a further whistleblow then he can of course contact [E] in that regard."

212. We find that the claimant was not told by E, the respondent's whistleblowing officer, that he was no longer to contact the respondent about the safeguarding concerns he had raised regarding Mrs B.

Resignation

213. On 4 December 2023 F wrote to the claimant following the conclusion of the ACAS early conciliation process. In the email he wrote that:

"When we met on the 14th September 2023 for the formal Grievance meeting you advised me that you did not wish to return to work and that you wished to explore an exit, as such we asked you at that point to speak to your solicitor about contacting me, I have not received any communication. As the grievance process has now been concluded with no findings the school cannot agree to your solicitor's terms set out in his email dated 20th July..."

214. F then invited the claimant to a stage 3 absence meeting to be held on 8th December 2023.

215. An absence review meeting took place on Friday 8 December 2023, chaired by F. The claimant was accompanied by a friend at the meeting. Tracey Rowe from Advanced HR was also present. During the meeting the claimant said he had recently experienced a mental health crisis and sought support from a counsellor and his GP. There was a discussion about a referral to Occupational Health, which the respondent agreed to progress. The claimant was also asked about a potential return to work and what steps could be put in place to support this. The possibility of mediation was also discussed, as was a potential agreed exit. The claimant said that he would prefer for the respondent to have that conversation with his solicitor, which the respondent subsequently did.

216. It was agreed that F and the claimant would meet again in January to allow the claimant time to recover and consider the options. F wrote to the claimant on 13 December summarising the outcome of the meeting.

217. On 22nd December 2023 the claimant resigned with immediate effect. In his resignation letter, which was addressed to the chair of the management committee, the claimant wrote:

“I find it necessary to take this step due to the untenable level of hostility shown towards me, including a false and malicious allegation made by a member of the Senior Leadership Team to the Police, in addition to a prolonged campaign of harassment and whistleblowing detriment as a result of my concerns with regards to safeguarding...”

218. He also alleged in the letter that his concerns had not been appropriately addressed, and that the grievance process had been “*marred by bias*” and finished by stating that he would be commencing legal proceedings.

219. The claimant’s employment terminated on 22 December.

The Law

Constructive dismissal

220. Where an employee resigns, as the claimant in this case did, he can still claim unfair dismissal if he can establish that his resignation falls within section 95(1)(c) of the Employment Rights Act 1996, which provides that:

“(1) For the purposes of this Part an employee is dismissed by his employer if....

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.”

221. The questions that the Tribunal needs to consider in a constructive dismissal claim are:

221.1.1. Was there a fundamental or repudiatory breach of contract;

221.1.2. Did the employee resign in response to that breach (and not for some other reason); and

221.1.3. Did the employee wait too long before resigning, such that he can be said to have waived any breaches of contract and affirmed the contract?

222. Both parties to an employment contract have an implied duty to conduct themselves in such a manner as to preserve trust and confidence in the relationship between the parties. (***Malik v Bank of Credit and Commerce International SA (in compulsory liquidation) [1997] ICR 606***). This duty is fundamental to the employment relationship and any breach of it will amount to a repudiatory breach of the employment contract. Where the claimant alleges that

the respondent breached the implied term of trust and confidence, the Tribunal must consider:

222.1. Did the respondent behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and

222.2. Did the respondent have reasonable and proper cause for doing so?

223. The law does not impose an obligation to behave reasonably, so unreasonable behaviour by an employer does not necessarily give rise to a constructive dismissal (***Western Excavating (ECC) Ltd v Sharp [1978] ICR 221*** and ***Bournemouth University Higher Education Corporation v Buckland [2010] ICR 908***). The question is whether “*the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract*”, as Lord Denning wrote in ***Western Excavating***.

Protected disclosures

224. The relevant statutory provisions are sections 43A, 43B and 43C of the Employment Rights Act 1996 which provide as follows:

“43A Meaning of “protected disclosure”

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

43B Disclosures qualifying for protection

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

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

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

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

- (2) For the purposes of subsection (1) it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.
- (3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.
- (4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.
- (5) In this part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

43C Disclosure to employer or other responsible person

- (1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –
- (2) (a) to his employer...”

225. In **Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325**, the EAT held that the ordinary meaning of giving information is ‘conveying facts’, which is distinct from the mere making of an allegation. The Court of Appeal has however subsequently held that ‘information’ can potentially include statements which might also be categorised as allegations (**Kilrairie v London Borough of Wandsworth [2018] ICR 1850**). The statement must however have sufficient factual content that it tends to show one of the matters listed in section 43B(a) to (f).

226. The EAT has more recently held that the communication of an expression of opinion can potentially amount to a disclosure of information (**McDermott v Sellafeld Ltd and ors 2023 EAT 60**).

227. In order for a disclosure to be a qualifying disclosure, the employee must reasonably believe that it tends to show one of the relevant matters. He must also reasonably believe that the disclosure is in the public interest.

