



EMPLOYMENT TRIBUNALS

Claimant: Mr Michael Graham John Shaw

Respondent: New Generation School Trust

Held at: London South - Croydon - Hybrid Hearing (one witness gave evidence via video)

On: 15 June 2022, 16 June 2022, and 17 June 2022

Before: Employment Judge C M Macey (sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr Atkins (Solicitor for London Borough of Bexley)

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claim for automatic constructive unfair dismissal under section 100 of the Employment Rights Act 1996 is not well-founded and is dismissed.
2. The claim for constructive unfair dismissal is not well-founded and is dismissed.

REASONS

Claims and Issues

1. The Claimant, Mr. Shaw, was employed by the Respondent, New Generation Trust, as a Premises Manager at Hope Community School ("the School").
2. The Claimant claims that he was dismissed under section 95(1)(c) of the Employment Rights Act 1996 ("ERA").

3. The Claimant claims that his dismissal was automatically unfair under section 100 of the ERA.
4. In the alternative the Claimant claims that his dismissal was unfair within section 98 of the ERA.

Unfair dismissal

5. The parties agreed that all remedy issues would only be considered after judgment had been given in respect of liability, and the agreed issues were as follows:

Factual issues

- 5.1 Did the Respondent fail to take reasonably practicable steps to provide a safe system of work?
- 5.2 Did the Respondent fail to investigate complaints relating to health and safety promptly and reasonably?
- 5.3 Did the Respondent fail to comply with its grievance procedure?
- 5.4 Did the Respondent fail to comply with the ACAS statutory Code of Practice on discipline and grievance procedures ("the ACAS Code")?

Legal issues

- 5.5 Did the Claimant terminate the contract of employment with the Respondent in circumstances in which he was entitled to terminate it without notice by reason of the Respondent's conduct (section 95(1)(c) of the ERA)?
- 5.6 Was there a repudiatory breach by the Respondent of the express or implied terms of the contract of employment, if so, what was that breach and when?
- 5.7 Did the Claimant accept the breach and treat the contract as at an end by way of his resignation dated 23 September 2019?
- 5.8 Was there a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence? The Tribunal will need to decide:
 - 5.8.1 whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
 - 5.8.2 whether it had reasonable and proper cause for doing so.

- 5.9 Whether the alleged final straw act which the Claimant alleges occurred on 4 September 2019 when the Principal said at a meeting “*That any issues must be reported to her in line with the school’s procedures so that they can be addressed*” was the last in a series of acts or incidents that cumulatively amounted to a repudiation of contract by the employer.”
- 5.10 Did the Claimant unreasonably delay before resigning on 23 September 2019 and as a result, affirmed the contract of employment?
- 5.11 Whether in accordance with section 100(1)(c) of the ERA the Claimant was entitled to treat himself as dismissed by reason of being an employee at a place where he brought to the Respondent’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.
- 5.12 Whether in accordance with section 100(1)(d) of the ERA the Claimant was entitled to treat himself as dismissed by reason of being an employee at a place where he was in circumstances of danger which the Claimant reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work.
- 5.13 Whether in accordance with section 100(1)(e) of the ERA the Claimant was entitled to treat himself as dismissed by reason of being an employee at a place where in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from danger.

Procedure, documents and evidence heard

6. The hearing was a hybrid hearing. Everyone except one of the Claimant’s witnesses, Janice Walker, attended the Tribunal in person. Miss. Walker gave her evidence by video (CVP).
7. There was a bundle of documents of 666 pages split into 4 sections: A, B, C and D. I read the Claim Form, the Response, the case management order dated 10 July 2020, the Agreed List of Issues and the documents in sections C and D of the bundle. There were written witness statements for the Claimant, Miss. Martin (parent and former volunteer at the School), Ms. Kendall (the Claimant’s mother’s carer), Miss. Walker (Carer Support Officer to the Claimant) and Mrs. Wood (Principal of the School). The Claimant, Miss Martin and Miss Walker gave evidence for the Claimant. Ms. Kendall did not attend, and the parties agreed that her written witness statement could be referred to and was agreed. Mrs. Wood gave evidence for the Respondent.

8. The Claimant applied to amend his Claim Form to remove the reference to £14,558.49 as the amount in compensation he was claiming, and to remove the fact that he had planned to stop working in January 2022. The Respondent resisted the application. I considered that in respect of the specific amount of compensation the prejudice against the Claimant to retain this in his Claim Form was greater than the prejudice to the Respondent to remove it. The reference to £14,558.49 as being the amount of compensation the Claimant was claiming was removed. In respect of the reference to the Claimant's plan to stop working in January 2022 I decided that the prejudice against the Respondent to remove this was greater than the prejudice to the Claimant to retain it. The fact that he had originally planned to stop working in January 2022 was not removed from the Claim Form.

FACTS

9. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point. References to page numbers are to the agreed Bundle of Documents.
10. The Claimant was employed by the Respondent between 22 February 2016 and 24 September 2019 as the Premises Manager at the School. The Respondent is an Academy Trust, and the School is part of that Academy Trust. There were 27 people employed at the place where the Claimant worked.
11. The Claimant had a statement of particulars of the terms and conditions of employment and he signed them on 20 July 2016 [C47-59].
12. The Claimant's elderly mother is vulnerable and the Claimant at the time he started his employment with the Respondent was his mother's primary carer, with Carol Kendall also providing personal care. Ms. Kendall's written witness statement states that as the Claimant's mother's care needs increased, and she was being assessed by Social Services, more carers were provided. As of 29 May 2020, when Carol Kendall made her statement the Claimant's mother had two carers who visited four times a day, every day of the week and Carol Kendall was one of those carers.
13. When the Claimant commenced employment, he was working 30 hours per week approximately over 42 weeks per year during termtime plus two weeks. The School at that time had three classrooms occupied with 30 children in each classroom.
14. The Claimant's job description at that time stated, "*The Premises Manager is responsible to the Principal for the security and maintenance of the whole school site and to ensure that the school complies with all current legislation relating to site safety...*" It also stated: "*the Premises Manager will work with the Business Manager who is the first line manager.*"
15. Under the heading "1. Site Maintenance" principal tasks included, but were not limited to: "*manage all contractors on site, ensuring that all health and safety requirements are met, monitor their performance and inspect completed work...*"

*Undertake and document a termly risk assessment of the whole site and other risk assessments/ health and safety checks as directed by the Health and Safety Officer...
Attend regular meetings including a weekly site review with the Principal and Business Manager."*

16. Under the heading "2. Fire and Security" it indicates that the Premises Manager is also the designated Fire Security Officer and the principal tasks included "*As a primary keyholder be prepared to attend out of normal working hours as and when required*".
17. Under "Health and Safety" the Premises Manager is expected to ensure the School complies with all current legislation in relation to site safety and facilities management; including the maintenance of appropriate records and actively participate in the Health and Safety Committee.
18. Under General School Maintenance it states, "*If in the course of carrying out the duties of the role, the job-holder becomes aware of any actual or potential risks to the safety or welfare of children in the school s/he must report any concerns to the School's Child Protection Officer or to the Principal.*"
19. I find that this job description does not state that the Claimant had a supervisory role in the kitchen in respect of hygiene and food preparation.
20. The Claimant's evidence is that there has never been a Business Manager while the Claimant worked at the School. On cross-examination the Claimant accepted that he could report directly to the Principal (but only if it was in writing or at minuted monthly meetings), and that at some point Lynn Mason (Finance Director at the School) temporarily took on the responsibility of managing the Claimant.
21. On cross-examination Mrs. Wood stated that Catherine Saill was the Business Manager and that the Claimant could report issues to Mrs. Wood. The Respondent did not lead any evidence on this point and there are no documents in the bundle to support this. I, therefore, find that there was no Business Manager while the Claimant worked at the School, but that the Claimant could report any issues to the Principal. It would have been preferable for those issues to be reported in a monthly meeting (that was minuted), but there was nothing preventing the Claimant from reporting issues outside of monthly meetings to the Principal, whether in writing or orally.
22. The School does have a grievance procedure [C212-C215]. Key aspects of this procedure include:
 - "1.4 The primary purpose of this procedure is to resolve current grievances...*
 - 1.5 The primary purpose is not to make findings of fact on historical matters (though this may be required in resolving some grievances)...*
 - 1.6 The School's focus is on the remedial steps required to resolve a grievance..."*

23. The grievance procedure encourages informal resolution before raising a formal grievance.
24. The Stage 1 Resolution Manager in respect of a grievance concerning pupils, parents, or staff (except the Principal) is either a deputy or assistant principal or other member of the leadership team as appointed by the Head teacher.
25. The Stage 2 Resolution Manager in respect of a grievance concerning pupils, parents, or staff (except the Principal) is the Principal.
26. The Stage 1 Resolution Manager in respect of a grievance concerning a Governor is a Governor that has not previously been involved and the Stage 2 Resolution Manager in this circumstance is the Chair of Governors (unless the grievance is about the Chair).
27. Under Stage 1 grievances must be submitted to the Stage 1 Resolution Manager. The next step is that the Stage 1 Resolution Manager then arranges a meeting with the person raising the grievance as soon as possible (normally within ten working days of receiving the grievance). After the meeting the Stage 1 Resolution Manager will confirm a response in writing – the Resolution Letter.
28. Under Stage 2 if the employee is not satisfied with the response they can appeal to the Stage 2 Resolution Manager within five working days of the response being sent to the employee. Again, a meeting should be arranged with the employee as soon as possible (normally within ten working days after receipt of the grievance appeal) and after the meeting the Stage 2 Resolution Manager will confirm a response in writing – the Final Resolution Letter.
29. The grievance procedure also includes the right to be accompanied to the grievance meetings.
30. The Respondent also has a sickness and absence policy [C147-C153]. In respect of a First Written Caution this policy states, "*In the context of long-term sickness absence this is a caution that if you are not fully back to work within between 4 -12 working weeks there will be a further Formal Absence Review Meeting.*"
31. In respect of a Final Written Caution it states, "*In the context of long-term sickness absence this is a caution that if you are not fully back to work within between 4 -12 working weeks you will be referred to the Final Absence Reviewer which could lead to termination of employment...*"
32. The Claimant included his notes on various policies held by the Respondent in the bundle [C179]. These include the Behaviour Policy, the Health and Safety Policy and the Code of Conduct. These notes were not disputed by the Respondent.
33. The Behaviour Policy states: "*Christian values respect, tolerance, harmony positive image of harmonious relations courtesy between all adults who work for the school*".
34. The Code of Conduct states that all adults will demonstrate Christian core values and that staff should behave in a positive way despite any personal problems especially in front of the children never use inappropriate or offensive language.

