Case No: 1600238/2021

EMPLOYMENT TRIBUNALS

Claimant: Mrs Lorraine Lancaster

Respondents: The Governing Body of Whitmore High School (1)
The Vale of Glamorgan Council (2)

Heard at: **Cardiff (by CVP)**

On: **28 February and 1, 2 and 4 March (before being adjourned part heard to and continuing on) 20, 21, 22 and 23 September 2022**

Before: **Employment Judge Vernon**
Mr P Pendle
Mr P Collier

Representation
Claimant: Mr C Adkins (Trade Union representative)
Respondent: Ms H Iyengar (Counsel)

RESERVED JUDGMENT

1. The Claimant's complaint of detriment contrary to sections 43B and 48 of the Employment Rights Act 1996 fails and is dismissed.

2. The Claimant's complaint of detriment contrary to sections 47 and 48 of the Employment Rights Act 1996 fails and is dismissed.

REASONS

Introduction

1. By an ET1 claim form presented to the Tribunal on 22 February 2021 the Claimant has made two complaints alleging that she has been subjected to one or more detriments as a result of a) making one or more protected disclosures and/or b) engaging in activities as a trade union employee representative.

2. In summary, the Claimant's case is that she was suspended from her employment on 19 October 2020. She asserts that the reason she was suspended is that she made a number of protected disclosures in June and September 2020 in respect of conditions at Whitmore High School and in relation to the arrangements that were made to allow for the reopening of that school during the Covid 19 pandemic. She asserts that she made those protected disclosures and raised the issues in her capacity as a trade union representative.

3. ET3 response forms and combined grounds of resistance were presented to the Tribunal on behalf of the Respondents on 9 June 2021. The Respondents denied liability in respect of the Claimant's complaints and have continued to deny liability throughout the proceedings. In summary, whilst the Respondents accept that the Claimant is a trade union representative and that she was suspended from work in October 2020, the Respondents deny that her suspension is related in any way to any issues raised by her. The Respondents do not accept that the Claimant made any protected disclosures but, even if the Tribunal is satisfied that she did, the Respondents assert that the Claimant's suspension was unrelated to them or her role as a trade union representative. The Respondents' case is that the Claimant was suspended as a result of complaints made about her by pupils and parents of pupils attending the school as well as other professionals working at the school.

Procedural history

4. As set out above, the Claimant presented her ET1 claim form on 22 February 2021. In section 8 of the form, when asked to set out the type of claim being made, the Claimant ticked the box that she was making another type of claim which the employment tribunal can deal with and, in the box below, described the claim as "Detriment arising from trade union activities". The claim form was accompanied by a document entitled "Claim Particulars". The majority of the contents of that document set out the chronological history of matters being relied upon by the Claimant. Insofar as it particularised the nature of the Claimant's complaints, the Claimant said the following in paragraphs 31 and 32:

   "*31. The claimant avers that she was subjected to a detriment, in that she was suspended, due to making a protected disclosure.*

   32. In the alternative, the claimant avers that she was subjected to a detriment, in that she was suspended, because of her trade union activities. The claimant avers that the suspension had the purpose of preventing or deterring her from taking part in trade union activities at an appropriate time, or penalising her for doing so."

5. Neither the claim form nor the separate document entitled claim particulars referred to any statutory provision under which the Claimant's complaints were made or pursued.

6. Following the issue of the claim and the filing of the ET3 by the Respondent, a preliminary hearing took place before Employment Judge Sharp on 13 July 2021. The record of that preliminary hearing appears in the bundle at pages 54 to 60. The following matters appear from that record:

   a) the claim was listed for a final hearing to take place over five days between 28 February 2022 and 4 March 2022 remotely by video;
   b) the Claimant was given permission to plead her complaints in the alternative and concurrently;
   c) the Claimant was directed to respond to the questions attached to the Respondent's preliminary hearing agenda by 3 August 2021;

d) the Respondent was then given permission to file an amended ET3 response by no later than 6 September 2021;

e) the Employment Judge set out her understanding of the complaints being pursued by the Claimant and the issues which would require consideration in order to determine them at the final hearing. In the normal way, and at paragraph 12 of the record of the preliminary hearing, the Employment Judge directed that if either party believed the summary was wrong or incomplete, the party must write to the tribunal and the other party within seven days and, if the party did not do so, the list would be treated as final unless the Tribunal decided otherwise.

7. At paragraph 38 of the record of the preliminary hearing, the Employment Judge recorded that the Claimant was making complaints of:
   a) detriment due to the making of a protected disclosure; and
   b) detriment due to being a trade union member carrying out trade union activities at an appropriate time.

8. The list of issues was then set out in paragraph 39 of the preliminary hearing record. It was split into three sections, entitled "Protected disclosure", "Detriment (Employment Rights Act 1996 section 48)", and "Remedy". In the second part of the list of issues, when dealing with the issue of detriment, the record read as follows:

   "*2.1 did the respondent do the following things:*
   2.1.1 suspend the claimant on 19 October 2020?
   2.2 by doing so, did it subject the claimant to detriment?
   2.3 if so, was it done on the ground that they made a protected disclosure / due to being a trade union member carrying out trade union activities?"

9. At no stage following the preliminary hearing did either party write to the tribunal to indicate that the record of the preliminary hearing was wrong or inaccurate insofar as it recorded the claimant's complaints or the issues for determination.

10. The Claimant subsequently responded to the Respondent's request for further information on 30 July 2021. The response provided further detail in

respect of the Claimant's complaint of detriment on the grounds of having made a protected disclosure. It added nothing in respect of the Claimant's complaint of trade union related detriment. Thereafter, on 6 September 2021, the Respondents presented combined amended grounds of resistance.

11. The final hearing commenced on 28 February 2022. The Claimant was represented by her union representative, Mr Adkins. The Respondents were represented by counsel. Regrettably, the final hearing did not proceed entirely smoothly. As a result, we have taken care to set out what happened during the final hearing as part of this judgment in rather more detail than might otherwise be the case.

12. At the outset of the final hearing, the Tribunal discussed the issues for determination with the parties. Both parties confirmed that the issues set out in the record of the preliminary hearing from July 2021 remained the issues for determination.

13. After the Tribunal took time to undertake pre-reading of the statements and relevant documents, the Claimant gave evidence starting on the afternoon of day one of the hearing. The Claimant's evidence was completed at lunchtime on day two. The Tribunal then heard evidence from two further witnesses on behalf of the Claimant, namely Sarah Greenslade (a colleague of the Claimant at Whitmore High School and also a union representative for a different trade union) and Neil Butler (national official of NASUWT Cymru). Their evidence was completed during the afternoon of day two of the hearing.

14. On day three of the hearing, Mr Robinson (Head of School at Whitmore High School) started giving evidence. During the course of cross examination of Mr Robinson by Mr Adkins, it became apparent that significant emphasis was being placed by the Claimant upon alleged inconsistencies between the way in which the Claimant was treated by the Respondent in suspending her and the treatment afforded to other members of the Respondent's staff in circumstances which the Claimant's representative suggested were either the same or not materially different in seriousness compared with the Claimant's case. It was apparent that the Claimant was seeking to persuade the Tribunal to draw inferences from the alleged inconsistencies in treatment so as to conclude that the Claimant a) had been subjected to one or more detriments

and b) had been so treated on one or more of the prescribed grounds. The comparator cases upon which the Claimant relied were referred to in the briefest of terms in the Claimant's witness statement. They had not been referred to in the ET1 claim form or in the Claimant's particulars attached thereto. As a result of the manner in which the Claimant's representative cross-examined Mr Robinson, the Tribunal raised a concern as to the need for there to be further disclosure of any documents relating to the comparator cases to which the Claimant was pointing.

15. After allowing some time for the parties to consider the most appropriate way forward, the Tribunal determined that if the Claimant wished to pursue the argument of inconsistent treatment in support of her complaints then an application to amend the claim would be required. The Tribunal adjourned the final hearing on day three in order to allow the Claimant and her representative an opportunity to consider the issue and, if so advised, to make an application to amend. The Tribunal indicated that it would not sit on day four of the final hearing to allow the Claimant plenty of time to deal with the matter but would hear and determine any application to amend on the fifth day.

16. The Claimant filed and served an application to amend the claim on the fourth day of the hearing. By the amendment, the Claimant sought to introduce new paragraphs 18A, 18B and 18C into the claim particulars. Having had the opportunity to consider the proposed amendment, the Respondent chose not to oppose the amendment that was sought but indicated its position that the final hearing would then need to be adjourned part heard in order to allow the Respondent to consider its response to the amendment and whether or not there was a need for further orders in respect of case management in light of the amendment.

17. In the circumstances, and by case management orders made on 4 March 2022, the Tribunal adjourned the final hearing part heard and relisted it for the continuation of the final hearing over a further five days commencing on 19 September 2022. The reason for the longer than normal delay when adjourning a final hearing part heard was the availability of the Tribunal, and particularly the availability of Employment Judge Vernon who sits in the employment tribunal for one week per quarter only.

18. In addition to granting permission for the Claimant's proposed amendment when adjourning the final hearing part heard, the Tribunal also issued further case management orders. The Respondent was given permission to amend its response which it did on 27 May 2022.

19. Further, the Claimant was also required to confirm to the Tribunal and to the Respondents the statutory basis for the Claimant's complaint of trade union related detriment indicating the statutory provision or provisions being relied upon. The Tribunal issued that order as a result of it being unclear to the Tribunal which statutory provision or provisions were being relied upon by the Claimant in pursuing that complaint. It appeared to the Tribunal, particularly having considered the list of issues agreed at the first preliminary hearing and confirmed by the parties at the outset of the final hearing, that the Claimant's complaint was being pursued in accordance with section 48 of the Employment Rights Act 1996. That was the only statutory provision having been identified at any stage of the proceedings.

20. By email dated 25 April 2022, the Claimant's representative wrote to the Tribunal and to the Respondent's representatives. The email contained the following statement:

"*The statutory provision for taking the trade union victimisation claim is under ERA96 paras. 47+48.*"

21. With the agreement of both parties and the non-legal members, and in order to ensure a timely further hearing could be listed considering the availability of Employment Judge Vernon, a preliminary hearing for further case management took place before Employment Judge Vernon alone on 9 June 2022. A record of that preliminary hearing appears in the bundle at pages 700 to 704. The following should be noted from that record:

a) The following facts were agreed between the parties and were recorded:
    i) the Claimant accepted and did not challenge the facts set out in paragraphs 48A to 48D of the second amended response to the claim in respect of the comparator cases now relied upon by the Claimant; and

ii) the Respondents accepted that the teachers / members of staff who were the subject of the complaints/allegations set out in those paragraphs were not issued with any disciplinary letters, suspended from work or subjected to any disciplinary investigation or sanction;

b) it was further agreed that, notwithstanding the agreed facts set out above, the issues for determination as part of the final hearing still included the following:

i) Why the Claimant was suspended and/or subjected to a disciplinary process when the other teachers/staff members in the three comparator cases relied on by the Claimant were not; and

ii) whether the Claimant was subjected to any detriment and, if she was, whether that was for one or more prohibited reasons.