228. The test for ‘reasonable belief’ is both objective and subjective. The Tribunal must focus on what the claimant believed (rather than what a hypothetical reasonable worker may believe) but there must also be some objective basis for the claimant’s belief (**Korashi v Abertawe Bro Morgannwy University Local Health Board [2012] IRLR 4**). In **Phoenix House Ltd v Stockman [2017] ICR 84**, the EAT, endorsing the approach taken in **Korashi**, held that, on the facts that the claimant believed to exist, a judgment must be made firstly as to whether the belief was reasonable and secondly whether looking at matters objectively, there was a reasonable belief that the facts tend to show one of the relevant matters.

229. The leading case when considering the question of public interest is ***Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) [2018] ICR 731***. In that case the Court of Appeal held that when considering whether a disclosure is in the public interest, factors that may be relevant include:

- 229.1. The number of people whose interests the disclosure served;
- 229.2. The nature of the interests affected and the extent to which they are affected by the wrongdoing that is being disclosed;
- 229.3. The nature of the wrongdoing disclosed; and
- 229.4. The identity of the alleged wrongdoer.

Whistleblowing Detriment

230. Section 47B of the ERA contains the right not to be subject to whistleblowing detriment, the relevant provisions being the following:

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

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

(a) by another worker of W’s employer in the course of that other worker’s employment, or (b) by an agent of W’s employer with the employer’s authority, on the ground that W has made a protected disclosure.

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

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker’s employer....

(2) This section does not apply where –

(a) the worker is an employee, and

(b) the detriment in question amounts to a dismissal....”

231. Section 48 (1A) of the ERA gives workers the right to make a complaint to an Employment Tribunal that they have been subjected to a detriment contrary to section 47A. Section 48(2) provides that in a detriment claim under section 47A *“it is for the employer to show the ground on which any act, or deliberate failure to act, was done.”* As a result of this provision if the claimant establishes on the balance of probabilities that there was a protected disclosure and a detriment, the burden of proof passes to the employer to show that the claimant was not subjected to the detriment on the ground that he made the protected disclosure. It

does not however mean that a detriment claim will succeed 'by default' if there is no evidence as to why the respondent subjected the claimant to the detriment (***Ibekwe v Sussex Partnership NHS Foundation Trust EAT 0072/14***).

232. The question for the Tribunal is what, consciously or unconsciously, was the reason for the detrimental treatment. In order for the claim to succeed the protected disclosures must be the 'real reason' or the 'core reason' for the treatment (***Aspinall v MSI Mech Forge Ltd EAT 891/01***). In ***Fecitt and others v NHS Manchester (Public Concern at Work intervening) [2010] ICR 372*** Elias LJ summarised the causation test in whistleblowing detriment claims as being 'did the protected disclosure materially (in the sense of more than trivially) influence the respondent's treatment of the claimant?'

233. In ***London Borough of Harrow v Knight [2003] IRLR 140*** the EAT held that in order for a claim for detriment to be successful, the following elements must be present:

233.1. The claimant must have made a protected disclosure;

233.2. He must have suffered an identifiable detriment;

233.3. The employer, worker or agent must have subjected the claimant to that detriment by some act or deliberate failure to act; and

233.4. The act or deliberate failure to act must have been done on the ground that the claimant made the protected disclosure.

234. A 'detriment' can include putting the claimant at a disadvantage and should be assessed from the claimant's perspective (***Ministry of Defence v Jeremiah [1980] ICR 13*** and ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337***). It can include matters that may appear to be minor to an observer, although the seriousness of the detriment will be relevant to the question of compensation.

235. The Tribunal can draw an inference in detriment claims. In ***International Petroleum Ltd and others v Osipov and others EAT 0058/17*** the EAT held that the correct approach when drawing inferences in a detriment claim is as follows:

235.1. It is for the claimant to show that the protected disclosure is a ground or reason (that is more than trivial) for the detriment;

235.2. The respondent must be prepared to show why the detrimental treatment was carried out. If it does not do so, inferences may be drawn against it;

235.3. Any inferences drawn must be justified by the Tribunal's findings of fact.

Burden of proof in discrimination claims

236. Section 136(2) of the Equality Act 2010 sets out the burden of proof in discrimination claims, with the key provision being the following:

“(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision...”

237. There is, in discrimination cases, a two stage burden of proof (see ***Igen Ltd (formerly Leeds Careers Guidance and others v Wong [2005] ICR 931*** and ***Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205*** which is generally more favourable to claimants, in recognition of the fact that discrimination is often covert and rarely admitted to. In ***Igen v Wong*** the Court of Appeal endorsed guidelines set down by the EAT in ***Barton v Investec***, and which we have considered when reaching our decision.

238. In the first stage, the claimant has to prove facts from which the tribunal could decide that discrimination has taken place. If the claimant does this, then the second stage of the burden of proof comes into play and the respondent must prove, on the balance of probabilities, that there was a non-discriminatory reason for the treatment.

239. In ***Ayodele v Citylink Limited and anor [2017] EWCA Civ. 1913*** the Court of Appeal held that *“there is nothing unfair about requiring that a claimant should bear the burden of proof at the first stage. If he or she can discharge that burden (which is one only of showing that there is a prima facie case that the reason for the respondent’s act was a discriminatory one) then the claim will succeed unless the respondent can discharge the burden placed on it at the second stage.”*

240. The Supreme Court has more recently confirmed, in ***Royal Mail Group Ltd v Efofi [2021] ICR 1263***, that a claimant is required to establish a prima facie case of discrimination in order to satisfy stage one of the burden of proof provisions in section 136 of the Equality Act. So, a claimant must prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination.