35. The Health and Safety Policy includes: “*The Principal has health and safety responsibility and [is] accountable as far as is practical...*
Premises Manager is on Health and Safety Committee. Catering activities is the Catering manager responsibility...
All exterior doors should remain closed throughout the day...
A work environment is created where work related stress is effectively prevented or managed...
Contractors *proper management of contractors ensuring risks are identified and managed jointly to ensure safe systems of working are followed. Good co-operation and co-ordination between all parties is ensured. Information to risk is exchanged effectively as necessary, health and safety matter raised are dealt with...*
Premises Manager *defects to the premises are dealt with in consultation with the Head teacher.”*
36. The Claimant’s case is that he had responsibility for the health and safety for everyone who was at the School. This included any contractors who were on site. The Respondent’s case is that ultimate responsibility for health and safety lay with the senior leadership team. The Claimant’s job description confirms that the Claimant was responsible for ensuring the School complied with legislation on site safety, it does not state he was responsible for all health and safety matters within the School. It does, however, state in respect of contractors that he needed to ensure that health and safety requirements were met.
37. The Claimant did concede in cross-examination that he did not have line manager responsibility to discipline staff at the School.
38. I find that the health and safety policy made it clear that the catering activities were the catering manager’s responsibility. I also find that the health and safety policy did envisage that contractors should share information concerning risks and that there should be good co-operation and good co-ordination between all parties.
39. I also find that the health and safety policy stated that in respect of defects to the premises the Premises Manager should deal with these in consultation with the Head Teacher.
40. When the Claimant commenced his employment he was given a set of handover notes [C6-C8] and a laptop computer. These notes are brief. No information was retrievable from the laptop computer.
41. When the Claimant started working for the School, the health and safety inspections between the School Governor responsible for health and safety (“H&S governor”) and the Claimant were produced in a list format with areas of responsibility not clear. From March 2016 the Claimant arranged that all future health and safety meetings with the H&S Governor were put in a spreadsheet clearly indicating the following: details, who is responsible, action to be taken, date completed and notes.

42. The Claimant also started producing detailed spreadsheets monthly/ bimonthly with headings: details of work, location, likely costs, who's responsible, target date for completion, level of priority and notes. These were sent to the senior leadership team (SLT) and later to Paul Weston Chair of the Trust, at his request.
43. On 6 May 2016 an updated, out of hours, on-call list was sent to Brook Security [C35]. This was after discussions between the then Principal, Dennis Irwin, Paul Weston and the Claimant where it was agreed that due to the Claimant's commitments with his mother, and that he lived furthest from the School, those who live nearest would be first on the list and the person who lived furthest away would be last.
44. On 19 September 2016 Paul Weston was removed from the on-call list and was replaced with a full-time member of staff [C60]. At this time there was an expectation that the Claimant would still respond to out of hours calls during the weeks when he was not employed by the School. The people who responded were generally Dennis Irwin, the full-time staff member, and the Claimant, despite other people being higher on the on-call list.
45. Just after Easter 2016 the School replaced its catering provider with ABC Catering, Tony Brown was the sole director of ABC Catering, and Tony Brown became the chef at the School. The Claimant's case is that the chef was a contractor at the School. Mrs. Wood confirmed that Tony Brown was a contractor at the School, and not an employee of the School. There are no contractual documents in the bundle detailing the relationship between ABC Catering/ Tony Brown and the School. I find that ABC Catering was a contractor to the School and Tony Brown attended on its behalf to undertake the services.
46. On 13 August 2017 the School's fire alarms were going off frequently. The Claimant was not employed by the School on that week. The School would have received a heavy fine if no-one from the School had attended with the Fire Service. No-one else on the on-call list responded, So, the Claimant attended, despite being at home in the middle of moving his mother with another carer using a mobile hoist. He had to leave the carer to complete his mother's care.
47. On 11 September 2017 the Claimant submitted a formal complaint regarding Tony Brown, at the School [C77-C79] the concerns included: that Tony Brown had a temper, which the Claimant had experienced whilst packing up after the summer fair; that Tony Brown had damaged the auto close mechanisms on the main kitchen door; that on numerous occasions Tony Brown was propping open the rear fire exit door in the hall, or allowed a member of his staff to do so, despite being told not to do so; that Tony Brown had removed a health and safety sign regarding not propping open the door; that when the Claimant had asked Tony Brown why he was removing the signs, Tony Brown had said "they were aesthetically unpleasing"; that Tony Brown had wasted both the Claimant's and the School's time; and the Claimant found his actions to be very frustrating and demotivating for the Claimant.

48. No meeting was held with the Claimant to discuss this formal complaint.
49. Dennis Irwin wrote to the Claimant on 13 September 2017 acknowledging the Claimant's complaint letter dated 11 September 2017 [C80]. This letter included some action points, including amongst others, that the Claimant and Dennis Irwin return to meeting every two weeks, that Dennis Irwin meet Tony Brown on a similar time frame at a different time; and to have appropriate meetings between Dennis Irwin, Tony Brown, and the Claimant. No right of appeal was included in this letter. There is no witness evidence or documentary evidence to confirm that these action points were carried out prior to July 2018, and I find that they were not carried out prior to July 2018.
50. On 21 December 2017 Paul Weston and the Claimant spoke about the on-call list (Paul Weston had been taken off the list). Paul Weston insisted that his name be added to the on-call list again, promising that he would respond. His name went onto the on-call list on 1 January 2018 [C103]. In fact, during January 2018 Paul Weston did not respond to any callouts. The Claimant spoke to Paul Weston and Paul Weston responded by saying "*prove it*". The Claimant later provided Paul Weston with a document from the security company, Brook Security, which listed who had responded to the call outs [C105 – C113].
51. The Claimant obtained a list of training programmes for Schools [C102]. These include courses of various dates, the first one being 5 October 2017 and the last one was dated 8 June 2018 [C102].
52. On 17 January 2018 the Claimant (on his request) had an informal meeting with Paul Weston and another Trust Member, in which the Claimant raised his concerns regarding Dennis Irwin leaving during December 2017 and the lack of support and training for the Claimant. Paul Weston offered to meet with the Claimant briefly, once a month, and the Claimant agreed to send Paul Weston copies of the monthly/ bimonthly spreadsheet with the works and issues outstanding.
53. In an email to Paul Weston on 18 January 2018 [C114] the Claimant stated: "*Babs also knows that I briefly mentioned about the formal complaint, concerning another member of staff and there have been issues between this person and the Breakfast Club.*" I find that this was in reference to his previous formal complaint concerning Tony Brown dated 11 September 2017 and to a new issue between Tony Brown and the breakfast club.
54. I find that as of 19 January 2018 there were still issues with people not responding to the out of hours calls. I also find that the Claimant emailed Babs O'Hara about this on 19 January 2018 [C115] and that it was included in the Claimant's spreadsheet of works to be carried out and outstanding issues dated 18 February 2018 [C 119 – C138]. This spreadsheet also included the training programmes with London Borough of Bexley [C102].

55. On 9 February 2018 there was a Health and Safety Meeting between Babs O'Hara, Acting Principal of the School at that time, and the Claimant [C116 – C118a]. The Claimant updated the notes on 23 February 2018. These notes include a discussion about the on-call list as follows:
"Discussed the On Call list with both Babs & Matt Green as people are not responding to callouts...Babs has suggested those on the rota can possibly take it in turns, which will mean one week in five for each person, possibly one in six, if Babs is added to the rota..."
56. During this meeting immediate health and safety training needs were identified and additional health and safety training needs were also identified. The notes indicate that the Claimant was to arrange the immediate training needs as soon as possible, in consultation with Babs O'Hara and Catherine Saill. The notes also state that the training budget is overspent. In respect of the additional training needs the Claimant was to obtain dates with costings.
57. The Claimant also raised in this meeting that approximately 95% of all tools and safety equipment was owned by the Claimant and that a planned purchase programme needed to be agreed by the end of this academic year (July 2018). The Claimant suggested the purchase of a wet and dry vacuum cleaner (which also cleans carpets).
58. The Claimant's evidence is that this meeting was the last health and safety meeting held between a member of the SLT and the Claimant. The Respondent conceded that this was the last minuted health and safety meeting between a member of the SLT and the Claimant. Mrs. Wood in cross-examination asserted that there were discussions about health and safety in the School, and with the Claimant. Mrs. Wood also stated that health and safety was an agenda item on in the staff team meetings.
59. There are no minutes of these staff team meetings in the bundle and, therefore, I do not accept Mrs. Wood's assertion that health and safety was an agenda item at staff team meetings. I accept the Claimant's evidence that the meeting on 9 February 2018 was the last health and safety meeting held between a member of the SLT and the Claimant. I also find that the Claimant was emailing his monthly/bimonthly spreadsheet reports to the SLT (and Paul Weston) and that there were informal discussions about health and safety between the Claimant and Mrs. Wood after she became Principal.
60. In May 2018 Miss. Martin was asked to help in the kitchen, for example, chopping vegetables and washing pots as Tony Brown's usual assistant was unavailable during this period. On 10 May 2018 Miss. Martin was assisting Tony Brown in the kitchen when Tony Brown left early. Miss. Martin was horrified to find how filthy the kitchen was from table-top to floor level. Miss. Martin was so concerned that she took photographs. These photographs are attached to Miss. Martin's witness statement and show the following issues:
- 60.1 A dirty floor between the kitchen units within the kitchen;
 - 60.2 A very dirty floor under the main washing area for vegetables etc. within the kitchen;

- 60.3 The rear kitchen storage area containing soiled clothes, baguettes and other food items;
 - 60.4 The interior of the warming tray being not only dirty, but in a poor state of repair with rust spots;
 - 60.5 Meat stored in the kitchen chiller on the floor of the chiller and not properly wrapped, the floor of the chiller was also dirty;
 - 60.6 Meat and other items stored together on the floor and two shelves;
 - 60.7 Poor organisation of the chiller with cooked food and raw meat stored at the same level;
 - 60.8 The side of the oven and the storage shelf dripping with fat; and
The area adjacent to the industrial dishwasher was very dirty.
61. Miss. Martin has qualifications and experience in the catering industry and had worked as a chef for several years before she had her children. Miss. Martin considered the state of the chiller, kitchen and rear kitchen storage to be a health risk and that it was serious enough to risk the health and wellbeing of all those being given food from the kitchen. Possibly even being life-threatening for the children. Miss. Martin felt compelled to report her findings to someone in authority at the School and she even considered contacting the health inspector.
62. Miss. Martin spoke to the Parent School Governor, who was extremely concerned, and informed Miss. Martin that Paul Weston was at the School. Miss. Martin showed Paul Weston the kitchen. On inspecting the kitchen Paul Weston appeared embarrassed and then defensive. Paul Weston dismissed Miss. Martin's concerns and said, "*That's what Chefs do.*" Miss. Martin replied, "*There is only one level of cleanliness within a commercial school kitchen and this isn't it.*"
63. The Parent School Governor told Miss. Martin that she agreed Miss. Martin's concerns were legitimate and that she had drawn the issue (along with others concerning Tony Brown) to the attention of Paul Weston and would bring these issues up at the next Governor's meeting.
64. I find that as at 10 May 2018 there were serious hygiene issues in the kitchen, that Paul Weston was dismissive of these issues when he was shown them by Miss. Martin, and that the Parent School Governor did raise these issues with Paul Weston and further at a School Governor's meeting. There is no evidence from the Respondent how these concerns were addressed in May 2018.
65. On 25 June 2018 Miss. Martin was present in the kitchen and could hear a conversation between the Claimant and Tony Brown. The Claimant told Tony Brown that he should not shout or be confrontational with anyone at the School. Tony Brown grunted and then muttered some rude remarks under his breath.
66. On 5 July 2018 the Claimant had a meeting with Paul Weston and Babs O'Hara. There are no minutes for this meeting.
67. The Respondent had arranged for a meeting to take place on 19 July 2018 between Babs O'Hara, the Claimant and Tony Brown. The Claimant had

emailed his formal grievance that same morning [C168] and, therefore, did not attend.