22. Various other case management issues were dealt with at the preliminary hearing on 9 June 2022, the vast majority of which were dealt with either by agreement between the parties or with little dispute between them. In addition to those matters, the Tribunal also, after hearing argument, refused the Respondent's application for the final hearing to continue in private but made a restricted reporting order pursuant to rules 29 and 50 of the Employment Tribunal Rules 2013 to the extent set out in the record of the preliminary hearing.

23. The final hearing reconvened on 20 September 2022. Despite the earlier listing direction, the Tribunal did not sit on 19 September 2022 as that was the date of Her Majesty the late Queen's funeral and, in accordance with national protocol, no Tribunal hearings took place on that date. The Tribunal heard the remainder of the evidence of Mr Robinson on 20 September 2022.

24. The following day, the Tribunal heard the evidence of Tracy Dickinson and Janice Ballantine on behalf of the Respondent. The Tribunal also began hearing the evidence of Dr Vince Browne. His evidence was eventually completed on the morning of 22 September 2022.

25. After allowing the parties time to collect their thoughts and fine tune their written submissions, the Tribunal heard oral closing arguments on the

afternoon of 22 September 2022. At the conclusion of submissions, and reflecting the extent of the evidence and argument received by the Tribunal, the Tribunal indicated that it would require the whole of the next day in order to deliberate and thereafter would issue a written Reserved Judgment to the parties.

Evidence and documents

26. As is apparent from the above procedural history, the Tribunal heard evidence from seven witnesses in total. All of the witnesses had provided written witness statements. Mr Robinson provided two witness statements, the second being provided to address issues arising from the Claimant's amendment of the claim part way through the final hearing. With the agreement of the parties, the Tribunal granted permission for the Respondents to take further instructions from Mr Robinson and to prepare a second statement for him despite the final hearing being adjourned part heard when he was in the process of giving his oral evidence.

27. In addition to the witness evidence, the Tribunal was provided with a hearing bundle which (by the end of the final hearing) comprised pages 1 to 741. Further, and in light of the manner in which the Claimant pursued some elements of the claim, the Tribunal was also provided with a separate bundle described as a "Bundle of Statutory Materials" which contained various extracts of primary and secondary legislation, guidance documents from the Welsh Government, some health and safety related guidance and copies of some authorities.

28. Both parties prepared written submissions. The written submissions were expanded upon during the hearing.

The issues

29. The issues to be determined were considered at the preliminary hearing conducted by Employment Judge Sharp on 13 July 2021. The issues were recorded in the record of that hearing at paragraph 39. Both parties agreed at the final hearing that those remain the issues for determination, subject to the developments during the final hearing summarised above.

Facts

30. A significant amount of the facts in this case are either not in dispute or are not materially challenged. Many of the facts can be gleaned from the significant quantity of documents provided to the Tribunal. Where there is a dispute of fact between the parties that is material to the Tribunal's decision, we have resolved that dispute on the balance of probabilities. In doing so, the Tribunal will not rehearse in this Judgment every piece of evidence received or every argument advanced by the parties but will only refer, where necessary, to the parts of the evidence and the arguments which the Tribunal considers to be significant and material in determining the issue in question.

The parties

31. The First Respondent is the governing body of a community school providing education for 11 to 18 year old students in the Vale of Glamorgan. Whitmore High School opened in September 2018 on the site previously occupied by Barry Comprehensive School.

32. The senior leadership team structure at Whitmore High School comprises of:

    a) an Executive Head Teacher, Dr Browne, who is responsible for Whitmore High School and Pencoedtre High School, another community school in Barry;
    b) the Head of School at Whitmore High School, Mr Robinson. Mr Robinson became Head of School in September 2019, the position having previously been held by Mr Thompson until Mr Robinson took over that role; and
    c) four Assistant Head Teachers.

33. The Second Respondent is a unitary authority responsible for providing local authority services. It is responsible for education within the Vale of Glamorgan.

34. The Claimant is a teacher at Whitmore High School and occupies the position of Head of Learning - Catering. As Whitmore High School is a community school, the Claimant is employed via the Second Respondent. However, the First Respondent is responsible for managing employee relations matters in accordance with the relevant Welsh legislation.

35. The Claimant worked at Barry Comprehensive School from 1 September 2000. She has worked at Whitmore High School since it opened in September 2018. The Claimant currently remains employed by the Second Respondent in her role at Whitmore High School.

36. In addition to her role as a teacher at the school, the Claimant was also the NASUWT school representative at Whitmore High School and was also the negotiating secretary for the Vale of Glamorgan for the NASUWT. The Claimant was elected to the position of negotiating secretary in 2017. She was already serving as the school representative for the union at that time.

Complaints arising in 2018

37. In October 2018, Dr Browne received a letter of concern from a parent of a pupil at the school regarding the manner in which it was alleged the Claimant had treated that pupil in respect of their use of a mobile telephone during the school day. The specific concern raised related to the use of the mobile phone noting that the child had learning difficulties and autism.

38. Prior to the complaint being received, the Claimant had raised concerns with Dr Browne about the particular pupil's use of his mobile phone at school. Similar concerns were raised at approximately the same time by Sarah Greenslade who was the local area representative for Unison.

39. Following receipt of the letter from the parent, Dr Browne wrote to the Claimant informing her of the complaint that had been received and also that he had asked Mr Nick Emery to carry out an initial fact-finding exercise into the matters raised. Dr Browne's letter informed the Claimant that concerns were raised that the Claimant's actions had discriminated against the pupil because of his disability. It further indicated that Mr Emery had been asked to report back to Dr Browne once he had obtained the Claimant's responses so that Dr Browne could then determine the appropriate course of action. The letter also advised the Claimant that the matter could result in the matter being considered in line with the school's disciplinary procedure.

40. Subsequently, and in the period between November 2018 and July 2019, an investigation was carried out into the matters raised by the parent's letter

during the course of which there were exchanges of correspondence between representatives of the NASUWT and Dr Browne in which concerns were raised by the union officials about the decision made by Dr Browne to investigate the matter and the manner in which the investigation was being conducted. Amongst other things, assertions were made by Neil Butler (in a letter dated 14 February 2019) that the investigation and the manner in which it was being conducted was the latest in a long line of detriments suffered by the Claimant in her role as NASUWT representative.

41. It should be noted at this stage that these matters are not relied upon by the Claimant as detriments for the purposes of her claim but are included by the Claimant as background information in respect of her claim only.

42. On 16 July 2019, Dr Browne sent a letter to the Claimant setting out the outcome of the investigation. The conclusion reached was that the investigation was unable to establish that the Claimant had been given specific instructions regarding the non-removal of the pupil's mobile phone as the pupil's parent understood was the case. The letter did, however, suggest that there could have been better interaction and communication between the Claimant and the SENCO about the issue during the school term. Dr Browne also indicated that certain emails which the Claimant had sent regarding the pupil could be perceived as displaying a lack of understanding regarding the pupil's circumstances and Dr Browne felt that the Claimant may benefit from some further training and development regarding autism and teaching children with such needs. Dr Browne also commented on the need for the Claimant to adopt a more professional style in writing such correspondence. The letter also informed the Claimant that it was not anticipated that the pupil would be taught by the Claimant in the following academic year following alternative arrangements being made whilst the investigation was ongoing for the pupil to access home economics education.

43. Neither the Claimant or her union were content with the outcome of the investigation and on 4 October 2019 Mr Butler wrote to the managing director of the Vale of Glamorgan Council setting out the NASUWT's view that the complaint had been used by Dr Browne to exert pressure on the Claimant in relation to her role as a union representative. The letter included a specific assertion that Dr Browne's outcome letter was a further act of detriment

against the Claimant directly linked to her role as a trade union representative. A longer letter also dated 4 October 2019 was sent by Mr Butler to Dr Browne raising similar concerns.

44. Tracy Dickinson was subsequently asked to address the concerns raised by the NASUWT by the managing director of the Vale of Glamorgan Council. From mid October 2019, Ms Dickinson met with the Claimant and, on occasion, her union colleagues, to discuss the concerns raised and to seek to find an amicable way forward. Ms Dickinson set out in her witness statement that an agreement was reached to move forward with an open relationship where issues and concerns could be raised with her informally by the Claimant and/or her union representatives in order to develop a new collaborative relationship.

Covid-19 and the Claimant's protected disclosures

45. As is now well-known, the Covid 19 pandemic took hold of society generally in the United Kingdom in March 2020. Amongst other significant changes in people's lives brought about by the pandemic, formal education in a school environment was discontinued in March 2020 with the majority of staff and pupils communicating and facilitating learning where possible via phone and online. Hub schools were established to assist key workers and Whitmore High School was involved in providing staffing for a hub along with other schools in the Vale of Glamorgan. Only the senior leadership team of the school were physically attending the hub.

46. At the beginning of June 2020, the Welsh government announced that all schools would return in Wales on 29 June 2020 in a phased return approach. The summer term would also be extended for one week to end on Friday, 24 July 2020. The phased return approach required year groups to be separated into cohorts with staggered starts and lesson times. A further measure was implemented requiring no more than one-third of any school's pupils to be present at any one time.

47. During the period between March and June 2020, and again following the Welsh Government's announcement of the reopening of schools at the start of June 2020, the Claimant raised various concerns in respect of decisions

being made by Dr Browne (in his capacity as Executive Head Teacher) and Mr Robinson (as Head of School) in respect of the management of the Claimant's Department and the school generally and the arrangements that were being made for the return of staff and pupils to the school building. The Claimant raised a number of issues including concerns as to the rota for the staff required to attend the school building and the alleged discriminatory effect on part-time workers. Concerns were also raised by her in respect of hygiene measures to be implemented at the school as a control measure to protect staff and pupils from the ongoing risk posed by the pandemic. A good example of the Claimant raising such concerns can be seen in an email sent by the Claimant to Tracy Dickinson on 21 June 2020 which appears at page 147 of the hearing bundle.

48. The Claimant also raised concerns regarding various risk assessments which had been prepared in respect of the return to the school building. There were fundamental disagreements between the Claimant (both in her personal capacity and in her capacity as a union representative) and the leadership of the school.

49. The Claimant was unable to resolve her differences regarding those matters with either the school or the Local Authority and, therefore, on 24 June 2020 the Claimant sent an email to Neil Moore, the Leader of the Vale of Glamorgan Council. A copy of the email sent appears at page 194 of the hearing bundle. This email is relied upon by the Claimant as the first of the protected disclosures she made.