241. In ***Glasgow City Council v Zafar [1998] ICR 120***, Lorde Browne-Wilkinson recognised that discriminators ‘do not in general advertise their prejudices: indeed they may not even be aware of them’.

242. The Tribunal has the power to draw inferences of discrimination where appropriate. Inferences must be based on clear findings of fact, and can be drawn not just from the details of the claimant's evidence but also from the full factual background to the case.

243. It is not sufficient for a claimant merely to say 'I was badly treated' or 'I was treated differently'. There must be some link to the protected characteristic or something from which a Tribunal could draw an inference. In ***Madarassy v Nomura International plc [2007] ICR 867*** Lord Justice Mummery commented that: *"the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."*

244. In ***Deman v Commission for Equality and Human Rights and others [2010] EWCA Civ 1276***, Lord Justice Sedley adopted the approach set out in ***Madarassy v Nomura*** that 'something more' than a mere finding of less favourable treatment is required before the burden of proof shifts from the claimant to the respondent. He made clear, however that the 'something more' that is needed to shift the burden need not be a great deal. Examples of behaviour that has shifted the burden of proof include a non-response or evasive answer to a statutory questionnaire, or a false explanation for less favourable treatment.

245. Unreasonable behaviour is not, in itself, evidence of discrimination (***Bahl v The Law Society [2004] IRLR 799***) although, in the absence of an alternative explanation, could support an inference of discrimination (***Anya v University of Oxford & anor [2001] ICR 847***).

246. In harassment cases the shifting burden of proof rules will apply in particular where the conduct complained of is not obviously discriminatory, and the Tribunal has to consider whether the reason for the conduct is related to the protected characteristic relied upon by the claimant – in this case his sex and disability.

Harassment

247. Harassment is defined in section 26 of the Equality Act as follows:

- "(1) A person (A) harasses another (B) if –*
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and*
 - (b) The conduct has the purpose or effect of –*
 - (i) Violating B's dignity, or*
 - (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B...*

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

- (a) *the perception of B;*
- (b) *the other circumstances of the case;*
- (c) *whether it is reasonable for the conduct to have that effect...*

248. In deciding whether the claimant has been harassed contrary to section 26 of the Equality Act, the Tribunal must consider three questions:

- b. Was the conduct complained of unwanted:
- c. Was it related to sex or disability; and
- d. Did it have the purpose or effect set out in section 26(1)(b).

Richmond Pharmacology v Dhaliwal [2009] ICR 724.

249. The two stage burden of proof set out in section 136 Equality Act (see below) applies equally to claims of harassment. It is for the claimant to establish facts from which the Tribunal could conclude that harassment has taken place.

250. In ***Hartley v Foreign and Commonwealth Office Services [2016] ICR D17*** the EAT held that the words 'related to' have a wide meaning, and that conduct which cannot be said to be 'because of' a particular protected characteristic may nonetheless be 'related to' it. The Tribunal should evaluate the evidence in the round, recognising that witnesses will not readily accept that behaviour was related to a protected characteristic. The context in which unwanted conduct takes place is an important factor in deciding whether it is related to a protected characteristic (***Warby v Wunda Group plc EAT 0434/11***).

Direct discrimination

251. Section 13 of the Equality Act provides that:

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

252. Section 23 of the Equality Act deals with comparators and states that: *"there must be no material difference between the circumstances relating to each case."* ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR*** is authority for the principle that it must be the relevant circumstances that must not be materially different between the claimant and the comparators.

253. When determining questions of direct discrimination there are, in essence, three questions that a Tribunal must consider:

- 253.1. Was there less favourable treatment?
- 253.2. The comparator question; and
- 253.3. Was the treatment 'because of' a protected characteristic?

Conclusions

254. The following conclusions are reached on a unanimous basis, having carefully considered the evidence before us, the submissions of the parties, and the legal principles summarised above.

Constructive dismissal

255. In support of his claim for constructive unfair dismissal the claimant relied upon 18 separate alleged breaches of the implied term of trust and confidence, set out in paragraph 22 of these written reasons. We begin by setting out our conclusions on each of those alleged breaches:

Allegation / Issue 1 : Alleged overbearing supervision including a 90 minute discussion behind closed doors

256. As set out in our findings of fact, we find that the claimant was not subjected to overbearing supervision. This allegation therefore fails.

Allegation / Issue 2 : Email sent by C allegedly questioning the claimant's work preparation

257. We also find that the email of 3 September was not questioning the claimant's work preparation but was merely asking him to do something that he should already have done. The claimant had missed a deadline. No one else had. This is nothing untoward in a manager asking a member of staff to do something that the member of staff should already have done, and that is exactly what happened here. The email does not question the claimant's work preparation generally.

258. There was also nothing untoward, in our view, in the email being copied to Mrs B. The content of the email makes clear that there was a good reason for copying Mrs B into the email as the claimant was being asked to send timetables and lessons to Mrs B also.