68. The email dated 19 July 2018 [C168] enclosed a letter dated 15 July 2018 to Babs O'Hara copying in Paul Weston and Anne Wood raising a formal grievance concerning Tony Brown being confrontational and intimidating, in front of Tony Brown's daughter, other staff, parents and swearing at the Claimant in front of a 15-year-old boy who was on work experience [C162 - C167].
69. This formal grievance highlighted, amongst others, the following incidents:
- 69.1 On 25 June 2018 following a discussion about which telephone number Tony Brown should contact the Claimant on, and an issue with the freezer, the Claimant had asked Tony Brown whether he knew any local contractors to fix the freezer. Tony Brown had shouted he did not and that the Claimant was a useless Premises Manager. When the Claimant tried to walk away to obtain the freezer details Tony Brown then shouted in front of parents, children and teaching staff "*where are you going?*";
- 69.2 On 9 July 2018 when the Claimant was trying to find a square bucket on wheels and mop for the cleaner it became apparent that it had been thrown into the back of the storage area and the Claimant suspected that Tony Brown had done this due to a text message received from Tony Brown at 16.57 that day;
- 69.3 On 10 July 2018 when the Claimant entered the kitchen to reset the gas controls, Tony Brown shouted a number of times "*get out of my kitchen in those clothes*", getting louder and louder in front of a 15-year-old work experience student; and
- 69.4 That one of the teaching staff had also claimed that Tony Brown had been heard to say, while in the kitchen, "*I'd like to punch him* [sic - the Claimant]."
70. The Claimant highlighted in this formal grievance that he was extremely concerned that Tony Brown's behaviour was becoming more abusive and aggressive and challenging and that it should be dealt with under the School's grievance procedure.
71. The Claimant also referenced the informal meeting on 5 July 2018 with Paul Weston in this formal grievance. The Claimant's concern was that during the meeting after the Claimant had expressed concerns about Tony Brown's behaviour (and that he had been told by parents and the Parent Governor that they had expressed their concerns about Tony Brown, verbally and in writing) Paul Weston had said:
"I've been a chef and we see the kitchen as ours, plus some of practices carried out in a professional kitchen are not necessarily best practice, we all know it goes on and it's inappropriate to talk to parents."
72. In this formal grievance the Claimant stated the following issues, amongst others, as being outstanding:
- 72.1 Tony Brown's behaviour had been intimidating and confrontational for over a year;
- 72.2 That Tony Brown must complete the necessary booking form for the hot water and/or heating to be put on, indicating if it is for school or private use;

- 72.3 Issues with Tony Brown taking for personal use kitchen equipment;
and
- 72.4 Tony Brown propping open fire doors, despite the Claimant reminding Tony Brown on numerous occasions not to do this.
73. The Claimant also highlighted that he did not feel that he was in a safe environment while working at the School and that his family and his partner had expressed their concerns that he was not sleeping well, appeared to be stressed and was having lapses in concentration, and that the Claimant for the first time felt despondent. Ms. Kendall's evidence was that the Claimant had always been very positive about his work at the School, but this changed in July 2018. The Claimant's mother, his partner and Ms Kendall noted that the Claimant was becoming increasingly stressed. The Claimant was visibly upset when he explained to Ms. Kendall that he had raised a formal grievance and that he was not being supported by senior members of staff at the School.
74. The Claimant also enclosed his previous formal complaint dated 11 September 2017 in the email with his formal grievance [C168].
75. No meeting was held to discuss the Claimant's formal grievance in either July 2018 or August 2018.
76. The Claimant received an email on 12 August 2018 enclosing a letter from Babs O'Hara dated 24 July 2018 [C169]. In this letter Babs O'Hara explained that in respect of the incident on 25 June 2018 Tony Brown had been having a very difficult personal issue during the week before that incident and this had already been explained to the Claimant. She further stated: "*this is not to say that the way he spoke to you is acceptable.*"
77. Babs O'Hara also explained that she had met with Tony Brown on several occasions and had discussed with him his reported rudeness to members of staff and that he was very apologetic for those behaviours. And that she felt Tony Brown would have apologised to the Claimant in the meeting on 19 July 2018 if it had happened. She also confirmed that Tony Brown was no longer on the on-call list, that he had completed the necessary booking form for the use of the hot water and heating, and that he has been made aware that he should close the fire doors.
78. In respect of Paul Weston's comment that it was inappropriate to talk to parents, Babs O'Hara stated the following in the letter: "*I believe that the concerns raised by Paul were to offer you support and advice around ensuring you are covered in case parents decide to 'turn funny'*".
79. Babs O'Hara also confirmed: "*The out of hours on-call system is now in place...*" and "*I feel that a joint meeting with Tony and myself will go a long way to resolving these issues.*" The right to appeal under the School's grievance procedure was not included in this letter.
80. I find that the Respondent had implemented a new system for the on-call list by July 2018 and that the Claimant did not raise with the Respondent any new incidents concerning the on-call list arising between August 2018 and 25 February 2019.

81. The Claimant's case is that Tony Brown has never apologised to him for Tony Brown's behaviour on 25 June 2018 and 10 July 2018. I find that Tony Brown did not directly apologise to the Claimant for his behaviour on 25 June 2018 and 10 July 2019. I find that Tony Brown apologised to Babs O'Hara and Babs O'Hara felt that Tony Brown would have apologised to the Claimant if the meeting on 19 July 2018 had gone ahead, and this was explained to the Claimant in Babs O'Hara's letter dated 24 July 2018.
82. In cross-examination the Claimant stated Tony Brown had sworn again when he was asked to complete the form for hot water and heating, stating that it was a "*fucking waste of time*". I accept the Claimant's evidence on this point. The Claimant did not specify the date when this happened but conceded on cross-examination this incident happened before Anne Wood became Principal in September 2018. In addition, given Babs O' Hara's correspondence referencing the form above, I find that this happened sometime in July 2018.
83. Anne Wood officially became Principal of the School at the start of the 2018/ 2019 academic year (3 September 2018). In cross-examination Mrs. Wood conceded that there were a number of issues with the School building when she became Principal and that there were also a number of academic issues at the School, and financial constraints.
84. Mrs. Wood gave evidence that prior to her first official day at the School she received a note from the Claimant on 27 August 2018 [C186 – C187] and that she also received another note from the Claimant on 10 September 2018 [C190 – 193]. The Claimant's evidence was that he sent the note dated 10 September 2018 to Anne Wood [C190-193]. I accept the Claimant's evidence on this point.
85. In the note dated 10 September 2018 to Anne Wood the Claimant requested, amongst others, the following:
- 85.1 A resolution to the formal grievance submitted on 19 July 2018 and the letter of complaint dated 11 September 2017;
 - 85.2 A staff appraisal;
 - 85.3 That he attend various health and safety training courses (this list included a course on asbestos management);
 - 85.4 That when the Claimant was not on site that the Principal take responsibility for the Premises Manager's role;
 - 85.5 Prioritisation for the purchasing of equipment and tools, including safety equipment, a pressure washer and a wet and dry vacuum cleaner; and
 - 85.5 The Claimant's current Samsung mobile phone (which he purchased) was not very compatible with the Inventory system and this prevented effective checks in emergency evacuation situations and this needed to be resolved.
86. In this note the Claimant also noted the creation of the kitchen report book by the Respondent and he also informed Anne Wood about his caring responsibilities.

87. On 10 September 2018 the Claimant also sent a note to Babs O'Hara entitled "What do I need/ want with regards to this formal grievance" [C194-C199]. In this note he again expressed his concern about Tony Brown's aggressive and confrontational behaviour, especially shouting things like, "*get the fuck out of my kitchen*", and that the Claimant had been told by parents, that Tony Brown had been bragging about it to other people. He also expressed concern about Paul Weston's comments in the meeting on 5 July 2018. The Claimant also made it clear that he did not want Tony Brown to lose his contract, but he did want him to understand the seriousness of the situation.
88. The Claimant also requested, amongst others, the following:
- 88.1 That Paul Weston not be involved in the grievance;
 - 88.2 That with immediate effect a kitchen report book be drawn up;
 - 88.3 That once the grievance has been resolved, monthly meetings should be held between the Deputy or Principal, the Claimant, Midday supervisor and Tony Brown and that every half term, during one of the regular meetings, the Parent Governor and a representative of the parents attend that meeting;
 - 88.4 A suggestion of a sanction against Tony Brown if he did not attend those meetings;
 - 88.5 That a letter of apology be sent to the Claimant by Tony Brown for his outbursts, giving an assurance that his behaviour, especially swearing, would not happen again; and
 - 88.6 That Tony Brown must adhere to all health and safety instructions given by the premises manager (i.e., the Claimant).
89. On 11 September 2018 the Claimant took a photograph of inappropriate waste disposal [D2].
90. On 18 September 2018 the Claimant also wrote to Paul Weston concerning the meeting that had taken place on 5 July 2018 [C 200 – C207]. The Claimant's particular concerns were:
- 90.1 Paul Weston's dismissal of the Claimant's concerns about Tony Brown's confrontational behaviour and that this had created the most distress for the Claimant;
 - 90.2 That Babs O'Hara's letter dated 24 July 2018 did not meet the requirements of the School's grievance procedure;
 - 90.3 That the Claimant was not confident that Tony Brown would not continue with his confrontation or bullying outbursts. The Claimant also wrote "*If Midday Supervisors continue to be verbally abused by Tony &/ or Dee I will offer them my support... If these outbursts happen for a third time, without the safeguards in place, I will consider that you have not met your obligation to ensure I have a safe environment to work and consider legal action*"; and
 - 90.4 That if Paul Weston was unable to give the Claimant assurance in writing or the Claimant did not receive a written reply, the Claimant would "*refer this on*" to ensure his safety and well-being within the workplace were met.
91. The Claimant also stated in this letter that he needed Paul Weston to acknowledge that it is not acceptable for harassment or bullying to take place within the School. He also said he required a letter of apology from

Paul Weston for any perceived disregard, on Paul Weston's part, concerning Tony Brown's outbursts.