50. In addition to stating that the Claimant had very grave concerns surrounding the attitude of Whitmore High School and its leadership when preparing for the reopening of the school and expressing her views about the appropriate way in which such matters should be dealt with, her email contained the following passages:

"*The WHS risk assessment was sent to all staff on Friday 19th June. It did not cover the opening of the school on Monday 22nd and Tuesday 23rd June for training sessions, for which it states will be online, and yet expected staff to attend in person. Again, despite requests I have still not received the school floor plans with the 2m social distancing marked out.*

The risk assessment lacks the detail and clarity expected and fails at all to mention the location of the rooms or the size of room in comparison to others. To choose the smallest suite of classrooms on the first and second floors, using a number of staircases and four flights of stairs is totally unacceptable. These rooms are the hottest classrooms in the school and extremely poorly ventilated with many of the windows not able to be opened or deliberately screwed shut. To suggest that if a window can be opened, it will be fitted with a restrictor that allows little airflow is a good resolution, borders on farcical. There are no external doors to increase airflow and the majority have no access to running water. Whilst minor movement has been made on the opening up of a very small number of rooms on the ground floor this is not good enough, there is absolutely no need to use any room other than those on the ground floor. On the ground floor the rooms are larger for greater social distancing, a large proportion have doors that open directly to the outside to increase the flow of air through the building and rooms but also to minimise movement between classrooms. The majority have access to running water essential for regular hand washing.

…

In the last paragraph of the hygiene section [a reference to Welsh Government guidance] *we see:*

"staff should also be mindful of the physical environment and how this can be managed to support the health and well-being of learners and staff, for instance keeping windows open to let in fresh air and ensuring there is natural sunlight. ***The airflow and ventilation should be increased where possible."***

How can this be achieved?

This is not possible where windows have been screwed shut. Ventilation can be massively increased on the ground floor (assuming that fire doors haven't been locked!)

The leadership at WHS are not reading and adhering to the WG guidance and in doing so significantly endangering life.

This RA is not aligned with the government guidance sent to all schools. The hygiene section is there for all to read but it has not been read in conjunction with this RA.

…

There are no washing facilities in the majority of rooms chosen and limited toilets on each of the first and second floors. Based on the information provided approximately 180 students will be present. On the ground floor there are a number of toilet facilities including sixth form as well as sink facilities in most classrooms. The logistics of essential hand washing has simply been completely ignored.

At no point has the disinfection of each of the stairwells been outlined. Disinfection of handrails would need to be carried out after every student. Teachers will have to either lead from the front or follow from the back, they cannot be 2m apart on the stairs if side-by-side, so there is very little opportunity for social distancing to be monitored when ascending or descending the staircase. Emergency fire access is also far less compromised on the ground floor."

51. Further correspondence (which is contained within the hearing bundle) then passed between the Claimant and the NASUWT (on the one hand) and the senior leadership team and the council (on the other hand) regarding ongoing concerns held by the Claimant and the union in respect of the arrangements made and risk assessments carried out for the reopening of schools including Whitmore High School and the fact that some of the control measures identified by the school and the council were not in fact being implemented or complied with on the ground. Those concerns, and the Claimant's and the union's dissatisfaction with the approach being taken by the school and the council continued towards the end of the school summer holidays in advance of and into the beginning of the Autumn term in September 2020.

52. On 9 September 2020, the Claimant sent an email to Tracy Dickinson. A copy of this email appears at page 307 of the hearing bundle and is relied upon by the Claimant as the second protected disclosure she made. The email was set out in the following terms:

"*I am sorry to inform you that the conditions at Whitmore high school continue to cause a significant concern.*

Although there are many, I have listed the main issues below:

1. movement, the school is operating as "normal" apart from staggered breaks. This means that all year group bubbles are following a normal

timetable and are on the move together. Due to the one-way system students are mostly moving throughout the school building on no less than nine occasions throughout the day. Bubbles are mixing and corridors crowded. Hand sanitising stations are not regularly used on entering the building. Teachers are required to move within these corridors from meetings to the first lesson and from classes to duty. There has been no attempt to reduce movement around the building and due to the one-way system movement is often unnecessary and lengthy.

2. *Cleaning. The school is managed by the same Head Teacher as Pencoedtre high school and yet has provided limited cleaning products for all classrooms. I cannot understand how staff at one school have been supplied with numerous products and yet in WHS we have 1 sponge, 1 bottle of cleaning fluid and a bottle of hand sanitiser. I raised this at the meeting this morning and I trust this will have been rectified by tomorrow.*
3. *Cleaning. Teachers cannot be expected to clean the rooms and the school cannot take it for granted that rooms are cleaned. Classrooms are not being cleaned between bubbles and the standard of cleaning is causing concern. It seems that whilst desks are cleaned at the end of the day, chairs along with other hard surfaces are not. There is a severe risk of cross contamination and viral spread. I have already expressed in writing to you my concerns over the expectation on teachers to clean.*
4. *The risk assessment presents significant concerns and these are highlighted in red on the attached document.*
5. *Assemblies are still continuing; they are with whole year groups and staff in an unventilated hall and pose a significant risk. It is not acceptable that such large gatherings continue.*
6. *Individual risk assessments have not been completed for all those who have requested them, to simply direct staff to the NHS toolkit is not acceptable and I would ask that all members who have requested a risk assessment to be provided with one.*
7. *Ventilation, windows remain screwed shut and broken. Airflow is a concern and compromised.*

Finally, if Dr Browne had followed the Welsh government operational guidance and consulted with the trade unions then an awful lot of our concerns could have been identified. Whilst I accept Dr Browne was on

sickness leave last week, he has been in school this week and has at no time attempted to engage or resolve the issues we have raised or at any other time. This is extremely disappointing.

I would hope that our concerns will be urgently addressed by Dr Browne and I continue to be available to meet with him this week. However, if we do not feel our concerns are being addressed and our members safety is not taken seriously then we do reserve the right to refer this matter to the Health and Safety Executive and Public Health Wales."

53. On the morning of 10 September 2020, Tracy Dickinson sent an email to the Claimant, copying in Mr Robinson and others. In her email, Ms Dickinson thanked the Claimant for raising the issues regarding cleaning product supply with her and informed her that, after speaking with Mr Robinson, the school did not have a cleaning product supply issue and that all members of staff were aware that they needed to speak to their line manager should they require additional products. The email invited the Claimant to liaise with Mark Kennedy if she required additional products for her classroom. Ms Dickinson also stated that there was an additional enhanced cleaning regime in place at Whitmore High School in line with the risk assessment which had been drawn up.

54. The Claimant responded to Ms Dickinson later that evening. She copied her email to Jane Setchfield of the NASUWT but did not copy in anyone else. A copy of this email appears at page 362.1 of the hearing bundle. It is the third alleged protected disclosure relied upon by the Claimant. The email said the following:

"*Unfortunately, Tracy it seems you have been misled or are mistaken because that is a completely different story to what we were told today at 8.30am by Innes. They apparently do not have any wipes and can't get them. In fact a joke was made comparing it to the flour shortage during the pandemic. The school has had 3 months to get this organised.*

With regard to cleaning products they are completely inadequate, not in line with the risk assessment and failed to protect those who work in the school. This falls well short of the basics outlined by Andrea Davies yesterday. If staff are only provided with 1 bottle of cleaning fluid, sanitiser and a cloth why would they expect to have anything else? There is no provision for cleaning

the rooms, children can hardly clean a room with one sponge between 30 and the expectation should not be on teachers to decide how best to clean and with what to clean. As I have already stated teachers are not cleaners. I would expect consistency across all schools and all these products in class and accessible.

These products should be replenished throughout the day by cleaning staff and should be in quantities suitable for cleaning of rooms between lessons and bubbles.

I can confirm that rooms are not being cleaned between classes or bubbles, chairs are not being cleaned and there is an unacceptable and significant risk of contamination. This in itself compromises the integrity of the risk assessment, regardless of all the other issues. As an aside the dirty cloth has been in that classroom for the week. The situation is completely untenable."

55. The Tribunal finds that, throughout the period from June 2020 into the Autumn term (including during the school summer holidays in August) the Claimant raised issues with the Second Respondent by corresponding with Tracy Dickinson. Numerous issues were raised about the concerns the Claimant had about what she felt were inadequate steps being taken to ensure the safety of staff and pupils in respect of Covid-19. The Tribunal also finds, on the basis of the emails within the hearing bundle and the evidence of Ms Dickinson, that she entered into a dialogue with the Claimant and representatives of other unions in respect of these concerns and, wherever possible, sought to engage with them and resolve them.

56. It is clear that the Respondents did not always agree with the observations made by the Claimant or her union colleagues. However, it is also clear (and the Tribunal finds) that the Respondents were not averse to the Claimant or any other trade union representatives raising these issues. In her statement, Ms Dickinson says (at paragraph 24 for example) that the Second Respondent welcomed the Claimant raising such issues. The Tribunal also finds that Dr Browne worked with the Second Respondent in his capacity as Executive Head Teacher to provide information to enable the Second Respondent to respond to and address the concerns raised by the Claimant. The Tribunal does not accept the Claimant's assertions that either of the Respondents took exception to her raising these issues. In the Tribunal's

view, the available evidence does not support such an assertion and, on the contrary, tends to suggest the opposite.

57. Issues related to the school's approach to Covid-19 were not only raised by the Claimant. Representatives of other trade unions, and specifically Sarah Greenslade on behalf of Unison, were also raising issues at around the same time as the Claimant. A good example of such communications appears in the email thread between Ms Greenslade and Tracy Dickinson at pages 354 to 362 of the hearing bundle. Ms Greenslade's emails raise many of the same issues as the Claimant had been raising.

Complaints and concerns about the claimant

58. In the early part of the Autumn term the school received complaints regarding the Claimant from pupils of the school and from parents. The initial complaints were made by pupils who approached Mr Robinson at school to raise concerns. He asked them to put their concerns in writing. The notes written by the pupils (Child B and Child D) appear in the hearing bundle at pages 353.1 to 353.16. The nature of the concerns raised were as follows:

58.1 Child B complained that she had been told by the Claimant that she was rude and disrespectful and was required to leave the class to learn some manners;

58.2 after being required to leave, Child B was outside the classroom for 40 minutes and was there without a face mask;

58.3 when Child B asked the Claimant what she had done wrong and what could be done to improve her behaviour, the Claimant screamed at her telling her to get out;

58.4 Child D complained that the Claimant shouted at her to get out of the class and had been left outside of the class for about 50 minutes;

58.5 the Claimant told child D that she was disruptive and rude and that if she had been polite, she would have been allowed back into the classroom;

58.6 child D indicated that because of the Claimant she no longer wished to take health and social as a subject at school.

59. The following day, Mr Robinson received a letter of complaint from the parent of child B regarding the Claimant. A copy of the letter appears at pages 346 to 350 of the bundle. The nature of the complaint made included the following:

59.1 the parent wished to complain about an incident which occurred on 10 September whilst child B attended her very first lesson with the Claimant;

59.2 child B had been apprehensive about attending the Claimant's class as a result of the claimant having been nasty to her sibling two years before;

59.3 child B had giggled during the lesson which is one way in which she behaves when she is either embarrassed or scared, whereupon the Claimant sent her out of the classroom for 50 minutes;

59.4 in the second lesson, child B was sent out of the class again for 40 minutes for smirking which child B had done because the Claimant had been staring at her with an angry face for some time;

59.5 child B had been left to stand in the corridor without a face mask;

59.6 upon returning to the class and asking what page she should be looking at (being uncertain having been out of the classroom) the Claimant responded sarcastically to child B which child B found intimidating;

59.7 as a result of the events set out, child B had missed the whole introduction to the new subject being taught by the Claimant and the parent of child B was not happy as a result.