259. It cannot be said in our view that this email amounted to a breach of the implied term of trust and confidence. The respondent had good reason for sending it, as the claimant had not done something that he had been asked to do.

260. The claimant's interpretation of this email is not, in the Tribunal's view, a reasonable one. The claimant made no complaint about the email at the time, or indeed for some time afterwards.

Allegation / Issue 3 : Subjecting the claimant to covert surveillance.

261. As we have set out in our findings of fact, we find that the respondent did not submit the claimant to covert surveillance. The claimant has misinterpreted something that was said to him by the school's caretaker. What the caretaker

actually said to the claimant was to be careful of what he was doing with FitWins because if any spyware were to be placed on his laptop, it would be possible for the respondent to see what the claimant was doing. The claimant has interpreted this, incorrectly, as meaning that he was being subjected to covert surveillance.

262. The respondent had good reason for acting as it did in relation to the action it took in September 2019 when the email was sent to all staff about positioning their laptops so that the screens could be seen. Concerns had been raised by two teaching assistants and by the parent of a pupil. It was entirely appropriate for the school to act as it did in response to those concerns. The claimant was not singled out or treated any differently to anyone else.

263. The claimant has misinterpreted a perfectly reasonable management action.

Allegation / Issue 4 : Confronting the claimant in his classroom

264. We find, as set out in our findings of fact, that C and Mrs B did not confront the claimant in his classroom in November 2019. Nor did they comment negatively on aspects of his teaching. The evidence before us indicates that the claimant was well thought of as a teacher.

Allegation / Issue 5 : Comments about additional training in marking English

265. The claimant did not adduce any evidence whatsoever in support of this allegation. His witness statement was silent on the issue.

266. We accept the respondent's evidence and find that the claimant was not told by a science teacher in November 2019 that the teaching staff had to undertake additional training in marking English due to the claimant not marking work properly. The respondent provided an entirely reasonable alternative explanation for asking staff to undergo additional training in marking.

267. It is of concern to the Tribunal that the claimant insisted on pursuing this allegation without adducing any evidence in support of it. It could easily have been withdrawn, but it was not.

Allegation / issue 6 : Complaint to an exam officer about assisting a pupil

268. This allegation is also not made out. As set out in our findings of fact, the science teacher in question did not make a formal complaint to the school's exam officer but did tell that officer that she believed that the claimant may have given answers to a pupil during an assessment. That assertion was investigated and it appears that no further action was taken. The claimant's explanation at the time appears to have been accepted.

269. It is entirely reasonable for an employer who receives an informal complaint that a member of staff has been assisting a pupil in an exam to take steps to investigate the issue. There is nothing untoward in that. The claimant accepted in his evidence

to the Tribunal that he had been in the room with the pupil during the exam and tried to help the student to start the exam.

Allegation / Issue 7 : Asking a pupil whether the claimant was a good teacher

270. This allegation is not upheld. For the reasons set out in our findings of fact we find that the respondent did not ask a pupil whether the claimant was a good teacher.

Allegation / Issue 8 : Dismissing concerns raised in an email of 16 February 2023

271. We accept that E did inform the claimant, following the claimant's email of 16 February 2023, that he was not going to look into the claimant's concerns about staff having long-standing relationships with Mr and Mrs B. We find that E had what he considered to be good reasons for this, in that in his experience it was common for staff to work together in more than one school. It is unfortunate that he did not communicate these reasons to the claimant or explain why he was not going to investigate the issue.

272. It was understandable therefore that the claimant felt that his concerns about recruitment and collusion had been dismissed by E without being properly considered.

273. The failure by E to explain his reasons for not looking into the concerns raised on 16 February did not however amount to a breach of trust and confidence. It was not sufficiently serious to do so.

Allegation / Issue 9 : Failure of E to consider or address concerns about the claimant's health

274. We find that the claimant did raise the issue of his mental health in the emails that he sent to E. We also find that E did not consider or address these concerns. That is, in our view, regrettable.

275. Taking matters as a whole however, it cannot in our view be said that it was a breach of the implied term of trust and confidence for E not to specifically address the claimant's health concerns. The claimant's sickness absence was being managed by the school, and it was not E's role to deal with it. He was responsible for dealing with the claimant's whistleblowing concerns and, subsequently, for overseeing the litigation.

Issue 10 : Visit to the claimant's home on 5 June 2023

276. We find that there is nothing whatsoever untoward in the head teacher of the school visiting the claimant at home whilst he was signed off unwell. The purpose of the visit was twofold – firstly to check on the claimant's welfare, and secondly to recover school property which the claimant had in his possession.

277. Staying in contact with employees who are off sick and encouraging them to

return to work when they are well enough to do so is, in the context of this claim, far from being a breach of the implied term of trust and confidence. Rather, it is good management practice.

Issue 11 : Failure by E to consider or act upon concerns about the grievance

278. We find that E did not fail to consider the claimant's concerns about the grievance entirely. Rather, he took the view that it was outside of the remit of the whistleblowing team to deal with concerns about the way in which a grievance is being managed. That was, in our view, an entirely reasonable approach for him to take, particularly since, by the time the claimant raised concerns about the grievance, he had already been through ACAS early conciliation and instructed a solicitor.