92. On 26 September 2018 Babs O'Hara sent a letter [C210] to the Claimant responding to his note dated 10 September 2018. Babs O'Hara noted that Paul Weston would not be involved in the grievance process, that the kitchen report book had already been actioned. In respect of monthly meetings between the Deputy or Principal, the Claimant, the Midday Supervisor and Tony Brown, sanctions against Tony Brown for non-attendance and Tony Brown adhering to all health and safety instructions given by the Claimant Babs O' Hara explained that these would be discussed by the SLT, and they would decide those points. That the issue of a written apology would be discussed with Tony Brown during the joint meeting between Tony Brown and the Claimant. Babs O'Hara response to many of the other issues that the Claimant had raised were that they would need to be discussed by the SLT, and that the SLT would decide those points too.
93. On 2 October 2018 Paul Weston wrote a letter to the Claimant [C211] suggesting that they meet to discuss the Claimant's letter to Paul Weston dated 18 September 2018 instead of Paul Weston responding in writing. He suggested either 4 October 2018 or 8 October 2018, that Anne Wood attend as a neutral party and that Caroline Saill attend to minute the meeting. This letter enclosed the Respondent's grievance procedure [C212-C215].
94. In this letter Paul Weston also noted that a grievance hearing had been booked on 3 October 2018. When I questioned Mrs. Wood she confirmed this letter was the only written confirmation of the meeting on 3 October 2018 that the Claimant received. I note the letter itself does not inform the Claimant of his right to be accompanied to the meeting on 3 October 2018. The attached grievance procedure did refer to that right.
95. I find there was no meeting with the Claimant on a one-to-one basis before 3 October 2018 to discuss his formal grievance.
96. On 3 October 2018 the Claimant attended a meeting with Babs O'Hara Anne Wood and Tony Brown ("the Meeting on 3 October 2018"). Babs O'Hara was chairing the Meeting on 3 October 2018, because Babs O'Hara had been dealing with the Claimant's formal grievance. The Respondent's notes of the Meeting on 3 October 2018 [C216-C217] were disputed by the Claimant. The Claimant sent a letter dated 14 January 2019 to Anne Wood with his comments about the notes [C251-C256]. Some of the Claimant's notes commented on what had happened in the Meeting on 3 October 2018 itself, and other comments detailed what had happened after the Meeting on 3 October 2018. Mrs. Wood's evidence was that the Respondent's notes [C216- C217] were not full minutes, but I note that the Respondent does not dispute what the Claimant said happened during the meeting. I find that the Claimant's letter [C251 – C256] insofar as it corrects what happened in the Meeting on 3 October 2018 itself sets out the complete version of the Meeting on 3 October 2018.

97. During the Meeting on 3 October 2018 Tony Brown admitted that he had sworn at the Claimant, but then made an accusation of assault that the Claimant had pushed him. At that point Anne Wood stopped the meeting, there was some discussion where Anne Wood made it clear that it was a serious matter and she would have to get the police involved if it was true, and then Tony Brown agreed that the Claimant had never touched him.
98. The Respondent's notes [C216 – C217] do not detail this exchange. They simply state, "*Tony admitted he had sworn at him but said he felt threatened by M when he was aggressive towards him. M did not feel this was the case. T accepted that using such language is not acceptable. He said he had apologised for this already.*" "M" refers to the Claimant. In cross-examination Mrs. Wood stated that when she challenged Tony Brown about the accusation, Tony Brown had been taken aback by what she had said. She stated that Tony Brown's body language was ashamed and that he looked remorseful. I accept Mrs Wood's evidence on this point. I find, however, that although Tony Brown accepted that the language he had used was unacceptable, he did not directly apologise for this in this meeting. I also find that he did not verbally apologise for making the false accusation in the Meeting on 3 October 2018.
99. Some other issues discussed in the Meeting on 3 October 2018 were:
- 99.1 That the kitchen report book must be used in the future to report any issues in the kitchen;
 - 99.2 The SLT were to look at the procedures for when the Claimant was not in building; and
 - 99.3 Babs O'Hara and Anne Wood were to consider the food storage for the breakfast club.
100. At the time (3 October 2018) the Claimant had been impressed with the way Anne Wood had dealt with the issues the Claimant had raised in the Meeting on 3 October 2018 and that if Anne Wood dealt with the other issues that were still outstanding, he was confident they could put all this behind them and move on.
101. On 8 October 2018 the Claimant had a meeting with Paul Weston. Anne Wood was present as a putative neutral person ("the Meeting on 8 October 2018"). I find that given Anne Wood was the Principal and, therefore, a member of the SLT, she was not a neutral person. It had been intended that Catherine Saill attend as notetaker. Catherine Saill did not attend as notetaker because she had a minor issue regarding her car. Mrs. Wood confirmed in cross-examination that Catherine Saill had been asked to attend as a notetaker. The Claimant did not put forward any evidence either in his witness evidence or in the documents referred to in his witness statement to demonstrate otherwise. I, therefore, accept Mrs Wood's evidence on this point.
102. The Respondent's notes of the Meeting on 8 October 2018 [C218] were disputed by the Claimant in his letter dated 14 January 2019 to Anne Wood with his comments about the notes [C251-C256]. The Claimant's comments cover both what had happened in the Meeting on 8 October 2018 and what had happened after the Meeting on 8 October 2018. Mrs. Wood's evidence was that the Respondent's notes [C218] were not full

minutes, but I note that the Respondent does not dispute what the Claimant said happened during the Meeting on 8 October 2018. I find that, insofar as the Claimant's comments relate to what had happened within the Meeting on 8 October 2018 itself, they represent the true version.

103. During the Meeting on 8 October 2018 Paul Weston apologised regarding any upset that the Claimant had been experiencing and stated that he did not and has never thought that bullying in the workplace is acceptable and that Paul Weston regretted that the Claimant had not received that message clearly at their previous meeting (on 5 July 2018).
104. The on-call list was discussed during the Meeting on 8 October 2018. Paul Weston confirmed that he and Dennis Irwin (the previous Principal) may have had a discussion that Paul Weston was happy to go onto the list, but it was not wise to place him high up on the list. The Claimant pointed out that he had not been part of that discussion. The Claimant then referred to their discussion on 21 December 2017 about the on-call list and Paul Weston not responding to any callouts in January 2018. The Respondent's notes on this point merely state that Paul Weston also confirmed that he is happy to go onto the on-call list, but it's not wise to place him high up on the list.
105. I find, however, that in this meeting the Claimant was referring back to historical issues and since February 2018 Babs O'Hara had proposed a workable solution to the on-call list issue and this was in place by July 2018.
106. In respect of Tony Brown swearing at the Claimant, the Claimant stated, "*I have complete confidence that Anne would deal with it*". The Claimant also stated in the Meeting on 8 October 2018 that he believed Tony Brown's outbursts would re-occur unless Tony Brown wrote a letter of apology to the Claimant. Paul Weston did reiterate that any form of verbal aggression bullying or swearing is not acceptable in the School. Paul Weston confirmed that he had spoken to Tony Brown about the importance of good manners between staff and visitors to the School.
107. The Respondent's notes indicate that the Claimant stated he would continue to focus on his key responsibilities and tasks, however, the Claimant did not say this in the Meeting on 8 October 2018.
108. The Claimant again raised that he felt that at times Tony Brown had been dismissive regarding health and safety issues. Point i. in the notes state, "*any breach in health and safety guidance in the building should be recorded and monitored by MS and reported to the SLT.*" There was also an assurance that the SLT would meet with the Claimant to discuss the premises.
109. I find that the Respondent made it clear to the Claimant in the Meeting on 8 October 2018 that the Claimant should record and monitor health and safety breaches and report it to the SLT.

110. The Claimant also raised that he had not received any training over the last two and a half years. Anne Wood stated the School would provide the Claimant with training during the forthcoming months.
111. As each item was raised in the Meeting on 8 October 2018 the Claimant had said, "*I have complete confidence that Anne would deal with it*". The Respondent's notes instead had said the Claimant was completely satisfied and had no further issues.
112. The Respondent did not provide the Claimant with the notes of these meetings at the time. The notes of the Meeting on 3 October 2018 were received by the Claimant on 23 November 2018. The notes of the Meeting on 8 October 2018 were received by the Claimant on 11 December 2018. In cross-examination the Claimant expressed his opinion that the omissions and inaccuracies in the Respondent's notes of these meetings had been deliberate.
113. Miss. Walker's evidence also refers to the Claimant's view that the Respondent's omission of the allegation of assault by Tony Brown in the Meeting on 3 October 2018 was deliberate. Mrs. Wood explained in cross-examination that the allegation of assault by Tony Brown and Anne Wood's challenge to it was not included in the notes for the Meeting on 3 October 2018, because it had been resolved in the meeting and everyone was content. I do not find this explanation to be convincing. I find the omission in the Respondent's notes of the Meeting on 3 October 2018 of the allegation of assault and Anne Wood's challenge to it was deliberate. In respect of the other differences and omissions I find that these were not intentional.
114. I also find that a Resolution Letter under the Respondent's grievance procedure was not sent to the Claimant after these meetings (on 3 October 2018 and 8 October 2018) and the Claimant was not notified of his right to appeal.
115. The Claimant has not provided evidence of any incidences of Tony Brown swearing or shouting at the Claimant or being confrontational with the Claimant after the Meeting on 3 October 2018. The Claimant has not provided evidence that Tony Brown persisted in falsely accusing the Claimant of assault after the Meeting on 3 October 2018. I, therefore, find that Tony Brown was not confrontational with the Claimant, and did not swear or shout at the Claimant after 3 October 2018 and that Tony Brown did not persist with falsely accusing the Claimant of assault after 3 October 2018.
116. On 2 November 2018 the Claimant took some photographs as follows:
- 116.1 A photograph at 16:02 showing a broken electric socket behind a freezer in the kitchen [D3];
 - 116.2 A photograph taken at 16:49 showing the repair sockets and installation of doorstops to prevent further damage [D3]; and
 - 116.3 A photograph taken at 16:53 of the toilets at the rear of the kitchen, used by Tony Brown and his member of staff, with the toilet seat broken with a comment that this toilet was almost never flushed [D4].