60. In the letter, the parent of child B said that she would really like the matter to be dealt with as soon as possible bearing in mind that the subject in question was a subject which child B wanted to do well in. The parent said that she did not want to happen to child B what had happened to her other child during the times her other child had been taught by the Claimant.

61. At around the same time, Mr Robinson also received a letter of complaint from a different parent, the parent of child C. A copy of that letter appears at pages 351 to 353 of the bundle. That letter of complaint raised the following matters:

61.1 child C had struggled since taking catering as a GCSE option because of the way the Claimant is (which the parent considered was unacceptable);

61.2 having experienced similar issues the previous year, and having been required to continue attending classes taught by the Claimant that year, child C now physically was unable to attend lessons as a result of becoming overwhelmed with anxiety;

61.3 the Claimant taught child C in such a way as to drain his confidence and made him feel he was not good enough;

61.4 child C felt cheated out of a qualification as he had not been able to achieve what he wanted from the subject;

61.5 the Claimant made him feel uncomfortable because of the way she teaches lessons, picking on certain pupils, focusing on the negatives and not giving proper feedback;

61.6 the Claimant's tone towards the class at times can appear very aggressive;

61.7 pupil C has spent the GCSE years constantly dreading catering classes and has been unable to concentrate in other lessons knowing that his catering classes were approaching;

61.8 child C had stopped sleeping properly as a result of the stress suffered as a consequence;

61.9 in the first lesson back after the school reopened following the pandemic-related lockdown, the Claimant was angry with the class for not completing work during lockdown despite the fact that none of the class knew it had been set;

61.10 as a result of all of those issues child C's anxiety had been through the roof and each time he was due to have a catering lesson would feel ill with chest pains, heart racing and headache;

61.11 since not attending lessons, child C had been feeling better and less anxious.

62. The letter concluded by indicating that child C had asked not to be named if the matter was discussed with the Claimant.

63. In paragraph 17 of her witness statement, the Claimant suggests that Mr Robinson had "trawled through the school" and found some badly behaved

children to exaggerate instances and minor complaints to their parents. It is unclear from the Claimant's witness statement whether she asserts that the complaints from the pupils and parents were in some way manufactured by or fabricated by Mr Robinson. When asked about this issue in cross examination, the Claimant was reluctant or unwilling to accept that the complaint notes and letters were genuine. She observed that due to them being undated and redacted in part, she was unable to accept that they were genuine. The Tribunal finds as a fact that the letters are genuine and that Mr Robinson's evidence about receiving them and the circumstances in which they were received is truthful.

64. Having received the notes from the pupils and the letters of complaint from the parents, Mr Robinson sought advice from Janice Ballantine, the Principal HR Business Partner for the Second Respondent. They had a discussion about how to treat the complaints received. Ms Ballantine considered that the matters raised were sufficiently serious that, if true, they might amount to potential conduct matters. At that point she felt, however, that the situation was not a potentially gross misconduct scenario.

65. Ms Ballantine considered various Welsh Government guidance and school procedures and considered that the most appropriate course of action seemed to be to carry out an investigation under the school's disciplinary procedure. She felt that the issues raised did not fall within the ambit of the Welsh Government complaints guidance but probably fell within the parameters of the examples of lesser misconduct set out in the Welsh Government guidance for disciplinary and dismissal processes. Ms Ballantine did not consider that suspension was something she needed to discuss with Mr Robinson at that stage because of the severity of the issues raised. However, a decision was reached that the matters required investigation.

66. Ms Ballantine advised Mr Robinson that before reaching a final conclusion on how to proceed he should discuss the matter with the Claimant. When it became clear that the Claimant was not prepared to meet with Mr Robinson before taking advice, the Respondents had to decide how to proceed. The Tribunal finds that both Ms Ballantine and Mr Robinson had formed the view that, whatever the Claimant may say, the issues raised required investigation. Advice to that effect was given to Mr Robinson by Ms

Ballantine in her capacity as Principal HR Business Partner. Mr Robinson accepted and then acted upon that advice.

67. In the early afternoon of 17 September 2020, Mr Robinson's personal assistant sent an email to the Claimant asking her to meet briefly with Mr Robinson at the end of the school day. The Claimant indicated that she would like to see an agenda for the meeting with Mr Robinson. No agenda was prepared but the Claimant was sent a copy of the letter dated 17 September 2020 (which appears at page 368 and 369 of the hearing bundle). The letter set out the following details:

    67.1 it informed the Claimant of the letter of concern which had been received in respect of child B and summarised the contents of that letter;

    67.2 it made the Claimant aware of the further concerns raised by child D in respect of the lesson on 10 September 2020;

    67.3 it further informed the Claimant of the letter of complaint received in respect of child C but indicated that the school was unable to provide greater detail pending permission from the child's parent to share information with the Claimant;

    67.4 the letter informed the Claimant that the concerns required a response and therefore required investigation and indicated that, if proven, the matters were potentially matters of misconduct and would be investigated in line with the school's disciplinary procedure;

    67.5 the letter clarified the areas of concern from a potential conduct perspective;

    67.6 it sought the Claimant's permission to make the regional officer of her trade union aware of the matter and informed the Claimant of her right to be accompanied by a trade union representative or work colleague to any investigation meeting;

    67.7 finally, it indicated the decision to appoint Emma Price to investigate the concerns and prepare an investigation report.

68. On 21 September 2020, Emma Price wrote to the Claimant regarding the investigation and indicating her intention to speak to pupils and then to the Claimant about the concerns which had been raised. Ms Price said that she would like to meet with the Claimant as soon as possible to discuss the matter and that the meeting could be arranged to suit the Claimant but

should be within 10 days of her email. The email also indicated that Ms Price envisaged that the investigation would be completed within 10 days.

69. The Claimant had various concerns regarding the school's decision to investigate the matter and to do so under the disciplinary procedure and raised her concerns with her regional trade union officer, Mr Adkins. The Claimant had taken the view that the investigation was unfounded and related to complaints which had no foundation. She believed that she was being treated unfairly and that the unfair treatment coincided with her "taking on" (in her words) the senior leadership team of the school in respect of union related issues. Amongst the Claimant's concerns was an issue relating to Ms Price's involvement in the investigation. This issue was raised on the Claimant's behalf with Mr Robinson by Mr Adkins and, in response, Mr Robinson informed Mr Adkins that the Chair of Governors had decided that the investigation would now be dealt with by one of the other school governors, namely Kathy Riddick.

70. On 28 September 2020, Ms Riddick sent an email to the Claimant confirming her appointment to carry out the investigation into the concerns set out in Mr Robinson's earlier letter. Her email again indicated her wish to meet with the Claimant as soon as possible and asked for details of dates which would be convenient to the Claimant. The Claimant responded by informing Ms Riddick that she had sent on the email to the senior trade union official and asked him to liaise with Ms Riddick in respect of a convenient time and date.

71. A meeting was arranged between Ms Riddick, the Claimant and Mr Adkins for 13 October 2020. As a result of a request to rearrange that meeting made by Mr Adkins, the meeting was rescheduled to take place on 20 October 2020.

72. Before that meeting took place, on 15 October 2020, Mr Robinson spoke to and subsequently received an email from Joanna Hill, an educational psychologist employed by the Second Respondent. Ms Hill had been present at the school the previous day and was informing Mr Robinson of the contents of a conversation which she had had with the child she was there to assess. Her email set out that the child had indicated that they did not like their catering teacher, namely the Claimant. The child said that the Claimant

had made the child cry and didn't care that the child had cried. The child described the Claimant as a bully. In light of that information, Ms Hill decided that the matter should be reported to the school's management.

73. Later that morning, Mr Robinson met with Ms Hunt, a Learning Support Assistant who was familiar with the child in question (child E) to see if she could provide any further information in respect of the concerns raised. Mr Robinson asked Ms Hunt to write down her concerns which she did the following day. A copy of the note prepared by her appears at pages 435 and 436 of the hearing bundle. The note contained the following information:

73.1 the Claimant told the child to hurry up as he was disrupting everyone else's learning which upset the child;

73.2 the child was suffering with a cold and was singled out by the Claimant when she told him to go to the toilet to wash his hands and not to return to the lesson until he had done so, which also upset the child;

73.3 the Claimant said to Ms Hunt that they both needed to be singing from the same page regarding the child's behaviour and that she (the Claimant) did not want the child back in her class again unless the hygiene issues were resolved;

73.4 in a subsequent lesson when the Claimant was instructing the class on the best way to wash their hands, when child E demonstrated how he washed his hands the Claimant told him that it was not the correct way to do it and that she did not care whether his father had shown him how to wash his hands because the child should follow her instruction. The child told the Claimant that he felt that she was bullying him and didn't like him. Ms Hunt's view was that the Claimant did not want to know and told the child to get on with his work;

73.5 in a further lesson, the child was visibly upset when Ms Hunt arrived at the lesson and the child informed her that the Claimant had not been interested in his story in comparison to being interested in listening to the rest of the class. Ms Hunt was of the view that the Claimant had praised a number of other students within the class but had missed child E out. The child was also told on numerous occasions to do his work and to stop looking at Ms Hunt when, in Ms Hunt's view, he was simply seeking reassurance from her.

74. There is some suggestion in the Claimant's case, arising from the evidence of Ms Greenslade, that there was something untoward in the way in which Ms Hunt provided her evidence to Mr Robinson and her motivation in doing so. In paragraph 11 of her statement, Ms Greenslade says that another member of her union told her that, after Ms Hunt had met with Mr Robinson at about this time, she told others that she was being sent on a course and that when a job became available at the school it was hers. This issue was raised with Mr Robinson when he gave evidence. He rejected any suggestion that he had put Ms Hunt up to raising her concerns or that he had promised her anything in return for doing so. The Tribunal considers that the best evidence on this issue is the evidence of Mr Robinson. He is the only witness from whom the Tribunal heard who can give evidence about what was said between him and Ms Hunt. The hearsay evidence given by Ms Greenslade about something which she was told and that somebody else had heard carries less weight than Mr Robinson's evidence. Accordingly, we accept Mr Robinson's evidence on this issue.

75. Later that evening, Mr Robinson forwarded the email from Dr Hill to Janice Ballantine. It was a common theme throughout the oral evidence of Mr Robinson that he was keen to always follow the correct process (at least as he understood it). It was also a common theme that Mr Robinson was keen to seek advice from those best placed to give it, particularly in relation to any issue that could be described as raising a safeguarding concern. The Tribunal finds that is what Mr Robinson did in relation to the issues raised in respect of child E.