279. It was not a breach of the implied duty of trust and confidence for E to inform the claimant that his concerns needed to be addressed through the grievance process and his solicitor, rather than through the whistleblowing process. E had reasonable and proper cause for acting in the way that he did.

Issue 12 : Comments by the Safeguarding Board on 22 December 2023

280. We find that a member of XY's Safeguarding Adults department did advise the claimant that he should raise any health concerns to his therapist or GP, and that any legal concerns should be reported to the police.

281. This was, in our view, not an unreasonable comment to make in the circumstances and did not amount to a breach of the implied duty of trust and confidence.

Issue 13 : PE lesson involving a tennis match

282. The claimant's allegation that Mrs B accused him of a safeguarding issue relating to a tennis match is not upheld. On the evidence before us we find that the claimant was not accused of a safeguarding issue, but rather he was made aware of a safeguarding concern raised about another member of staff, the male agency worker.

283. The manner in which the respondent dealt with the concerns raised by a teaching assistant who was present during the lesson was, in the Tribunal's view, entirely appropriate. The concerns could not be ignored, and we make no criticism of the way in which the respondent handled them.

Issue 14 : Request to apologise to a teaching assistant

284. We find that the claimant was asked to apologise to the teaching assistant following the incident in the PE lesson. The reason D asked the claimant to apologise was to try and reassure the teaching assistant who had said that she wanted an apology, and to prevent matters escalating. The claimant was asked to deliver the apology not because he had done anything wrong but because he was the teacher in charge of the lesson and the agency worker was not an employee of the school.

285. The respondent did not force the claimant to apologise, it asked him to do so and he agreed. The matter then ended there and went no further. The head teacher had reasonable and proper cause for acting as she did, as she wanted to reassure a member of staff who was upset by what had happened in the lesson. No one suggested that the claimant was to blame.

Issue 15 : The claimant's grievance

286. The first allegation made by the claimant about the grievance process is that it was dealt with in a prejudicial, unfair and unreasonable manner, resulting in an unfair and prejudicial outcome.

287. We accept that there were some failings in the grievance process, and some things could have been better handled. For example, the claimant did not have the opportunity to comment on the evidence obtained during the grievance investigation before the original decision was made. It would in our view have been preferable for a further meeting to have taken place before the decision was taken.

288. In addition, the notes of the original grievance hearing were not of a standard that we would have expected from an HR professional. Nor was there any evidence to suggest that they were sent to the claimant for him to comment on.

289. That being said, it is clear that the claimant's concerns were taken seriously and investigated thoroughly. A considerable amount of time and effort was spent dealing with the grievance. The claimant was allowed to be accompanied by a friend at both the grievance hearing and the appeal.

290. At the appeal hearing the claimant had the opportunity to question the witnesses and to call his own witnesses if he wished. He was permitted to take regular breaks.

291. Whilst the appeal hearing lasted some time, and it may have been preferable for it to have been broken down into shorter periods, there was no evidence to suggest that the claimant had asked for an adjournment or a break which was not granted.

292. It was not unreasonable for G to be appointed as a governor to deal with the appeal. There were no other governors available. It was not appropriate for a parent governor or a member of staff governor to deal with the appeal because of the issues raised. All other members of the governing board who were available at the time were parents or staff. There was nobody else, so in order to have an appeal panel of 3 someone needed to be co-opted.

293. We are satisfied on balance that G was an appropriate person to hear the appeal. He was only one of 3 governors on the appeal panel, and no complaints were raised by the claimant about the other two. He appears to have done a thorough job on the appeal. He is a very experienced individual, having sat on a number of panels, and his prior links to Advanced HR were not such as to render him an inappropriate person to hear the appeal.

294. We therefore conclude that although there were some failings in the grievance process, looking at the process overall, it cannot be said that it was prejudicial, unfair or unreasonable. This is particularly the case because of the manner in which the appeal was conducted. The appeal was, in practice, a rehearing, at which the claimant had the opportunity to question witnesses.
295. The claimant's concerns were taken very seriously by the respondent and investigated thoroughly. The claimant was provided with detailed written outcomes at both the grievance and appeal stages. The conclusions reached were ones which, the respondent was, in our view, entitled to reach on the evidence before it and which cannot be described as unfair or prejudicial.
296. The second complaint about the grievance process was that the claimant was made to feel that he had raised inappropriate concerns, that his concerns were trivialised and that he was questioned inappropriately. We do not uphold this complaint.
297. We find that the respondent did not do anything to make the claimant feel that he had raised inappropriate concerns. It investigated them thoroughly, interviewing witnesses and going to the length of appointing a new temporary governor to sit on the appeal panel.
298. There was no evidence whatsoever before the Tribunal to suggest that the claimant's concerns were trivialised. Giving the claimant an outcome that he disagrees with does not amount to trivialising his concerns.
299. We also find that the questioning of the claimant in the grievance and appeal hearings was appropriate.
300. The final complaint made by the claimant about the grievance process was that during the appeal he was described as having an obsession with Mr and Mrs B. We find on the evidence before us that the claimant was not described as having an obsession with Mr and Mrs B, but rather as having a fixation with them.
301. This was, in our view, an entirely understandable and reasonable conclusion for the panel to reach. It is clear that the claimant's main issue in the grievance was Mr and Mrs B. Following the incident in January 2023 prior to the head teacher interviews, the claimant had raised repeated complaints about Mr and Mrs B. He raised complaints to the school through the grievance procedure, he raised complaints through the whistleblowing procedure, and he made complaints to the police publicly in a carpark outside ASDA. He was unwilling to accept any of the reassurances he was given about safeguarding processes and protections being in place. There was, in our view, more than ample evidence before the appeal panel to support a conclusion that the claimant had a fixation with Mr and Mrs B.
302. It appears to the Tribunal that this fixation arose from the incident involving the claimant and Mrs B in January 2023. Before then the claimant had worked at the