117. At the beginning of November 2018 Miss. Martin was informed by Tony Brown's assistant that Tony Brown had pushed the kitchen freezers back so hard that he had smashed the electrical sockets behind the freezers. That Tony Brown was trying to blame it on the assistant, and she (the assistant) was not going to take the blame for.
118. Miss. Martin told the Claimant about the electrical sockets and what the assistant had said. Miss. Martin stated that the Claimant returned to her later that day and confirmed he had made the necessary checks, arranged emergency repairs by an electrician and had carried out adjustments to ensure this could not happen again. The Claimant's evidence was that he had asked Tony Brown about the electrical sockets and Tony Brown did confirm that he had broken them. Miss. Martin's evidence was that it would have been difficult to have broken these plugs by accident.
119. I find that on 2 November 2018 the electrical sockets in the kitchen behind the freezer were broken, they had been broken by Tony Brown and this had not been reported by Tony Brown (and there was a kitchen report book at this time). There is not enough evidence to demonstrate that this damage was deliberate. I also find that on being told about the issue by Miss Martin the Claimant acted quickly to resolve this serious issue.
120. In an email dated 5 November 2018 [226] from the Claimant to Anne Wood, the H&S governor and Babs O'Hara, the Claimant raised the following issues:
- 120.1 That Tony Brown must be less forceful when moving the freezers;
 - 120.2 On moving the freezer the Claimant had found the floor in a poor state of cleanliness and there were signs of black mould growth on the wall behind the freezers and on the side of the freezer where they met;
 - 120.3 That Tony Brown was not flushing the toilet on a regular basis;
 - 120.4 That the toilet seat had been broken for a number of months, which had not been reported;
 - 120.5 That Tony Brown regularly leaves his washing in the rear storage area;
 - 120.6 The Claimant was particularly concerned that Tony Brown was still failing to report damage or faults that potentially could be life-threatening; and
 - 120.7 The Claimant repeated his concerns about the breakfast club not having their own shelving in the rear storage area of the kitchen.
121. I find that as of 5 November 2018 there were still some issues with the cleanliness of the kitchen, and with Tony Brown leaving his washing in the rear storage area of the kitchen, and that Tony Brown had failed to report broken electrical sockets (which he had damaged) that potentially could have been life-threatening. There is nothing in the Respondent's evidence or the documents in the bundle to confirm what action was taken by the SLT in response to the Claimant's email dated 5 November 2018.
122. On 8 November 2018 the H&S governor sent an email to the Claimant, Anne Wood, and Babs O'Hara stating that unless anything was an immediate threat to the children, staff or public then he planned to

come and finish his visit and report in a few weeks' time on health and safety. This email also stated, "*Anne, I'd like to set a date when I could see you, and maybe take a walk with Michael.*" The Claimants evidence is that this did not happen. The H&S governor's draft health and safety report [C248] indicates that the H&S governor and the Claimant had spent time in discussion on 30 October 2018. It also indicates that the H&S governor had a brief discussion with Anne Wood and Babs O'Hara on 8 January 2019 and I find that after 8 November 2018 the H&S governor did have a brief discussion with Anne Wood and Babs O' Hara on 8 January 2019.

123. In December 2018 there was also an issue with a red topped mop and bucket. On 14 December 2018 the Claimant had sent to Tony Brown colour coding advice regarding cleaning equipment [D5]. A mop with a red top should only be used to clean toilet facilities. If it is used for cleaning toilet facilities and other areas this could lead to cross-contamination. On 17 December 2018 the Claimant took a picture of a red top mop and bucket in the kitchen sink [D5].
124. On 17 December 2018 the Claimant also took two photographs of the top of the fire escape. These photographs show that the area is crowded with items that should not be there.
125. The Claimant completed in January 2019 "Works to be carried out and issues as at 07/01/2019" ("the Claimant's Spreadsheet dated 7 January 2019") [C236-C247]. This included issues such as:
- 125.1 The supply of a domestic fridge to the breakfast club (and the installation of a double socket for the breakfast club fridge);
 - 125.2 Tony Brown damaging equipment;
 - 125.3 Tony Brown not reporting faults and repairs;
 - 125.4 Inappropriate waste disposal by Tony Brown;
 - 125.5 Tony Brown not following health and safety best practice, the Claimant highlighted Tony Brown's usage of the red top mop to clean the kitchen floor; and
 - 125.6 The PAT testing still being outstanding (and that the School will be asked about PAT testing in the forthcoming health and safety audit with the London Borough of Bexley as the School had previously indicated it would be carried out in the last academic year and possibly the year before). The Claimant also confirmed that he had removed his own personal electrical equipment, and this would have an impact on how efficiently work would be carried out for the School.
126. The Claimant confirmed when I questioned him that PAT testing is the testing of portable electronic equipment that has a plug on it. It is to ensure the safety of that equipment. If there was anything wrong with the cables it could cause electrocution.
127. When I questioned Mrs. Wood she stated that there was no issue with the waste disposal by Tony Brown at that time (January 2019). I note that the last photograph of inappropriate waste disposal is dated 11 September 2018. I find that inappropriate waste disposal was not an ongoing issue in January 2019.

128. I questioned Mrs. Wood about the decision to not provide a domestic fridge for the breakfast club (with accompanying socket). She stated it was not necessary because there was a large walk-in fridge at the School already. I accept Mrs. Wood's evidence on this point.
129. I also questioned Mrs. Wood about when the PAT testing was completed. Her evidence states this happened in September 2019 (but a specific date was not provided). When I questioned her Mrs. Wood was not entirely sure but thought it had been completed around the Easter holidays in 2019. There are no documents confirming when this happened. I find that this was not completed before the Claimant left the Respondent's employment.
130. On 9 January 2019 the H&S governor emailed a draft copy of his health and safety report ("the H&S Report") to Anne Wood and the Claimant [C248]. In this he stated that his overall impression of the physical safety of the School was one of improvement. That there were no longer any health and safety issues with the infrastructure and equipment that were ongoing or causing alarm. But that his overall impression of the paperwork was mixed. The Claimant had presented logs which were all up to date. The fire drills, the alarms, the emergency lighting, the water were all regularly checked, along with general inspections. He also stated that PAT testing was up to date (the Claimant's case is that the PAT testing was not up-to-date, and I find it was not up to date in January 2019).
131. However, he further stated that risk assessments for both activities and the building were not readily available, that the health and safety policy on the website was over two years out of date and that while it was verbally confirmed to the H&S governor that health and safety was an agenda item at team meetings, he could not verify this through the meeting minutes or notes. He was also concerned that the Claimant did not attend those meetings, despite taking on much of the responsibility for health and safety. The H&S governor noted the following points for urgent action:
Reviewing and updating the health and safety policy;
Sending the H&S governor copies of risk assessments; and
That the red mop was been used in the kitchen and this is the colour for toilets and could cause cross-contamination.
132. For consideration the H&S Report highlighted, "*Management of equipment, repairs and building when Michael is off i.e. over the summer, and its being used by AB Catering.*"
133. There are no minutes of any health and safety meetings or, health and safety briefings in School team meetings for 2019 in the bundle. Mrs. Wood's evidence was that dedicated health and safety meetings were held from September 2019 onwards. I find that dedicated health and safety meetings did not commence prior to the Claimant leaving his employment with the Respondent.
134. On 14 January 2019 the Claimant wrote a letter to Anne Wood. The original letter without Anne Wood's notes is in the bundle at pages C251 – C256. The version with Anne Wood's underlined notes is at pages C257 –

C264. The Claimant did not see the version with Anne Wood's underlined notes until after he had left the Respondent and had commenced his claim against the Respondent.

135. The main issues raised in this letter were:
- 135.1 That the notes of the Meeting on 3 October 2018 and the Meeting on 8 October 2018 were not accurate. In particular that Tony Brown's accusation that the Claimant had shoved or pushed past him had not been included;
 - 135.2 That the SLT had held a number of meetings with Tony Brown, however, they had not held any meetings with the Claimant;
 - 135.3 That the Claimant had never received an apology from Tony Brown and that he felt that Tony Brown would only take this seriously if he apologised in writing;
 - 135.4 The Claimant's strong suggestion that both Tony Brown and the Claimant meet together with an SLT member on a monthly basis;
 - 135.5 Tony Brown's failure to follow basic hygiene regulations and best practice which had been brought to the attention of the SLT and had not been resolved;
 - 135.6 Tony Brown being dismissive of health and safety issues and despite the SLT being informed, nothing had happened to resolve this;
 - 135.7 The Claimant had not seen or been given any information about the kitchen procedures by either Tony Brown or the SLT;
 - 135.8 That it still was not clear who took responsibility for the premises when the Claimant was not in the building and this was still outstanding;
 - 135.9 That the issues regarding the breakfast club food storage were still outstanding, and this meant there was a risk that children may eat cereals to which they are allergic;
 - 135.10 That the SLT needed to be more specific about the demarcation of staff roles and duties particularly given the Claimant's job description;
 - 135.11 That the last health and safety meeting had taken place on 9 February 2018; and
 - 135.12 That the School's grievance procedure had not been followed throughout.
136. The breakfast club food was at that time stored in the Sports Hall to which pupils had access. This could be an issue if a pupil had an allergy to any of the ingredients of the cereal. On cross-examination Mrs. Wood stated that the breakfast club was given its own storage in the kitchen. I questioned Mrs. Wood about when the breakfast club received its own storage for its food in a secure location, and she stated it was in Spring 2019. I accept her evidence on this point. Mrs. Wood also confirmed that as the Claimant was still on the School's WhatsApp business group at that time he would have been aware of this.
137. The Claimant did acknowledge in this letter that a health and safety course had been booked for him for 14 February 2019.
138. At the end of this letter the Claimant stated, *"it is therefore with regret that at the end of this week I will be progressing my grievance to*

'Stage 2 Resolution Manager' and I'll be bringing with me someone independent, of my choice, and will require someone, not involved, to take the minutes, to ensure they are a true reflection of the meeting.' I find this was a reference to the School's Grievance Procedure, the Stage 2 Resolution Manager hears appeals.

139. There is nothing in the Respondent's evidence or the documents to indicate that anyone from the SLT responded to the issues in the Claimant's letter dated 14 January 2019 in writing, nor that an appeal hearing under the School's Grievance Procedure was arranged in January 2019 or February 2019.
140. On 17 January 2019 Anne Wood emailed the H&S governor and the Claimant, copying in Babs O'Hara [C267]. In this email she confirmed that the risk assessment for trips was available in the main office, that she was in the process of updating the health and safety policy, that the process of reviewing risk assessments was underway, that the kitchen staff had been asked to replace the red topped mop in the kitchen and that the School was recording health and safety briefings. When I questioned Mrs. Wood about the red topped mop she stated it was only being used to clean the kitchen floor and it was not being used to clean the toilet too. However, because there was a chance that someone else may use it to clean toilets (due to it being red topped) it was replaced.
141. I find that the issue with the red topped mop was resolved in January 2019 before 17 January 2019.
142. On 20 January 2019 Anne Wood emailed the H&S governor and the Claimant, copying in Babs O'Hara [C267]. This email attached the latest update on the general risk assessments [C268]. Anne Wood had reviewed some of these risk assessments, and she had requested that the Claimant review the ones relating to the building. On C268 "premises manager" is listed next to twenty of the risk assessments.
143. In cross-examination the Claimant also referred to an issue concerning asbestos within the School and drew my attention to C283. C283 is part of the Claimant's document titled "Premises Manager – works to be carried out and issues as at 01/02/2019". Under issues the document states when starting at the School the Claimant had been told there was a certificate stating there was no asbestos in the School. However, in June 2018 the Claimant had found an asbestos folder in the server room with plan, photographs and a report on asbestos, however, it was out of date, as most of the asbestos had been removed. The Claimant highlighted this with Babs O'Hara and Anne Wood, when she visited the School in July/August 2018.
144. The comments section in C283 relating to this asbestos issue indicate that the Claimant had inspected the original School building and had found no identifiable risk unless contractors were working on the cemented areas, at the top of the chimney, or drilling holes into the ground floor concrete floors and there was a possibility of some asbestos being located above the ceiling tiles in the rear lobby area. Also, that Anne Wood had given the Claimant a copy of the regulations concerning the

management of asbestos, that the Claimant discussed this with the H&S Governor on 8 January 2019 and the documentation relating to the asbestos procedure, (including a folder for contractors) was completed by 23 January 2019.