The Claimant's suspension

76. At 11:27 on 16 October 2020, Mr Robinson emailed Ms Ballantine with details of what Ms Hunt had told him about the events concerning child E. Ms Ballantine then raised the issue with Natasha James from the Local Authority's safeguarding team. At 11:42, while Ms Ballantine was waiting for a response from Ms James, Ms Ballantine sent an email to Mr Robinson with a blank suspension checklist for his consideration. Ms Ballantine advised Mr Robinson in her email that "This will need to be completed".

77. The Claimant has asserted that, rather than completing the suspension checklist at that stage, Mr Robinson completed it at a much later stage. That

assertion appears to be based on the properties of the document which are set out in the document at page 434 of the hearing bundle. That document shows that the suspension checklist document was "created" on 16 October 2020 and was "Last modified" on 19 January 2021. It is the Respondent's case that the difference in dates is explained by the initial creation of the document on 16 October 2020 and a modification of it as part of updating it with details of the review of the Claimant's suspension. The Tribunal accepts that as the most likely explanation in the circumstances. In particular, the Tribunal accepts the direct evidence of Mr Robinson that he completed the suspension checklist initially in October 2020.

78. At 14:35, Jason Redrup (Safeguarding Officer) sent an email to Mr Robinson and Ms Ballantine amongst others. His email specifically addressed the concerns regarding child E and noted that the concerns had been raised by two professionals independently and indicated that the Claimant's treatment of the child was inappropriate, neglectful and potentially abusive. The email continued as follows:

"*At this time I would support the school and HR position that Ms Lancaster should be formally suspended whilst a Professional Concern investigation under section 5 of the Social Service & Wellbeing Act (Wales) 2014 takes place so in order to establish the facts fully.*

I have advised you that a MARF needs to be completed fully outlining the alleged concerns/abuse and submitted to DUTYMARF with both myself and Ann Williams copied in"

79. At 14:23, Ms Ballantine had emailed Mr Robinson a copy of the school's disciplinary procedure and had directed his attention to the relevant part of the procedure dealing with suspension. She also advised him to again seek the Claimant's agreement to Mr Robinson contacting the Claimant's union representative.

80. On 19 October 2020, Mr Robinson spoke with Mr Adkins by telephone. A note of that conversation appears in the bundle at page 437. The accuracy of that note is not accepted by the Claimant, although it must be noted that no evidence was called on behalf of the Claimant as to what was said during

that meeting and calling such evidence for the Claimant would have been difficult (and probably unorthodox) given that Mr Adkins was acting as her representative for the purposes of the final hearing before the Tribunal. The Tribunal notes that there were times during the final hearing when the Tribunal had to take care to ensure that Mr Adkins was not giving evidence as to the events with which he had been directly involved instead of acting as advocate for the Claimant. Whatever the dispute about the accuracy of the note, there is no dispute that Mr Robinson informed Mr Adkins that the Claimant was going to be suspended from work and that Mr Adkins forcefully disagreed with that approach.

81. At 11:34 that day, Mr Robinson sent an email to the Claimant saying that he had received more information and needed to discuss it with her in a meeting. He asked if they could meet via Teams later that day.

82. Mr Robinson and Mr Adkins spoke again later that day after Mr Adkins had spoken to the Claimant. Mr Adkins told Mr Robinson that the Claimant would not attend the proposed meeting. There was a discussion between them as to whether suspension was a "neutral act". They fundamentally disagreed about that issue. The Tribunal finds that Mr Robinson said that suspension was being considered as a "last resort".

83. At 12:19, Mr Robinson emailed Mr Adkins and asked him to put in writing that the Claimant would not like to attend the meeting and would prefer a letter instead.

84. At 12:24 the Claimant emailed Mr Robinson (copying in Mr Adkins) in the following terms:

"*I understand from my union representative, Colin Adkins that your intention is to suspend me regarding allegations made by an LSA that she felt uncomfortable. Please provide this formally in writing by email by return. I therefore shall assume that from this moment I am suspended unless you advise me otherwise. Please ensure that in future all correspondence is sent to Colin.*"

85. By that time, the school had not suspended the Claimant and, the Tribunal finds, Mr Robinson remained open to the idea of meeting with the Claimant and Mr Adkins. Had that meeting taken place, the Tribunal accepts that Mr Robinson would likely have discussed matters with the Claimant and Mr Adkins and would have further considered whether there were any options available to avoid suspending the Claimant from work. In light of the Claimant's email, and her refusal to meet with him, Mr Robinson was unable to take such an approach.

86. At 12:57 that day, Mr Robinson sent an email to the Claimant and copied it to Mr Adkins. The email attached a letter confirming that the Claimant was suspended form work. The letter confirmed that the Claimant was suspended from duty on full pay with immediate effect and that the suspension was being put in place to carry out a full and thorough investigation. The letter further stated that the suspension was a result of further alleged misconduct in addition to the matters which were already under investigation.

87. Later that afternoon, Mr Adkins wrote to Ms Dickinson in light of the Claimant's suspension and asked for Ms Dickinson's agreement that, notwithstanding the suspension, the Claimant could continue with her trade union casework. Ms Dickinson responded promptly confirming that the Claimant could do so.

88. On 21 October 2020, Mr Robinson wrote again to the Claimant. His email said that he thought there may be some misunderstandings on her part and on the part of her union as to the reasons for her suspension. He attached a further letter which he said outlined his reasons for "reluctantly determining suspension". The letter contained the following:

"*I was disappointed that you did not wish to meet with me as I had felt it would have been beneficial to you. In the circumstances, I am now writing to you to provide the information I had hoped to initially share with you. You are aware from my e-mail of 19th October 2020 and the attached letter, that because of the issues which have arisen, it has become necessary to suspend you from duty. I am sorry that you have received this news but given your reluctance to discuss matters with me and given the concerns*

arising I felt I was left with no option other than to suspend you. I would wish to remind you again, although I am sure you know this, suspension is considered by the Governing Body to be a neutral act. The reason for the suspension is as previously explained are due to allegations of Complaints made by pupils and parents in relation to the manner in which you address pupils, alleged bullying behaviour towards pupils, failure to follow school policy on time outside the classroom, Health and Safety issues of leaving children outside in the corridors without facemasks and alleged bullying behaviour to a child with additional educational needs. Given that you did not meet with me, I have not heard in any detail your views and therefore have had to make this difficult decision based on the information available to me.

Following email exchanges on the 19th October to me I think there may be some misunderstandings arising on your own and your union's part as to the reasons for suspension.

For clarity my reasons for reluctantly determining suspension was the best option, relates to the growing number of complaints/concerns being made for an on behalf of pupils. This has latterly included, a notification from an Education Psychologist concerning how you treated and responded to a pupil with learning difficulties and a known medical history.

Due to the nature of the concerns arising and, in this instance, as you will appreciate the vulnerabilities of the pupil, I was advised that advice needed to be obtained from a Safeguarding perspective. It was confirmed that if proven, the allegations potentially fall within safeguarding concerns and therefore should be dealt with as potential safeguarding matters. Consequently, I was also advised that the concerns should be dealt with under the Safeguarding Allegations against Practitioner process. We are currently awaiting a meeting date for this to take place.

I would wish you to know that this was a difficult decision to reach but given the guidance received it was felt necessary. Having considered the position carefully given the number of complaints/concerns recently received, it might be helpful if you were not in work whilst investigated for several reasons. These reasons included the potential for further allegations to arise in the

future, whilst the investigation is ongoing and the additional pressure on you during what we know are already difficult times."

89. A strategy meeting took place as part of the Local Authority's safeguarding procedures on 26 October 2020. The notes of that meeting appear in the hearing bundle at pages 450 to 454. In summary, it was noted that an internal investigation was already underway within the school when the issue in relation to child E was raised. It was confirmed that, in respect of child E, the police would not be investigating the complaints as they did not cross the criminal threshold. Ann Williams, Principal Officer, stated that outside investigators may provide a better understanding, outcome and conclusion and it was agreed that the matter would remain open until the investigation was completed.

90. On 3 November 2020 Mr Robinson wrote to the Claimant to inform her of the outcome of the strategy meeting. He informed her that an external investigator would be appointed to investigate the allegations in detail via the school's disciplinary processes.

91. On 26 November 2020, a further safeguarding strategy meeting took place in order to review matters relating to the claimant. The view of the safeguarding meeting was that the issue should be concluded from a safeguarding perspective and should be returned to the school to consider as part of a disciplinary process. The summary section of the notes of the meeting (at page 468 of the bundle) indicates that the view of those present at the meeting was that the concern was substantiated, and all were in agreement with that outcome.

92. An external investigator was subsequently appointed. The hearing bundle contains an extract from the report compiled following that investigation. The report does not conclude that there is no foundation to any of the issues considered but, rather, indicates that if the matters were to proceed to a disciplinary hearing, it would be necessary to determine what occurred on the balance of probabilities.

93. The school's procedures required the Claimant's suspension to be reviewed every 25 days. The Respondents accept that, after some initial reviews were

carried out, the Claimant's suspension was not reviewed in accordance with the policy thereafter.

The comparator cases identified by the Claimant

94. In her amended Claim Particulars, the Claimant relies on the cases of three other teachers who she asserts she was treated less favourably than in circumstances comparable to hers. The Claimant points to those comparators in order a) to establish that she has been subjected to a detriment and/or b) to assert that the reason that the Claimant was subjected to one or more detriments is that she had made protected disclosures or because of her trade union activities.

95. In the Second Amended Response presented by the Respondents, they set out detailed facts of the events surrounding the three comparators. At the Preliminary Hearing in June 2022, and as recorded in paragraph 7 of the record of that Preliminary Hearing, the Claimant accepts and does not challenge the facts asserted by the Respondent in respect of those comparators as set out in paragraphs 48A to 48D of the Second Amended Response.

96. Whilst those paragraphs set out full details of the facts regarding the three comparators, they can be summarised as follows:

96.1 An allegation was made that Teacher 1 did not leave the room when a LSA was properly dressing a female pupil with learning difficulties. Mr Robinson was not involved in dealing with this allegation which was dealt with by others. The issue was raised with the school by representatives of Unison and was subsequently put in writing by them. The email was then sent by the school to the Local Authority education safeguarding officer. The Local Authority's safeguarding team considered the information provided and concluded that there were no safeguarding concerns. Rather, the Local Authority concluded that Teacher 1 and the LSA had properly supported Child 1. Teacher 1 was not suspended or subjected to any disciplinary process;

96.2 In September 2019, four pupils raised allegations that Teacher 2 had an overly friendly relationship with Child 2. The allegations did not

include any allegation of sexual impropriety. Mr Robinson referred the allegations to the Local Authority education safeguarding officer. Teacher 2 was not suspended, there being no suggestion from the Local Authority that the teacher should be suspended or removed from contact with pupils. Two strategy meetings took place. The investigation carried out as part of the safeguarding process established the facts following which the safeguarding team closed the strategy meeting after determining that the allegations were unsubstantiated. In light of those findings, the school did not commence any disciplinary investigation into the allegations although Mr Robinson spoke informally to teacher 2 to remind the teacher of the importance of professional boundaries;

96.3 An allegation was made in May 2021 that Teacher 3 had touched Child 3 inappropriately. Mr Robinson referred the allegation to the Local Authority's social services safeguarding team. A strategy meeting took place, prior to which Teacher 3 had been removed from the school. The teacher was not suspended (although Mr Robinson had considered doing so) but was instead permitted to work from home on tasks which could be completed without attending the school site. Mr Robinson was satisfied that there was sufficient work for the teacher to do off-site and so decided not to suspend the teacher. No previous concerns had been raised in respect of Teacher 3. A further strategy meeting took place following which the police concluded their investigation with no further action. The matter was closed with the allegations being recorded as unsubstantiated. As a result of the outcome of that investigation, the school concluded that no formal disciplinary action should be taken against Teacher 3.