school for 4 years without raising any safeguarding concerns, despite the fact that he knew about Mr B's conviction and that Mrs B worked at the school whilst still living with Mr B.

303. The first time he suggested that there were any safeguarding issues relating to Mr and Mrs B was after the altercation in front of other members of staff on 25 January. The claimant acted entirely inappropriately by mentioning Mrs B's husband in public in front of other members of staff who may not have been aware of the situation. Mrs B held a position of responsibility within the school and was senior to the claimant. It was, in our view, inappropriate of the claimant to challenge her in this way in front of others.

304. The respondent's conduct of the grievance process did not amount to a breach of the implied term of trust and confidence.

Issue 16 : Resignation comment by school governor

305. We find that F did make a comment to the claimant at the end of the grievance hearing on 14 September to the effect that if he had been the claimant he would have resigned.

306. This was a most ill-advised comment for F to make to the claimant. We accept however that in making this comment F was not seeking to encourage the claimant to resign. There was no evidence before the Tribunal to suggest that F or any of the school's management wanted the claimant to leave; on the contrary he was a valued member of teaching staff. We also accept F's evidence that he wanted the claimant to return to work and was trying to be empathetic. This was further supported by an email he sent to the claimant on 4 December about a meeting to discuss a supported return to work, and the meeting itself which took place on 8 December.

307. In light of the context in which the comment was made to the claimant, and the reasons why F made it, we find that the comment, whilst ill-advised, was not a breach of the implied term of trust and confidence. Not every unfortunate or misplaced comment made by an employer will amount to a breach of trust and confidence.

Issue 17 : Complaint to the police by Mrs B

308. The claimant complained that Mrs B made a complaint to the police that he was demanding money by menaces from her, leading to a visit from the police to his home address in December 2023.

309. We find, on the evidence before us, that during one conversation with the police, Mrs B did give the police officer the impression that the claimant was seeking money from her personally. She did not say that the claimant was demanding money by menaces from her and she may have been referring in her comment to the fact that his solicitor had put forward terms of settlement and/ or to the ACAS early conciliation process.

310. By the time these comments were being made, Mrs B was clearly feeling harassed by the claimant, who had made repeated complaints about her over a period of several months. He began in January 2023 by undermining her in front of more junior colleagues by the comments he made whilst waiting for the head teacher interviews. He went on to complain to XY's whistleblowing officer, to raise a formal grievance, and to complain publicly to the police about her. It was understandable that she was distressed by this and felt harassed.
311. The claimant appears to have had no consideration whatsoever for Mrs B in the way in which he conducted himself between January and December 2023. Whilst he puts his behaviour down to genuine safeguarding concerns, we find that difficult to believe given that he had known about Mr and Mrs B for four years and raised no concerns whatsoever.
312. In the circumstances and in the context in which they were made, it cannot be said that Mrs B's comments to the police amounted to a breach of the implied term of trust and confidence. Had the claimant not complained to the police in the ASDA carpark on 7 December 2023, it is possible that the police would not have spoken to Mrs B again, or visited the claimant. It was the claimant's behaviour on 7 December that was at least in part a cause of the subsequent police visit to his house.

Issue 18 : Instruction not to contact the whistleblowing officer

313. We find that on 11 December 2023 an email was sent to the claimant's solicitor asking the claimant not to contact the whistleblowing officer, E, to discuss his claim. There was no instruction not to contact the whistleblowing officer at all, and in fact the email made clear that the claimant could contact E again if he wanted to make a further whistleblow. The claimant was merely being asked to refrain from contacting E about his claim.
314. This was not, in our view, an unreasonable step for the respondent to take. By the time the email was sent the claimant had instructed a solicitor, been through ACAS early conciliation, made it clear that he was intending to bring legal proceedings and put forward settlement terms. In the circumstances it was appropriate for E, who had overall responsibility for legal proceedings involving XY, to ask the claimant not to contact him directly about the claim.

Did any of the above breach the implied duty of trust and confidence

315. We have considered whether it can be said that the respondent's conduct amounted, either individually or cumulatively to a breach of trust and confidence?
316. Mr Wiltshire submitted that the Tribunal should look at all the circumstances objectively from the perspective of a reasonable person in the position of the innocent party and consider whether the conduct amounts to the employer abandoning and altogether refusing to perform the contract. He referred to the case of **Tullett Prebon Plc v BCV Brokers LP [2011] EWCA Civ 131** in which the Court of Appeal held that the question of whether or not there has been a breach of the duty of trust and

confidence is a question of fact, and that the legal test is whether, looking at all of the circumstances objectively, the contract breaker had clearly shown an intention to abandon and altogether refuse to perform the contract. We accept Mr Wiltshire's submissions on this point.