145. The Claimant also highlighted in this document that the SLT would need to arrange an inspection.
146. I find the Claimant had not received any specific training on either the management of asbestos or the creation of documentation on asbestos procedures while he was employed at the Respondent.
147. I also note at page C269 of the bundle the first page of a Method Statement regarding asbestos last updated by the Claimant on 22 January 2019. In cross-examination the Claimant stated that this Method Statement was for any contractors who attended the School to undertake works and that this Method Statement was available at the reception of the School.
148. I find that there was a known serious health and safety risk for any contractors attending the site (to conduct works on those areas of the original building identified by the Claimant), and anyone within the vicinity of their work between June 2018 and 22 January 2019 and that Anne Wood had been informed sometime in July or August 2018 by the Claimant. This serious health and safety risk was mitigated once the Method Statement was available to contractors at the reception of the School on 23 January 2019. I find that this risk was mitigated by 23 January 2019.
149. On 7 February 2019 the general school audit was conducted by London Borough of Bexley.
150. On 14 February 2019 the Claimant attended CIEH Foundation certificate in Occupational Health and Safety. The trainer was from London Borough of Bexley, the Claimant passed and was given a certificate [C286].
151. The Claimant's evidence is that this was the only health and safety training provided to the Claimant by the School. Mrs Wood's evidence was that the School had organised training in December 2018 with a five-course bundle that was provided by AT and F solutions. This training was a rolling programme of online courses and it was available to the Claimant to access after December 2018. On cross-examination the Claimant stated that he did not remember this training being available and that he was not informed about it. There are no documents in the bundle about this five-course bundle provided by AT and F Solutions. I find that the Claimant did not know either about the existence of this training or that he could access it in early 2019.
152. I find that the course on 14 February 2019 was the only health and safety course organised by the Respondent that the Claimant attended during his employment with the Respondent.

153. On 15 February 2019 the School received the general school audit for 2018/2019 [C289]. The School's score was 43/61 (or 70.49%). No further evidence was presented about the detail behind this score.
154. Sometime in February 2019 there was an incident between a year one pupil and Tony Brown. The Claimant and Respondent agree that Tony Brown was tall (at about 6 feet in height). The Claimant and the Respondent give different version of events. The Claimant stated he had attended school one morning and saw that one of the breakfast club supervisor's sons ("the Year One Pupil"), who was usually lively and energetic, looked scared. The Claimant asked the Year One Pupil what was the matter? The Year One Pupil would not respond. The Claimant then asked the breakfast club supervisor what had happened? She explained that the Year One Pupil had been intimidated by Tony Brown the day before. And the Year One Pupil had been refusing to come into School that morning. That Anne Wood had interviewed the Year One Pupil without informing the breakfast club supervisor or the Year One Pupil's father (her husband). That Anne Wood had then met with the Year One Pupil and Tony Brown in her office to discuss what had happened. The Claimant was aware that the breakfast club supervisor and her husband had made a formal complaint, but that they did not follow up the complaint because at the time they were applying for a mortgage and they needed the school to be a referee for that mortgage application.
155. Mrs. Wood stated that this had been a safeguarding incident and that the Year One Pupil had become upset at lunchtime because Tony Brown had challenged the Year One Pupil when he had thrown away a lot of potatoes. The background to this being that the pupils help themselves to food that is on the table in a family dining style format. The Year One Pupil had taken a lot of potatoes and then had not eaten them. Other members of staff had intervened and brought the Year One Pupil to her. The Year One Pupil was very upset, and Anne Wood had investigated the matter by talking to the Year One Pupil.
156. Anne Wood had then spoken to Tony Brown. Mrs Wood also gave evidence that the staff who had been present confirmed that Tony Brown had not shouted. Mrs. Wood's evidence was that to the Year One Pupil a tall person (such as Tony Brown) could seem intimidating. Mrs. Wood denied that the meeting between Tony Brown, herself and the Year One Pupil took place in her office. That it took place in the hallway close to the dining room where other staff were present. The parents had been informed afterwards and they were happy.
157. Mrs. Wood pointed out that neither the Claimant nor Sarah Martin had witnessed the incident or her response to it. Page C301 of the bundle (which is part of the minutes the Claimant made of a meeting on 13 March 2019) states in reference to this incident, "*Anne explained this did not occur in this way as the meeting took place in the library area, ensuring they couldn't be over-heard and the parents were happy with the action taken.*" I also note that Mrs. Wood did not witness the incident between Tony Brown and the Year One Pupil in the dining room itself.

158. I find that this was a safeguarding incident and was not a health and safety matter, that Tony Brown's challenge to the Year One Pupil was potentially intimidating regardless of whether he had shouted, that Anne Wood had met with the Year One Pupil on his own first, that she had then met with Tony Brown before all three of them had a reconciliation meeting, and that this took place somewhere where they could not be over-heard, which was most likely either in her office or the library, and not the hallway near the dining room. Finally, that she did not involve the Year One Pupil's parents, and that they did make a formal complaint, but did not continue with it due to concerns about financial repercussions.
159. Miss. Martin's witnessed or was informed about other incidents with Tony Brown including:
- 159.1 Shouting and swearing at the breakfast club supervisor and another member of staff without provocation, those two staff members told Miss. Martin independently and together, that they had raised these issues, sometimes once or twice a week, with the SLT, including Anne Wood and Paul Weston;
- 159.2 Miss. Martin's own children had heard Tony Brown swearing and shouting at other members of staff;
- 159.3 During breakfast club Tony Brown had listened to inappropriate radio stations, with swearing and the volume high enough for the children to hear. Miss. Martin spoke with Anne Wood about this ("the Breakfast Club Incident");
- 159.4 Despite the School having a no nuts policy, Miss. Martin had seen Tony Brown taking a silver platter of nuts, covered in clingfilm, from the School kitchen to a private function;
- 159.5 Miss. Martin regularly expressing her concerns to Tony Brown about the hand washing station often being used as an extra sink for draining liquids and insufficient soap and paper towels in this area of the kitchen; and
- 159.6 Miss. Martin also witnessed children, including her own daughter not receiving a lunch. If a pupil did not like or would not eat their lunch a second option of pasta was supposed to be available. Tony Brown would become defensive and aggressive to the midday supervisors and would refuse to make more pasta.
160. Miss. Martin was not able to provide dates for these incidents. In cross-examination Miss. Martin stated that she had been complaining to Anne Wood about Tony Brown on an almost weekly basis until at least December 2019, and possibly even to March 2020 when the coronavirus restrictions were implemented.
161. On cross-examination Mrs. Wood remembered the Breakfast Club Incident but could not recall Miss Martin complaining on a weekly basis. I note that Anne Wood did not say it did not happen. I find that Miss. Martin did complain on a weekly basis about Tony Brown to Anne Wood up to at least December 2019, but there is no evidence about the detail of these complaints.
162. It is unfortunate that Miss. Martin is not able to put the specific incidents into context with dates. The Breakfast Club Incident clearly occurred after Anne Wood became Principal. The evidence of the two

members of staff that they complained to Anne Wood is second-hand evidence that Miss. Martin is repeating and carries less weight than if these two members of staff had given evidence in Tribunal themselves, and again there are no dates about when they made their complaints to Anne Wood. Also, I note the Claimant's reference in his letter dated 18 September 2018 to Paul Weston (see above) about midday Supervisor's being verbally abused, but again but this would have been before 18 September 2018. I, therefore, find that the specific incidents outlined by Miss Martin more likely than not happened before 3 October 2018.

- 134 In February 2019 the School had provided Positive Handling training to its staff members. The Claimant did not attend this training because Anne Wood had asked him to put up some communal noticeboards. In cross-examination Mrs. Wood confirmed that the Positive Handling course was about de-escalation techniques with pupils and that it was for classroom-based staff, and the Claimant, as premises manager, did not have contact with pupils. I accept Mrs Wood's evidence that this course was more for classroom-based staff and, therefore, was not wholly relevant to the Claimant, but I do not accept her assertion that the premises manager at a School does not have contact with its pupils.
- 135 Safeguarding Prevent training took place in February 2019, but there is no evidence confirming that the Claimant attended that training. I find that the Claimant did not attend that training.
- 136 On 25 February 2019 the Claimant wrote a letter to Anne Wood [C290] attaching his first statement of fitness for work certificate [C406]. In this letter the Claimant stated that his GP had strongly urged him to take time out, despite the Claimant's reluctance. Other training that had been booked for the Claimant to attend after 25 February 2019 was cancelled because he was absent on sick leave. The Claimant was aware that this training had been booked.
- 137 In cross-examination the Claimant stated that he had lost trust with the Respondent in February 2019, but that he did not resign in February 2019 because he wanted the School to resolve the issues.
- 138 On 12 March 2019 the Claimant wrote to Anne Wood detailing the areas he wanted addressing, with his desired outcomes [C294-C295]. These included the following, amongst others, issues:
- 138.1 That Anne Wood agree the amendments to the notes of the Meeting on 3 October 2018 and the Meeting on 8 October 2018 as set out in the Claimant's letter dated 14 January 2019;
 - 138.2 That the Claimant be provided with other health and safety training and be included within safeguarding training, such as 'Positive Handling' that had taken place on 25 February 2019;
 - 138.3 That the School provide the Claimant with the required health and safety equipment, which the Claimant had paid for in the past;
 - 138.4 Confirmation that in the Claimant's health and safety role, he has responsibility for the structure of the buildings and equipment owned by the School;
 - 138.5 To ensure that the School meets its health and safety responsibilities by holding monthly meetings with the Claimant, Principal or

assistant and Tony Brown attending;

138.6 Confirmation of who has health and safety responsibility when the Claimant is absent, with particular focus on the kitchen as a high health and safety risk area;

138.7 That any request for work or services must first be written in the premises manager's record book. No requests were put in that book during February 2019, but additional work was carried out; and

138.8 That the Claimant be provided with risk assessment training and that time be allocated for him to review those risk assessments.

139 On 13 March 2019 the Claimant and Anne Wood had a meeting to discuss various matters including the Claimant's possible return to work and the restructuring proposals within the School. The School proposed to reduce the hours for the Claimant's post from 30 to 25 hours per week. In this meeting Anne Wood gave the Claimant the reorganisation consultation paper [C302 – 312]. The Respondent did not produce minutes for this meeting.