The applicable law

Detriment claims generally

97. Pursuant to section 48 of the Employment Rights Act 1996, an employee may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47 or 47B of the Employment Rights Act 1996.

98. The word detriment is not defined in the legislation. In simple terms, an employee is subjected to a detriment if they are put at a disadvantage. To test whether there is a disadvantage, a comparison may be made with an actual or a hypothetical comparator. The term "detriment" is to be given a wide interpretation and is to be considered subjectively in relation to the particular claimant, so that "*there is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment*" (Jesudason v Alder Hay Children's NHS Foundation Trust [2020] IRLR 374). However, an unjustified sense of grievance cannot amount to a detriment (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337).

99. It must be shown not merely that the employee has suffered some detriment, but that the detriment was caused by some act or deliberate failure to act on the part of the employer.

100. It must also be shown that the employer's act or omission was "done on the ground that" the employee had a protected status or did a protected act (within the meaning of Part V of the 1996 Act). There must be a causal connection between the employee's protected act or status and the employer's decision. This requires the tribunal to consider the reason why the employee was subjected to any detriment. However, the employer's motives are not relevant and it does not matter whether or not there is an intent to subject the employee to a detriment.

101. A reason for an act or omission is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to act or refrain from acting (Abernethy v Mott Hay and Anderson [1974] IRLR 213). In determining the grounds on which a particular act was done it is necessary to consider the mental processes, both conscious and unconscious, of the employer.

102. Reflecting that only the employer knows what prompted him to act as he did, section 48(2) ERA 1996 provides that, when considering such complaints, it is for the employer to show the ground on which any act, or deliberate failure to act, was done. The employer must prove on the balance of probabilities that the act, or deliberate failure, complained of was not on the grounds that the employee had done the protected act (or had the relevant protected status), meaning that the protected act or status did not

materially influence (in the sense of being more than a trivial influence) the employer's treatment of the employee (Fecitt v NHS Manchester [2012] ICR 372, CA).

Detriment – public interest disclosures

103. Section 47B(1) of the employment rights act 1996 provides that 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.

104. Protected disclosure is a term defined for these purposes by section 43A of the 1996 Act as meaning a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

105. Insofar as it is relevant to the Claimant's claim, Section 43B(1) provides that "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)…
(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)…
(d)That the health or safety of any individual has been, is being or is likely to be endangered,
(e)…
(f) …"

106. It should be noted at this stage that, as confirmed by the further information provided by the Claimant, the Claimant relies upon sections 43B(1)(b) and (d) only in asserting that she made one or more protected disclosures.

107. In Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 the EAT (Slade J) said that "*the ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a*

hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around". Contrasted with what would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information."

108. However, in Kilraine v London Borough of Wandsworth [2018] IRLR 846, the Court of Appeal (in a judgment given by Sales LJ) held that in Cavendish, the EAT had decided that whatever is claimed to be a protected disclosure must contain sufficient information to qualify under section 43B ERA 1996. There is a spectrum to be applied and, although pure allegation is insufficient, a disclosure may contain sufficient information even if it also includes allegations.

109. Section 43C of the 1996 Act provides that a qualifying disclosure is made in accordance with that section if the worker makes the disclosure to his employer.

Detriment – employee representatives/trade union activities

110. Turning then to the Claimant's complaint of detriment on the ground of her engagement in trade union activities pursued under sections 47 and 48 ERA 1996, section 47 of the Employment Rights Act 1996 provides as follows:

"(1) An employee 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, being –

(a)an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006, or

(b)…

he performed (or proposed to perform) any functions or activities as such an employee representative or candidate."

Detriment complaints - remedies

111. In terms of remedies, section 49(1) of the 1996 Act provides that where an employment tribunal finds a complaint of these types well-founded the tribunal (a) shall make a declaration to that effect, and (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates. Section 49(2) provides that the amount of the compensation awarded shall be such as the Tribunal considers just and equitable in all the circumstances having regard to (a) the infringement to which the complaint relates, and (b) any loss which is attributable to the act, or failure to act, which infringed the complainants right.

112. It should be noted that the Claimant has not suffered (and is therefore not pursuing any claim in respect of) any loss of earnings. The only remedy sought by the Claimant in these proceedings is compensation for injury to feelings.

Analysis and conclusions

Detriment on the grounds of protected disclosures

Did the Claimant make one or more protected disclosures?

113. The issues to be determined in respect of this complaint were recorded in EJ Sharp's record of the Preliminary Hearing which took place on 13 July 2021 and appear at pages 58 to 60 of the hearing bundle.

114. The Claimant relies upon three emails as the alleged protected disclosures. As set out above, the three emails appear within the hearing bundle at pages 194 to 196 (email to Councillor Moore dated 24 June 2020), pages 307 to 308 (email to Tracy Dickinson dated 9 September 2020) and page 362.1 (further email to Tracy Dickinson dated 10 September 2020).

115. The first issue identified for determination is what the Claimant said or wrote on those occasions. As the Claimant relies upon emails as her protected disclosures, and as copies of those emails are in the hearing bundle, the emails speak for themselves in answering this first question. There is no dispute between the parties that the Claimant sent those emails or that they were received by the intended recipients.

116. The next issue is whether or not the emails disclosed information. The Tribunal has considered the emails carefully and notes, as the Respondent asserts, that the emails were sent by the Claimant in the context of an ongoing discussion (and disagreement) between the Claimant and the Senior Leadership Team of the school in relation to the plans for reopening the school in the Autumn term of 2020.

117. As each of the emails is relied upon as a protected disclosure, it is necessary to consider each one in turn:

117.1 The first email, to Councillor Moore, dated 24 June 2020. The Tribunal finds and concludes that this email contained expressions by the Claimant of her opinion as to the measures which should or should not be implemented upon the school reopening. The Tribunal also finds that the email disclosed information, including the following:

a) The risk assessment sent to all staff on 19 June 2020 did not cover the opening of the school on 22 and 23 June for training sessions yet expected staff to attend in person;
b) The rooms chosen for teaching classes are on the first and second floors and are the hottest classrooms and are extremely poorly ventilated with many of the windows not capable of being opened or being screwed shut;
c) There are no external doors to the classrooms to increase airflow and most rooms do not have access to running water;
d) There are no washing facilities in the majority of classrooms to be used and limited toilets on both the first and second floors;
e) There will be very little opportunity for social distancing when pupils are ascending or descending staircases requiring staff members to lead from the front or to follow pupils down the stairs;

117.2 The second email sent to Tracy Dickinson and dated 9 September 2020 sets out a number of issues in numbered paragraphs. Again, whilst that email contains some statements of the Claimant's opinion on the issues raised, the Tribunal finds that it also discloses information as follows:

a) All year group bubbles are following a normal timetable and are on the move together;

b) Students are mostly moving throughout the school building on no less than nine occasions throughout the day;
c) Bubbles are mixing and corridors are crowded;
d) Hand sanitising stations are not regularly used on entering the building;
e) Teachers are required to move within the corridors to lessons and then to duty following lessons;
f) The school has provided limited cleaning supplies for all classrooms;
g) Staff in the school have been provided with one sponge, one cleaning fluid and a bottle of hand sanitiser;
h) Classrooms are not being cleaned between bubbles;
i) Whilst desks are cleaned at the end of the day, chairs along with hard surfaces are not;
j) Assemblies are continuing and take place with whole year groups and staff in an unventilated hall;
k) Individual risk assessments have not been completed for all those who have requested them;
l) Windows remain screwed shut and broken;

117.3 The third and final email relied upon by the Claimant as a protected disclosure, sent to Tracy Dickinson on 10 September 2020, again contains a number of statements of the Claimant's opinion and statements of her disagreement with the approach being taken by the school. As with the earlier two emails, however, the Tribunal again finds that the email also discloses information. In particular, the Tribunal notes the following information disclosed:

a) The school does not have any cleaning wipes and can't get them;
b) No provision has been made for cleaning the rooms and there is only one sponge between thirty pupils;
c) The rooms are not being cleaned between classes or bubbles and chairs are not being cleaned.

118. In summary, the Tribunal concludes that each one of the three emails relied upon by the Claimant contains a mixture of statements of the Claimant's opinion, disagreements with the approach being taken by the school and allegations but also contain disclosures of information. In

accordance with the case of Kilraine, the question is therefore whether the emails contain sufficient information to qualify for protection under section 43B ERA 1996. In the Tribunal's judgment, it cannot be said that any of the emails contain pure allegations or statements of opinion. As set out above, each one of them contains information. The balance between opinion and allegation (on the one hand) and information (on the other hand) varies between the three emails. However, overall, the Tribunal concludes that each one of the emails contains sufficient information to qualify for protection under section 43B ERA 1996.

119. The next issues in the list of issues address i) whether the Claimant believed the disclosure of information was made in the public interest, ii) whether she believed that the information tended to show one of the matters prescribed in section 43B(1)(b) or (d) and iii) whether such beliefs were reasonable.

120. The Tribunal concludes that the Claimant believed that the disclosures of information were in the public interest and that the information tended to show that the health or safety of any individual had been, was being or was likely to be endangered. The Tribunal also concludes that those beliefs were reasonable. The Tribunal has come to those conclusions for the following reasons:

a) The disclosures of information were made by the Claimant regarding i) arrangements for the reopening of the school in the Autumn term 2020 and ii) the reality of what was happening on the ground at the school when the school in fact reopened in September 2020;

b) In her emails, the Claimant expresses concerns regarding the risks of the approach being taken against the background of Welsh Government and other guidance which she asserted was not being followed;

c) Each of the emails was sent by the Claimant and signed off by her as the NASUWT Negotiating Secretary which indicates that she was raising the issues in that capacity. In her role with the Trade Union she was raising the issues on behalf of all of the members of staff who are members of the NASUWT but, in the Tribunal's judgment, was also raising them more

generally out of concern for the welfare of all staff and children at the school;

d) It is apparent from the emails that the Claimant was concerned about the health and safety of staff and pupils at the school in the circumstances she describes and that she held the belief that, with the arrangements made and implemented by the school, the health and safety of many was endangered;

e) The emails were sent at one of the peak times of the Covid-19 pandemic when society was beginning to reopen after the lockdowns ordered by the Government in the earlier part of that year;

f) The emails were therefore also sent at a time of heightened anxiety for many people (including the Claimant) about the risks posed to themselves and others by the return to social mixing, even where some precautions were taken to prevent the spread of the virus;

g) It is likely that, given the issues raised, a significant portion of people connected with the school would have an interest in the matters disclosed by the Claimant. Those with an interest are likely to have included members of staff at the school, governors, children attending at the school, parents and families of those pupils together with members of the community in which the school is situated.