317. It cannot in this case be said that, looking at matters objectively, the respondent had demonstrated an intention to abandon or refuse to perform the contract. Whilst there were some failings in the way it treated the claimant, for example in the way the grievance was handled, these failings were not serious and did not amount to a breach of the implied duty of trust and confidence.

318. The evidence before the Tribunal indicated that the respondent wanted to retain the claimant in employment and took steps both to reassure him that appropriate safeguarding measures were in place and to encourage him to return to work. Unfortunately, the claimant was unwilling or unable to accept the assurances that he was given, both by E, a senior employee of the respondent, and during the grievance and appeal process.

319. In a case such as this one where the claimant relies upon a final straw, we take account of the guidance of the Court of Appeal in ***Omilaju v Waltham Forest London Borough Council [2005] ICR 481*** that:

"A final straw, not itself a breach of contract, may result in a breach of the implied term of trust and confidence. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant." [para 19]

"...an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in his employer. The test of whether the employee's trust and confidence has been undermined is objective..." [para 22]

320. By December 2023 the claimant was very unwell. The decision to resign was, we find, taken due to a combination of the police visit on 11 December, E telling him he would not discuss the case with him any further, and the Safeguarding Adults team indicating that the claimant should raise any concerns about health with his GP, and about illegality with the police. Those were the final straw. None of these actions by the respondent, either individually or cumulatively, amount to a breach of the implied term of trust and confidence.

321. It is regrettable that the claimant felt he had no option but to resign, as he was clearly a competent and well thought of teacher who the school did not want to lose. Looking at matters objectively however, rather than subjectively, there was no breach of trust and confidence by the respondent.

322. The claimant has not established that he was dismissed by the respondent. The claim for constructive unfair dismissal therefore fails and is dismissed.

Protected disclosures

323. The claimant relies on two alleged protected disclosures : the first an email of 26 January 2023 sent to E, and the second an email of 16 February 2023. In the email of 26 January, the claimant disclosed information relating to Mr and Mrs B and expressed concern that safeguarding measures were not in place. In the email of 16 February, the claimant asked for an update following his earlier email, and disclosed information about perceived collusion between members of staff at the school.

324. In both emails there is, in our view, a disclosure of information which goes beyond a mere allegation or assertion.

325. We have therefore gone on to consider whether the disclosures were made in the public interest. In the email of 26 January, the claimant specifically wrote that he wanted to help children in their learning and make sure they are safe. He also referred to having concerns were his own daughters under Mrs B's care and to members of the public having the same concerns.

326. We accept, on balance, that the claimant believed that his disclosure on 26 January 2023 was made in the public interest, namely the interest of children at the school, and the parents of those children. The nature of the information disclosed relates primarily to the protection of vulnerable children in school and is, by its very nature, likely to be in the public interest.

327. The second email (16th February) does not specifically refer to the public interest, but is a follow up to the first email and raises similar concerns. We therefore find, on balance, that the claimant also believed that his disclosure on 16 February was made in the public interest.

328. Mr Wiltshire submitted that the disclosures were made in retaliation for the incident that occurred on 25 January 2023 between the claimant and Mrs B. We find that they were made, at least in part, as retaliation. The claimant had been aware of Mr B's conviction and of the fact that Mrs B was still living with Mr B and working in the school for some four years before he raised any concerns. There was no evidence before us to suggest that anything changed in January 2023 to increase any safeguarding risks. The only thing that changed was that the claimant was involved in an altercation with Mrs B which caused him then to contact E.

329. That being said, the fact that part of the reason for making the disclosure is not the public interest does not in itself prevent the disclosure from being a protected disclosure. A disclosure can be made for mixed reasons, some of which are the public interest and some not.

330. Having concluded that, on balance, the claimant believed the information he was disclosing was made in the public interest, we have then gone on to consider whether that belief was reasonable. We find that it was. The claimant is a teacher whose professional obligations include the safeguarding of children. It is reasonable for him to believe that safeguarding issues involving vulnerable children are in the public interest.

331. We also accept, on balance, that the claimant believed that the information he disclosed on 26 January and 16 February tended to show that the school was failing to comply with its legal obligations in relation to safeguarding, and that as a result the health or safety of children at the school were being endangered. We also accept that the claimant believed that matters were being covered up, as he specifically refers in the email of 26 January to Mrs B not having disclosed her relationship and having failed to address the issue with senior staff within the council.

332. We find that at the time the claimant sent the emails on 26 January and 16 February, he had no knowledge of the measures that were in place to protect children in light of Mr B's conviction. It was, therefore, reasonable on balance for the claimant to hold the beliefs that he did.

333. The disclosures made by the claimant were to his employer, so they were protected disclosures falling within section 43A of the Employment Rights Act 1996.