140 I find that the Claimant was not provided with the restructuring information and its proposed impact on the Claimant prior to the meeting on 13 March 2019. I find he was given this information at the meeting.

141 The Claimant and Anne Wood also discussed the Claimant's areas of concern set out in his letter dated 12 March 2019. The Claimant took minutes of this part of the meeting [C296 – C301]. The discussion included, amongst others, the following:

141.1 In respect of the Claimant's requested amendments to the notes of the Meeting on 3 October 2018 and the Meeting on 8 October 2018, Anne Wood asked for more detail and the Claimant pointed out that he had provided specific details, which were listed under each of the items, as listed within Anne Wood's minutes. That he had not received a reply and incidents regarding Tony Brown continued. The Claimant said that he would only speak to Tony Brown with another member of staff or PTA parent in attendance and that if Tony Brown approached the Claimant while he was on his own, the Claimant would walk away just saying, "speak to Anne". The Claimant again repeated his request for meetings between a member of the SLT, Tony Brown and the Claimant. The Claimant also pointed out that it had taken over a month and a half to get Tony Brown to change the mop head, with the possibility of cross-contamination.

141.2 In respect of health and safety training Anne Wood confirmed that all the training highlighted within the School's audit would be booked for the Claimant when he returned to work. Anne Wood also explained she did not feel it was necessary for the Claimant to attend the Positive Handling course and on that particular day it had been a priority to get the communal noticeboards installed.

141.3 In respect of health and safety equipment the Claimant explained that due to the PAT testing being outstanding it was agreed that the Claimant should remove his equipment (as he could be held liable should anyone sustain any injury from his equipment). Anne Wood acknowledged this and requested examples of health and safety equipment that the Claimant required. The Claimant specified hardhats, safety goggles, steel

toe cap boots, ear defenders, a wet and dry vacuum cleaner. The Claimant agreed to provide a more comprehensive list on his return to work. Anne Wood pointed out that there was no money for a wet and dry vacuum cleaner.

141.4 The Claimant's areas of responsibility were discussed. The Claimant referred Anne Wood to his job description concerning his role on managing contractors on site ensuring that all health and safety requirements were met and expressed concern that his role of health and safety officer had been questioned, and in writing from the SLT. Anne Wood confirmed that the Claimant's job description included this role. The Claimant highlighted a number of issues including a reference to his issues with Tony Brown, the issue of cross contamination within the kitchen, and children with dietary issues gaining access to food that may be extremely harmful to their health, Anne Wood's instructions on three separate occasions to fit coat hooks with the toilet area in Year 2, despite the Claimant's extreme concerns.

141.5 In respect of the monthly health and safety meetings Anne Wood confirmed that the monthly health and safety meetings would take place, but that Tony Brown would only be invited when there was a need.

141.6 The Claimant repeated in this meeting his extreme concern that there was a distinct lack of action regarding health and safety.

141.7 Anne Wood confirmed in this meeting that in the absence of the Claimant, she took responsibility for the premises manager's remit, including health and safety responsibilities.

141.8 The Claimant expressed his frustration that he was having to justify the use of the premises manager's record book, that it had worked really well over the last three years, and had been so successful that books had been set up for the IT consultants, cleaning company and Tony Brown. It also meant that the SLT knew how the Claimant was spending his time, in addition to his daily, weekly, or monthly tasks. Anne Wood responded that this was not necessary and that the Claimant should not worry what people think about what he does and it was different for the others as they worked less frequently.

141.9 In respect of the provision of training for risk assessments and the allocation of time for their review, Anne Wood expressed that with the Claimant's previous experience he should be able to carry out the risk assessments and that he just needed to set aside the time and give them priority, as and when it was required. The Claimant responded that with his workload and the fact that his last relevant risk assessment training was in the late 1990s he was not confident in checking these assessments. The Claimant also stated he had been given 20 risk assessments to check in addition to his ongoing responsibilities and that he had been criticised three weeks later by Anne Wood for not completing them.

142 In addition to the issues raised by the Claimant in his letter dated 12 March 2019 Anne Wood and the Claimant also discussed the Claimant's concerns about Tony Brown and the Year One Pupil and how Anne Wood had dealt

with it. The Claimant also informed Anne Wood that he had spoken to the NSPCC (without mentioning the School or the names of the people involved) about this incident. Anne Wood responded as follows, "*Anne explained this did not occur in this way as the meeting took place in the library area, ensuring they couldn't be overheard and the parents were happy with the action taken. This highlights how important it is to have the correct facts.*" The Claimant's meeting notes state that Anne Wood would make a note of this discussion, just stating a discussion was held regarding a safeguarding, but this did not involve the Claimant.

- 143 In respect of the School restructure the Claimant expressed his concerns that there was already too much work to do, even within 30 hours per week. The 30 hours had been calculated when there were only two classes and the number had increased to six, with an additional one to be added in September 2019. Anne Wood did not respond to these concerns in the meeting but informed the Claimant that this was the consultation period and a decision would be made in accordance with the details given to everyone.
- 144 I find that the hooks in the year two toilet area were not fitted prior to the Claimant being absent from 25 February 2019 on sick leave.
- 145 I find that the School did not provide the Claimant with safety equipment, including personal protective equipment, before he went on sick leave on 25 February 2019.
- 146 I find that this meeting (on 13 March 2019) was the first time the Claimant had requested specific items of safety equipment. Though he had requested that the School provide him with tools and equipment, including a wet and dry vacuum cleaner, on a number of occasions prior to this meeting. I find that Anne Wood did acknowledge that safety equipment should be provided and that it would be provided to the Claimant on his return to work. I find that she did say that there was not enough money for a wet and dry vacuum cleaner.
- 147 I also find that Anne Wood during this meeting confirmed with the Claimant that all the training highlighted within the School audit would be booked for him when he returned to work, that the School would pay for health and safety equipment, that she agreed with the Claimant about the content of his job description, that monthly health and safety meetings would take place, but Tony Brown would only be invited when there was a need, and that when the Claimant was absent Anne Wood took responsibility for the premises manager's role, including the health and safety responsibilities.
- 148 I find, however, that in this meeting Anne Wood did not respond to the Claimant's concerns about the Respondent's notes of the Meeting on 3 October 2018 and the Meeting on 8 October 2018. I also find that Anne Wood did not respond in this meeting to the Claimant's concerns about the possible reduction in the Claimant's working hours and that he would struggle to complete his workload within 25 hours.
- 149 The Claimant did not receive the email dated 16 March 2019 from Anne Wood inviting the Claimant to attend one more meeting regarding the

restructure, suggesting 9:15 AM, 20 March 2019 [C312a] prior to leaving his employment with the Respondent.

- 150 On 12 April 2019 Anne Wood wrote a letter to the Claimant [C314] informing him that his role as site manager was effective from 1 May 2019. This included that his hours of work would be 25 hours per week, 42 weeks per year at an actual salary of £12,951.25. This also stated, "*Please accept this letter as formal notification of a change to your terms and conditions of employment... Would you please sign and return the attached duplicate of this letter to confirm your acceptance of the changes.*"
- 151 The letter also enclosed a job description [C316-C320]. I compared this with the Claimant's original job description [C27-C30] and I find that the only difference between the two documents is the substitution of 25 hours instead of 30 hours.
- 152 The meeting on 13 March 2019 was the only meeting held with the Claimant that discussed the proposed restructure and the proposed reduction in his hours prior to the notification dated 12 April 2019. I find that this letter stated the change in hours would take effect from 1 May 2019.
- 153 On 23 April 2019 the Claimant sent an email to Anne Wood. The subject matter of that email states, "Medical Certificate, up-to-date situation and minutes for meeting held on 13/03/2019". The Claimant reiterated in this email his concern about the reduced hours of work. In particular this will overall increase the costs to the School and that the School will not be able to fulfil its legal obligations regarding health and safety regulations.
- 154 This email also attached the Claimant's notes of the meeting on 13 March 2019 [C296-C301].
- 155 Mrs. Wood's evidence was that on 29 April 2019 she had written to the Claimant inviting him to a formal stage sickness meeting [C332]. In cross-examination Mrs. Wood conceded that a blank template [C331] had initially been sent to the Claimant and that the Claimant had contacted her about this. The Claimant referred Mrs. Wood to the letter at C333 in the bundle as being the complete version of the letter. I note that C332 and C333 are identical apart from handwritten notes on C333. Both indicate that the Claimant was required to attend a meeting which had been arranged for Thursday 9 May at 2 PM. Both also state, "*The purpose of the meeting is to review your absence and to discuss the latest medical report we've had from occupational health.*" I note that the Claimant did not include either of these issues in his witness statement (his evidence-in-chief).
- 156 Anne Wood sent a letter to the Claimant on 17 June 2019 [C363] which included a sentence about the occupational health meeting being booked for 20 June 2019 and the occupational health report was dated 26 June 2019 [364 – 365]. I find, therefore, that there was not an occupational health report available until 26 June 2019.
- 157 On 8 May 2019 the Claimant wrote to Anne Wood [C335]. Mrs Wood's evidence is that this was regarding the Claimant's sickness absence and that he also referred to his wish for amendments to be made to the notes of

the Meeting on 3 October 2018 and the Meeting on 8 October 2018 and 13 March 2019. I note on looking at C335 that the Claimant was requesting clarification about the proposed meeting regarding his sickness absence and in respect of the Claimant's notes of the meeting on 13 March 2019 he requested that Anne Wood confirm that those were a true record, or to give her suggested changes.

- 158 On 9 May 2019 Anne Wood wrote to the Claimant inviting him to a formal meeting on 16 May 2019 as part of the School's sickness management procedure [C337]. This letter again stated: "*The purpose of the meeting is to review your absence and to discuss the latest medical report we've had from occupational health.*"
- 159 This letter informed the Claimant of his right to be accompanied and I also find that it was clear that one of the purposes of the meeting was to review the Claimant's absence. I find that the second purpose specified in the letter was incorrect because a medical report had not been obtained from occupational health at that stage.
- 160 The formal meeting under the School's sickness management procedure took place on 17 May 2019 with Anne Wood chairing the meeting and Merlyn Vlotman, HR Consultant from Strictly Education, was present to support the School. There are no minutes for this meeting in the bundle.
- 161 On 20 May 2019 Claimant wrote a letter to Anne Wood [C340-C341]. This letter requested the minutes of the meeting held on 17 May 2019. The Claimant also requested that all future meetings not take place at the School.
- 162 On 23 May 2019 Anne Wood sent the Claimant a letter confirming the outcome of the meeting on 17 May 2019 [C343-C344] this included a monitoring period for three months to review the Claimant's sickness and to monitor his progress. The letter also stated that during the meeting the Claimant had mentioned that he had discussed the issues at work previously, however, he felt that they were not fully resolved. That he would discuss this further with the medical adviser at the occupational health appointment, as he did not feel ready to discuss it at that stage. This letter also stated, "*I wish to reiterate the importance of you informing me if you experience any difficulties or require further support. I would like to remind you of my ongoing support, and should you have any concerns about the above or if you think of anything else we could do to support you further, then please let me know.*"
- 163 On 24 May 2019 Anne Wood wrote to the Claimant acknowledging the Claimant's letter dated 20 May 2019 and the Claimant's request that future meetings should not be held at the School.
- 164 The Claimant wrote to Anne Wood on 4 June 2019 [C346 – C347]. In this letter he requested confirmation that Anne Wood was dealing with the issues raised in his letter dated 12 March 2019 and confirmation of Anne Wood's agreement to the Claimant's minutes from the meeting on 13 March 2019 emailed to Anne Wood on 23 April 2019.