121. In those circumstances, the Tribunal concludes that the Claimant believed that the disclosures of information she was making a) were in the public interest and b) tended to show that the health and safety of individuals had been, was being or was likely to be endangered. Taking into account the factors set out above, the Tribunal is also satisfied that those beliefs were reasonable.

122. The only remaining issue in determining whether the Claimant's emails were protected disclosures within the meaning of the ERA 1996 is to consider whether the disclosures were made in accordance with sections 43C to 43H of that Act.

123. There is no dispute between the parties that the emails sent to Tracy Dickinson on 9 and 10 September 2020 were sent to the Claimant's employer.

124. As to the first of the Claimant's emails, sent to Councillor Moore on 24 June 2020, the Respondent asserts that it was not sent to the Claimant's employer but rather to a political representative. The Respondent observes that Councillor Moore was, at that time, the Leader of the Vale of Glamorgan Council. The Tribunal has considered this issue and determines that the email to Councillor Moore was an email sent to the Claimant's employer. The Vale of Glamorgan Council was (and remains) the Claimant's employer. Paragraph 20 of the Grounds of Resistance admits that the Claimant is employed via the Council. A Local Authority such as the Second Respondent comprises elected representatives and staff members employed by the Local Authority. The elected representatives are responsible for making decisions on behalf of the constituents they represent and, in the Tribunal's judgment, are ultimately responsible for the running of the Local Authority. They will delegate functions to members of staff employed by the Council in carrying out their duties. However, the Tribunal does not accept that a distinction should be drawn between the status of Ms Dickinson (as Head of HR) and Councillor Moore (as Leader of the Council) for these purposes. If the Claimant elected to write to the Council as her employer, she had to identify someone (i.e. an individual) to write to. The Tribunal concludes that she was doing exactly that when she wrote to Councillor Moore. There is also nothing in the email to Councillor Moore, in our judgment, to suggest that she was writing to him in any other capacity.

125. For all of the reasons set out above, the Tribunal concludes that each one of the three emails upon which the Claimant relies was a protected disclosure within the meaning of the Employment Rights Act 1996.

126. In light of those conclusions, it is not necessary for the Tribunal to consider whether the emails were also protected disclosures insofar as the Claimant relies on section 43B(1)(b) of the 1996 Act.

Did the Respondent subject the Claimant to any detriment(s)?

127. In the Claimant's claim, as originally set out in the ET1 and Claim Particulars, the Claimant identified one detriment to which she alleged she was subjected by the Respondent. In paragraphs 31 and 32 of the Claim Particulars, the Claimants alleged she had been subjected to a detriment by being suspended.

128. There is no dispute between the parties that the Claimant was suspended from work by the letter sent to her by Mr Robinson on 19 October 2020. In paragraph 65 of the Respondents' outline closing submissions, Ms Iyengar concedes that "a reasonable employee would probably regard an instruction to stay at home and avoid attending at the workplace, even on full pay, as unfavourable treatment in comparison with an employee who was allowed to go to the workplace". There is no dispute, on that basis, that the Respondents' suspension of the Claimant was an act which subjected her to a detriment.

129. As a result of the Claimant's successful application to amend the claim (made part way through the final hearing) the Claimant introduced further allegations of additional detriments to which she says she was subjected. The nature of those detriments is summarised in the Case Management Orders of the Tribunal dated 4 March 2022 at paragraph 4 a) as follows:

"*The Claimant asserts that she was subjected to detriment in one or more of the following ways:*
i) By being subjected to a disciplinary process in September 2020 in respect of the complaints made by or on behalf of pupils B, C and D;
ii) By being subjected to an external investigation in respect of the complaint made by or on behalf of Pupil E in October 2020; and
iii) By being suspended following the complaint made by or on behalf of Pupil E"

130. Insofar as the last of those allegations is concerned, the Claimant's case (as set out in the amended Claim Particulars) is that she has suffered a detriment by being suspended when, by comparison, Teacher 3 was not suspended but placed on duties at home as an alternative to suspension. The Tribunal concludes that, in establishing the existence of a detriment,

nothing is added to the allegation that the Claimant was subjected to a detriment by any comparison with Teacher 3. The Respondent concedes that the act of suspending the Claimant is a detriment. No further comparison with the case of Teacher 3 is needed or required to reach that conclusion.

131. The other two detriments are asserted by the Claimant on the basis of a comparison with the actions of the Respondent in respect of Teachers 1, 2 and 3. The Claimant asserts that she was subjected to a disadvantage when compared with them in being subjected to a disciplinary process and in being subjected to an external investigation and that, as a result, she has been subjected to a detriment by those actions of the Respondents.

132. The Tribunal concludes that the decision of the Respondents to carry out an investigation into the complaints and concerns raised regarding Child B, Child C and Child D in and of itself was not an act of detriment. The Tribunal has found that the school received notes of concerns from pupils and also letters of complaint from parents regarding the behaviour of the Claimant towards those three pupils. The Tribunal has found that those notes and letters are genuine. The Tribunal considers that it was reasonable for the school to take the view that it was necessary to investigate those concerns and that the concerns should be investigated within the scope of the school's disciplinary procedure. That is the decision that was made by the school and communicated to the Claimant in the letter of 17 September 2020. The letter did not contain any findings against the Claimant or any conclusion that she was guilty of misconduct (to any degree). In light of the nature of the complaints raised, and the number of the complaints, the Tribunal rejects the assertion made by the Claimant that the school should have simply looked into the complaints on an informal basis and dismissed them without any type of investigation. The Tribunal does not accept that such a course was reasonably open to the school. The Tribunal also concludes that the carrying out of an investigation by the school, even if it was under a disciplinary procedure, was not an act of detriment. The purpose of the investigation was to look into the issues raised, obtain and collate evidence and to establish the facts. The investigation could establish facts detrimental to the Claimant, but it could equally establish facts which were in her favour, or even exonerate

her of any wrongdoing. Such facts could not be established properly without an investigation and, therefore, as Dr Browne said in his oral evidence, the investigation in fact protected the Claimant by ensuring that a proper process was undertaken in relation to the issues raised.

133. There was some dispute between the parties during the evidence as to whether the letter dated 17 September 2020 amounted to the commencement of a disciplinary process or not. The Respondents (and, in particular, Mr Robinson) did not agree with such an assertion. The Tribunal concludes that the issue does not actually take the matter much further. Even if the commencement of the investigation could properly be characterised as the commencement of a disciplinary process, the fact that the Respondent was at that stage only carrying out an investigation leads to the conclusion which the Tribunal has already set out above, namely that the decision to carry out an investigation was not an act of detriment in and of itself.

134. The Tribunal also concludes that it was open to and reasonable of the Respondents to carry out an investigation in respect of the issues raised in relation to Child E. The issues raised in respect of the Claimant's behaviour towards Child E were significant and serious. The Tribunal was unimpressed by the arguments advanced on behalf of the Claimant to the contrary during the hearing. That conclusion is supported by the fact that, when the issue was relayed by the school to the Local Authority safeguarding team, a decision was reached by them that the issues should be considered at a strategy meeting. That decision is consistent with a conclusion that the school was justified in dealing with the matter in the way that it did.

135. The outcome of the strategy meeting was that there was no criminal case to progress but that there was sufficient information to warrant further investigation of the concerns via the school's internal processes. The record of the strategy meeting confirms those conclusions and that Ms Williams suggested that outside investigators may provide a better understanding, outcome and conclusion. In those circumstances, and again considering the nature and extent of the issues raised in respect of Child E, the Tribunal does not consider that the Respondents can be criticised for making a decision to carry out an external investigation in respect of those matters.

136. Further, consistent with the Tribunal's conclusions above in respect of the internal investigation in relation to the other children, the Tribunal is not persuaded that the decision to carry out an investigation in and of itself is a detriment, even if the investigation is an external one. Further, for the Claimant to object in principle to the carrying out of an investigation into these matters by the school would, in our judgment, amount to an unjustified sense of grievance, which is not capable of amounting to a detriment.

137. The Tribunal has also considered whether it can be said that the conclusions above should be any different as a result of a comparison between the way the Claimant was treated compared with Teacher 1, Teacher 2 and Teacher 3. The Tribunal has concluded that no different conclusion can be reached. We are satisfied that, rather than the Claimant having been subjected to a disadvantage when compared with the other members of staff, all of the members of staff concerned including the Claimant were treated comparably and in accordance with the appropriate procedures. In coming to that conclusion, the Tribunal notes the following:

137.1 Teacher 1 was referred to the Local Authority as a safeguarding issue. The Local Authority determined that the issue raised was not a safeguarding issue. A positive conclusion was reached by the safeguarding team at the Local Authority and there was considered to be no basis to conclude that there had been any misconduct. In the Tribunal's view that approach was consistent with the way the Respondents dealt with the Claimant and was in line with the appropriate procedures;

137.2 Teacher 2 was also referred to the Local Authority as a safeguarding issue. The matter was investigated and was found not to be substantiated. The matter was then returned to the school and it became a question for the school as to how to proceed. The school took the view, reasonably and appropriately, that there was nothing likely to be added by any further investigation;

137.3 Teacher 3 was also referred to the Local Authority as a safeguarding issue and was subsequently investigated by the police.

The outcome of the police investigation was that the complaint was unsubstantiated and the matter was thereafter referred back to the school. The school concluded, again reasonably and appropriately in our view, that there was no merit in carrying out any further investigation in light of the outcome of the police investigation.

138. It follows from all of the above, that the Tribunal concludes that the Claimant was subjected to only one detriment, namely being suspended from work in mid-September 2020. The Claimant has not established that she was subjected to any other detriment.

Why was the Claimant suspended?

139. The Tribunal's view is that this, in reality, represents the central issue in the Claimant's claim. The Tribunal has found already that all three of the emails relied upon by the Claimant were protected disclosures. There is no dispute that, in suspending the Claimant, the Respondents subjected her to a detriment. The issue now to be determined is the reason why the Claimant was suspended. It is for the Respondent to show the reason why any act was done and that the decision was not materially influenced by the fact that the Claimant had made one or more protected disclosures.