Detriments

334. The claimant alleged that he was subjected to three separate detriments because he made protected disclosures:

334.1. The comment made by F on 14 September 2023 that he would have considered resigning;

334.2. The complaint made by Mrs B to the police and the comment about the claimant demanding money; and

334.3. Being told in December 2023 that he was no longer to contact E.

335. In reaching our conclusions on the detriment claim we have reminded ourselves that if the claimant establishes on the balance of probabilities that there was a protected disclosure and a detriment, the burden of proof passes to the respondent to show that the claimant was not subjected to the detriment on the ground that he made the protected disclosure. We have to consider what, consciously or unconsciously, was the reason for the treatment and whether the protected disclosure materially influenced the respondent's behaviour towards the claimant.

336. We accept that the comment made by F about resigning was a detriment. It was clearly unwanted by the claimant and raised, for the first time, the possibility of the claimant leaving the respondent's employment. There was however no evidence before the Tribunal to suggest that the comment made by F on 14 September 2023

was materially influenced by the claimant's protected disclosures. Nor was there any evidence from which we could draw such an inference. The comment was made 7 months after the second disclosure, and there was no evidence before us to suggest that F was motivated either consciously or unconsciously by the claimant's disclosures. F was not involved at all in investigating the claimant's protected disclosures, as E treated them confidentially and did not disclose the claimant's identity.

337. The comment made by F was inappropriate and naïve, but we accept his evidence that the reason he made it was to try and empathise with the claimant and ascertain what he was looking for as an outcome from the grievance.

338. The second alleged detriment was the comment made by Mrs B to the police about the claimant demanding money. We accept that this comment also amounted to a detriment as it was unwanted by the claimant and caused him some upset.

339. The comment was made in the course of a conversation between the police and Mrs B after the claimant had approached the police in a public place and made serious allegations about her and her husband, including showing them photographs and referring to sexual grooming and a paedophile ring. It is clear that Mrs B felt harassed by the claimant and was, herself, distressed by the claimant's repeated complaints about and attitude towards her.

340. There was no evidence before us to suggest that Mrs B was even aware of the fact that the claimant had made protected disclosures. She was aware of the claimant's grievance and, it appears, of the fact that his solicitor had made a without prejudice offer to the school. The protected disclosures by the claimant were made months before Mrs B spoke to the police, and were made to E, who treated them confidentially. E's evidence, which we accept, was that he did not even name the claimant to the person he asked to look into the claimant's concerns.

341. We find on balance that Mrs B did not know that the claimant had made protected disclosures, and that she was motivated in making the comments by her concerns that the claimant was harassing her personally. Concerns which were, to some degree, justified.

342. The final allegation of whistleblowing detriment relates to the email sent on E's instruction on 11 December to the claimant's solicitor asking the claimant not to contact him about the claim. This email was not sent because the claimant had made protected disclosures, but because there was the prospect of litigation between the claimant and the respondent. The email was sent months after the protected disclosures, and it specifically stated that the claimant could contact E if he wished to make a further whistleblow.

343. For the above reasons, the claim of whistleblowing detriment fails and is dismissed.

Harassment and direct discrimination

344. As a result of the concessions made by the claimant during cross examination, and by his solicitor during closing submissions, the only remaining allegations of discrimination before the Tribunal were the following:

344.1. Issue One (overbearing supervision);

344.2. Issue Thirteen (PE lesson);

344.3. Issue Fourteen (request to apologise); and

344.4. Issue Fifteen (3) (comment about having an obsession with Mr and Mrs B)

345. All of the remaining allegations are pleaded in the alternative as acts of harassment and direct discrimination. They cannot of course be both. The first three allegations are pleaded as sex discrimination, and the fourth allegation as disability discrimination.

346. In relation to the first allegation, we have found that there was no overbearing supervision of the claimant. In addition, the claimant accepted in cross examination that the alleged overbearing supervision was not because he was a man. There was no evidence before the Tribunal to suggest that the supervision that did take place was either because of or related to sex. Rather it was part of the school's standard supervision process.

347. The complaint about the PE lesson is not made out on the facts. In addition, when the claimant was asked in cross examination whether the way in which the respondent dealt with the PE lesson was related to sex he replied 'no'. There was no evidence to suggest that the respondent's treatment of the claimant in relation to the incident was either because of or related to sex.

348. The final allegation of sex discrimination related to the request that the claimant apologise to the teaching assistant who had been upset by the PE lesson. The claimant also accepted in cross examination that the respondent's treatment of him on this occasion was not related to him being male. There was no evidence before us to suggest that the respondent's treatment of the claimant was either because of or related to sex.

349. We turn finally to the allegation that the claimant was told he had an obsession with Mr and Mrs B. On the evidence before us we have found that the comment that was made was that the claimant was fixated with Mr and Mrs B, not that he had an obsession with them. In his evidence to the Tribunal the claimant accepted that this was nothing to do with his disability.

350. Once again, there was no evidence before the Tribunal to suggest that the comment was made because of the claimant's disability, or was related to disability in any way. Rather it was an observation about the claimant's behaviour, which was, in our view, justified on the evidence before the appeal panel.

351. For the above reasons the claims of direct discrimination and harassment fail and are dismissed.

352. In light of our conclusions on the above matters it has not been necessary for us to consider time limits or questions of remedy.

Approved by:
Employment Judge Ayre
Date: 10 March 2026

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