140. In determining this issue, the Tribunal finds that the following matters are significant:

140.1 The only party which actually knows why the Claimant was suspended is the First Respondent as it was the First Respondent which decided to suspend the Claimant from duty;

140.2 The decision to suspend was taken by Mr Robinson. The evidence adduced on behalf of the Respondents is that it was Mr Robinson alone who decided to suspend the Claimant. Although he sought and obtained advice from others before doing so, the Tribunal is satisfied that he took the decision. The Tribunal notes that was the evidence given by Mr Robinson himself who did not seek to shy away from the decision he had taken. The Tribunal is also satisfied that Mr Robinson was in charge of operational matters at the school, a point reinforced by the cross-

examination of Mr Robinson. That is also consistent, therefore, with it being Mr Robinson who made the decision to suspend the Claimant;

140.3 The Tribunal also finds that the process followed in coming to the decision to suspend, and the decision to suspend the Claimant itself, did not involve and was not influenced by Dr Browne. The Tribunal notes that part of the Claimant's case is focussed on issues which arose at a time before Mr Robinson was even employed by the school and which were dealt with by Dr Browne. The Tribunal particularly has in mind the complaints which were made regarding the Claimant and which were investigated and resolved by Dr Browne in 2018/19. Although there are numerous issues which the Claimant complains about in respect of those complaints and the manner in which they were dealt with by Dr Browne (and the Tribunal notes that Dr Browne accepts that they were not dealt with as well as they might have been) the Tribunal considers they are not material to the issue in this claim given the Tribunal's conclusion that Dr Browne played no part in the decision to suspend the Claimant from duty;

140.4 Even if the Claimant were right and there was some general feeling against her amongst the senior leadership of the school, and if the actions of Dr Browne in 2018 were indicative of that, the Claimant's own evidence would be suggestive of her being treated poorly long before she made the protected disclosures relied on in this claim. That would further undermine any suggestion that the protected disclosures were a material influence on any decisions Mr Robinson made in the autumn of 2020;

140.5 For the reasons set out earlier, the Tribunal is satisfied that Mr Robinson received the complaints from pupils, parents and from Dr Hill and Fay Hunt in September and October 2020 concerning the Claimant's alleged conduct and did not, as alleged by the Claimant, go trawling around the school to gather evidence against the Claimant or act improperly in seeking and obtaining the evidence from Ms Hunt;

140.6 In accordance with his general approach to such matters, Mr Robinson sought advice from either the Local Authority's HR team or the safeguarding team in respect of the complaints he received;

140.7 The advice received from the Local Authority in respect of the initial concerns was that they should be investigated but that they probably amounted, at most, to lesser misconduct. Mr Robinson followed that advice and did not seek to treat those initial complaints in any way more seriously than the Local Authority suggested;

140.8 The further concerns received in October 2020 were appropriately considered by Mr Robinson to raise safeguarding concerns. Mr Robinson was justified in treating them in that way. The Local Authority was consulted in the appropriate manner and confirmed that the concerns should be considered as part of the safeguarding processes conducted by the Local Authority. That reinforces, in the Tribunal's view, that the approach taken by Mr Robinson was reasonable;

140.9 The decision to suspend the Claimant, made in the context of a number of allegations being received by the school about the Claimant's conduct towards pupils, was one that is consistent with the timeline of events and is also, in the Tribunal's view, consistent with the policies and procedures used by the school;

140.10 The evidence of the Respondents' witnesses is and has remained consistent and adamant a) that the Claimant was suspended because of the issues raised regarding her conduct towards the pupils and b) that the decision to suspend her was not based in any way on the concerns which the Claimant had raised and which the Tribunal has found to be protected disclosures;

140.11 Any suggestion that the decision to suspend the Claimant was influenced by the fact that the Claimant had made protected disclosures (in the emails she sent in early September 2020) is significantly undermined by a number of matters including:

a) The school and the Local Authority engaged with and responded to the concerns raised by the Claimant regarding the health and safety

related issues she raised in her emails and, while not agreeing with all of the points she raised, properly considered them in dealing with the numerous and difficult issues arising from the reopening of the school after lockdown in circumstances which were new to all parties;

b) The issues that were raised by the school were considered and dealt with mainly, if not exclusively, by Dr Browne (for the school) and Ms Dickinson (for the Local Authority). Mr Robinson had little involvement with them. For reasons set out above, the Tribunal is satisfied that Mr Robinson alone made the decision to suspend the Claimant and, therefore, any issues which Dr Browne or Ms Dickinson had regarding the issues raised by the Claimant played no material part in the decision making of Mr Robinson;

c) Similar concerns were raised by others at approximately the same time, including Ms Greenslade in her capacity as representative of another trade union. No consideration was given to suspending Ms Greenslade at any time and she was not suspended;

d) It is also inconsistent with the evidence of all those of the Respondents' witnesses who are able to give evidence on the point (and which has remained consistent throughout) that the protected disclosures played no part in the decision to suspend the Claimant;

140.12 As set out in his correspondence to the Claimant at the time she was suspended, Mr Robinson was keen to meet with the Claimant and with Mr Adkins to discuss the issues that had arisen. The Tribunal is satisfied that Mr Robinson was genuine in what he said in that correspondence and, in particular, in stating that he was willing to discuss alternatives to suspension with the Claimant and her representative. Mr Robinson was unable to do so as a result of the Claimant's unwillingness to meet with him. The Tribunal concludes that, in the circumstances, Mr Robinson was faced with a decision of either suspending the Claimant or not. The Tribunal further concludes that it is not only understandable that Mr Robinson decided to suspend the Claimant in those circumstances but that, in the absence of being able to

meet with the Claimant, it was probably an inevitable conclusion for him to reach;

140.13 The Tribunal does not consider that any alternative conclusion can be inferred or reached even after considering the comparator cases referred to by the Claimant. The Tribunal considers that there are significant differences between those cases and the case of the Claimant which means that those comparator cases are of limited assistance in seeking to infer that the decision to suspend the Claimant was based on anything other than the issues identified by the Respondents. In particular, the Tribunal notes the following:

a) The issues raised in respect of Teacher 1, Teacher 2 and Teacher 3 were all considered from the outset to be safeguarding concerns and were referred to the Local Authority as such. The initial concerns raised regarding the Claimant were not considered to be safeguarding concerns;

b) Those concerns which were considered to be of a safeguarding nature were all referred to the Local Authority safeguarding team. That was the approach taken by the school in respect of all three comparators and in relation to the issue raised about the Claimant's alleged conduct towards Child E;

c) The safeguarding investigation in respect of Teachers 1, 2 and 3 concluded either that there were no safeguarding concerns or that the issues raised were unsubstantiated. That was not the conclusion reached by the safeguarding team in relation to the concerns raised about the Claimant. The complaint regarding Child E, in particular, was found to be substantiated and the external investigation carried out subsequently was unable to reach any conclusion that the complaints raised (including the complaints raised earlier in September 2020) were either unsubstantiated or unfounded;

d) Unlike the Claimant, Teacher 3 was willing to meet with Mr Robinson when the prospect of suspension arose and, after discussing the matter, Mr Robinson was able to agree to Teacher 3's suggestions of

work which could be completed from home without the need to attend the school site as a way of avoiding the need to suspend.

141. Taking all of those matters into account, and after considering all of the issues and arguments advanced by the Claimant as to why a different conclusion should be reached, the Tribunal is satisfied that the Respondent has shown that the decision to suspend the Claimant was not influenced (materially or otherwise) by the fact that she had made one or more protected disclosures. Further, the Tribunal is satisfied that the only material reason for Mr Robinson's decision to suspend the Claimant (and the only material reason he had also commenced the investigations into the issues raised regarding the Claimant, whether internal or external) was the fact that the complaints and concerns had been raised regarding the Claimant's alleged conduct by the pupils, parents and other members of staff in addition to Dr Hill.

142. In the circumstances, the Claimant's complaint of detriment pursuant to section 43B and 48 of the Employment Rights Act 1996 fails and is dismissed.

Other issues

143. Before moving on, the Tribunal notes that the Claimant has also complained in her evidence and during the hearing that the Respondents failed to review her suspension in line with the school's policies. To the extent that the Claimant relies upon that as a further detriment, the Tribunal concludes that it is not actually part of her claim. That assertion does not feature in the Claimant's Claim Particulars either before or after their amendment. No further application was made to further amend the claim. The Tribunal has therefore not considered any assertion that the absence of ongoing reviews amounted to a detriment, if any such assertion is actually made by the Claimant (which is not clear). The Tribunal did consider the issue when determining the grounds on which the Claimant was suspended. The Tribunal concluded that it did not undermine or alter the decision set out above in respect of that issue.

Complaint of trade-union related detriment

144. The procedural history section of this Judgment (at paragraphs 4 to 25) sets out details of the way in which the Claimant's complaint of trade-union related detriment is advanced. In particular, the Claimant confirmed that the complaint is pursued under sections 47 and 48 of the Employment Rights Act 1996.

145. Section 47 of the Employment Rights Act 1996 provides that an employee has the right not to be subjected to any detriment by his employer done on the grounds prescribed by that section. That section is specific and limited in respect of the protection which it provides. It gives protection from detriment to certain employee representatives who have specific functions in relation to the statutory rules concerning consultation by employers with employees about redundancies or the transfer of undertakings. That is clear from the provisions set out in section 47(1) of the 1996 act. The section does not confer any wider protection beyond the scope of the matters referred to within the section.

146. It is apparent from the facts set out above and the matters relied upon by the Claimant in support of her claim, that the Claimant does not complain factually that she was subjected to a detriment as a result of any functions she performed in relation to redundancies or the transfer of undertakings.

147. In the circumstances, the Tribunal concludes that, even if the Claimant established all of the factual matters which she asserts and upon which she relies in her claim, those factual matters do not establish that which would be necessary to succeed in a complaint pursued under sections 47 and 48 of the Employment Rights Act 1996. Accordingly, that complaint must fail and is therefore dismissed.

148. The Tribunal has come to that decision having taken into account the fact that the claim did not clearly identify the statutory basis of the complaint at the outset but noting that the Claimant was given every opportunity to clarify the statutory basis of the complaint prior to the Tribunal deliberating upon it and reaching this judgment. The issue was specifically raised by the Tribunal with the Claimant and her representative and an opportunity was provided to clarify when the final hearing was adjourned part heard. It should also be

noted that the final hearing was adjourned part heard as a result of the Claimant making an application to amend the claim. It was therefore apparent to the Claimant what the process was that needed to be followed in order to amend the claim which had been presented. No further applications were made to amend the claim at any stage. The tribunal further notes that this issue was identified in the written submissions on behalf of the Respondent and the Claimant's representative was given an opportunity to respond to it when making his oral submissions.

149. Finally, and in any event, for the reasons set out above, even if the Claimant's complaint had been presented in reliance on any other statutory provision (and specifically section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992), the Tribunal's conclusions as to the reason why and the grounds on which the Respondents took the decisions they did would have been no different and therefore the complaint would still have failed and been dismissed.

_____

Employment Judge Vernon
Date 30 December 2022

JUDGMENT SENT TO THE PARTIES ON 5 January 2023

FOR THE TRIBUNAL OFFICE Mr N Roche