- 165 The Claimant also stated that in future meetings he would be accompanied by Janice Walker, care support worker from Greenwich Carers Centre. He also notified Anne Wood that Greenwich Carers Centre had agreed that future meetings could take place at the Centre. The Claimant also made clear in this letter that all the issues relating to his mother's care had been resolved as of November 2018.
- 166 Anne Wood wrote to the Claimant on 10 June 2019 [C356]. Mrs Wood's evidence was that this was marked 10 July 2019 in error, and I accept her evidence on this point. This letter confirms that the Claimant had been referred to the School's occupational health service for medical advice. Anne Wood also informed the Claimant that following receipt of the occupational health report she would invite the Claimant to attend the meeting under the sickness procedures to discuss the outcome of the report and the recommendations from the medical advisor. She confirmed that Merlyn Vlotman would be present at that meeting.
- 167 On 13 June 2019 Anne Wood wrote to the Claimant referencing the meeting on 13 March 2019 this stated: "*During the meeting we addressed a large number of areas which you wished to discuss. In order for the school to best support you in dealing with your current situation and supporting a return to work, I believe it would now be best for you to outline if you have any ongoing concerns about any of these issues, so that these can be addressed.*"
- 168 On 14 June 2019 the Claimant wrote to Anne Wood [C259-C360]. The Claimant reminded Anne Wood of, amongst others, his letters dated 12 March 2019, 8 May 2019, 20 May 2019, and 4 June 2019. The Claimant also referred to the Claimant's minutes of the meeting on 13 March 2019 that he had emailed to Anne Wood on 23 April 2019. The Claimant indicated he had not received a reply to this correspondence. The Claimant also noted that he had been removed from the School's WhatsApp business group, and he requested an explanation for this.
- 169 On 17 June 2019 Anne Wood wrote to the Claimant [C362] acknowledging his wish to be accompanied by Janice Walker and his request for the future meetings to be held-off site. This letter also informed the Claimant that given he had been absent from work since 25 February 2019, and as he was finding it difficult to deal with work, it had been decided to avoid sending him messages about School matters, either directly or, via the WhatsApp business group. That this was intended to reduce the possibility of extending or adding to any concerns that he may have about work.
- 170 Mrs Wood's evidence was that the Claimant was removed from the WhatsApp business group to protect him from receiving alerts about security issues and other matters at School whilst he was off sick. This was to prevent unnecessary stress to the Claimant. When I questioned Mrs. Wood she confirmed that a break-in at the School had occurred in June 2019. It was after this break-in that the Claimant was removed from the WhatsApp group. I accept Mrs Wood's evidence that the Claimant was removed from the School's WhatsApp business group to prevent unnecessary stress to the Claimant.

- 171 The occupational health report dated 26 June 2019 was completed by an occupational physician at Medigold Health [C364 – C366]. This report indicated under the heading "History", amongst others, the following:
- 171.1 That the Claimant had stated he had an especially difficult relationship with one employee, who is allegedly aggressive and swears at the Claimant, other members of staff and pupils;
 - 171.2 That the Claimant stated the grievance process had not yet been completed nor had the situation improved;
 - 171.3 That the Claimant felt unsupported by senior management;
 - 171.4 That the Claimant had not been provided with appropriate training during his employment, which limited his ability to work effectively;
 - 171.5 That his system to record work requiring completion had not been followed;
 - 171.6 That the minutes for meetings were either not provided or, were not a true reflection of the meetings and the Claimant's comments and corrections had been ignored;
 - 171.7 That the Claimant had acknowledged that he acted as a carer for his mother and had done so for several years and appropriate social support was in place to assist with this;
 - 171.8 That the Claimant's domestic situation did not cause him anxiety; and
 - 171.9 That at the occupational health assessment the Claimant had been able to provide a clear account of events, as he saw them, with good apparent insight and that he had shown the occupational physician copies of correspondence that the Claimant had sent to the School.
- 172 Under the heading "opinion" the report stated that the Claimant would appear to be making progress but was not yet able to return to work. It further stated, "*the main limiting factor at present is the breakdown of trust between him and the school. If his opinion and perceptions can be acknowledged and addressed in some manner, then I would suspect that a prompt return to work may prove possible.*"
- 173 Under this heading the occupational physician also stated that the Claimant appeared to be a dedicated employee, eager to make some difference to the running of the School, however he had become frustrated in such, by his perceptions regarding the manner in which he believed management had treated him.
- 174 The report suggested that use of an external mediator to facilitate any discussions would prove expedient in resolving matters and that the Claimant should be allowed representation at those meetings, so that he did not feel his position is unheard.
- 175 In respect of the Claimant's return to work the report stated: "*I cannot foresee any return work proving sustainable, until some action is taken to address the perceptions held by Mr Shaw regarding management. Given this, I would hope that matters could be resolved by the start of the new school year.*"
- 176 On 16 July 2019 an absence review meeting was held with the Claimant. Present at this meeting was Anne Wood, the Claimant, Merlyn Vlotman and Janice Walker. A clerk was also present to take minutes. This meeting was

held at Greenwich Adult Carers Centre. Mrs Wood's evidence indicated that the notes for this meeting were in the bundle at C368 – C374. The Respondent conceded that the notes were those at C390a – C390g. In assessing what happened at that meeting I have had regard to the notes in the bundle at C390a– C390g.

- 177 In this meeting the Claimant indicated that his main issue was that his concerns were being dismissed. In particular that his grievance had not been resolved and the Claimant had asked for the minutes of the Meeting on 3 October 2018, but he felt they were not a true reflection of the meeting, that he had highlighted how he felt, had asked for a response and none had been received.
- 178 Anne Wood explained that she had met with the Claimant and the Chair of the Trust (Paul Weston) and they had spoken about how the Claimant felt. The Chair had apologised that the Claimant felt his concerns had been dismissed and the Chair also said that he in no way thought the behaviour had been appropriate.
- 179 Merlyn Vlotman asked what the Claimant wanted, and the Claimant stated he had written this in communications to Anne Wood. The meeting then reviewed the points highlighted in blue in one of these communications. I find that this refers to the document at pages C294 – C301 in the bundle document which is repeated at pages C323 – C329 of the bundle.
- 180 In respect of meetings and minutes, the Claimant stated he had not received minutes without difficulty at various meetings and those minutes were not always a true reflection of what was discussed. Anne Wood replied there may be a different interpretation. The Claimant said, "*not when it is simply wrong – i.e., where it says he was happy with something and he actually wasn't.*"
- 181 In respect of training Anne Wood confirmed that training has been organised. That the training was waiting for the Claimant to return to work
- 182 The Claimant repeated that he did not think it was possible to carry out his role within the hours now stipulated, as the job description remained the same. Anne Wood replied that the risks had been assessed and the role would address the priorities in and around the School.
- 183 The Claimant said it was essential to have a service and works book to keep track of jobs. Anne Wood noted that the Claimant did not like being given verbal instructions and insisted that Anne Wood write the jobs in a book. Anne Wood confirmed she needed to be able to give staff verbal instructions. The Claimant expressed his opinion that the book makes the system efficient.
- 184 The Claimant said that all he wanted was a letter of apology from Tony Brown, apologising for his behaviour so he would realise how serious it was. Also, that all the Claimant wanted from the Chair was to confirm that he would support anyone who was a victim of bullying and emitting intimidation and that robust action would be taken.

- 185 The Claimant asked who was in charge in the premises manager's absence? It was confirmed the Principal is in charge (Anne Wood).
- 186 In respect of equipment the Claimant had asked for a wet and dry vacuum cleaner. Anne Wood said there was not funding for this, but the budget could be looked at to see what is possible.
- 187 In respect of the monthly health and safety meetings Anne Wood confirmed she was happy to have monthly meetings.
- 188 The Claimant said it was not only about meetings but also about the list of things that needed to be resolved. The Claimant tabled the list, and the list was then reviewed to see what had or could be actioned.
- 189 The list was as follows:
*"Appraisal – being done, but MS off sick.
Training – now discussed
Responsibility – now discussed – AW
Using only eqpt – now discussed
Own phone – not discussed
Grievance – ongoing"*
- 190 Merlyn Vlotman stated that Anne Wood had confirmed that regular meetings will now be scheduled, then Merlyn Vlotman asked the Claimant if he was satisfied? The Claimant said he was. However, the Claimant then added that he would need meetings with the Chef (Tony Brown) as well, as there are some issues to be addressed. The Claimant is responsible for the structure of the School, but currently has no idea what methods are being used or, what risk assessments had been done in the kitchen. Merlyn Vlotman said: *"the buck stops with the principal, council members and directors."* The Claimant agreed, but said it was his direct responsibility. Anne Wood said: *"that MS should raise any issues with her, and she will address as they are the school's contractors, and she doesn't want MS to feel the burden of responsibility for the kitchen."* The Claimant felt there was no clarity as to whether the caterer had risk assessments and method statements in place and the School needed to confirm this. Merlyn Vlotman said that the Trust is responsible.
- 191 The Claimant stated his belief that the caterer was responsible for processes in the kitchen, and he (the Claimant) was responsible for all other areas. Anne Wood said when the Claimant or other colleagues observe any issue, they need to raise it with her.
- 192 In respect of the risk assessments the Claimant stated he needed more support to enable him to complete them. The Claimant also reiterated that he could not meet the various statutory obligations working only 25 hours a week.
- 193 The summary of the meeting was as follows,;
*"1 Meeting notes – MS [sic- the Claimant's] notes to sit alongside minutes
2 Other H & S training. Arranged to go forward when MS RTW
3 Provision of H and S equipment will be addressed – AW happy to consider wet/dry vacuum."*

4 budgets – to be provided

5 not discussed – outstanding PM areas of responsibility – MS wants to have folders available when these are discussed

6 Meetings to be held monthly. MS believes the chef should be present as has responsibilities

MV said this was a one-to-one and no other person will be present. MS agreed but said the action must be taken quickly.

7 – Responsibility in PM absence – Principal

8 Outstanding – PM record book and workload

9 Risk assessment – MS needs comments noted from concerns"

- 194 The Claimant also repeated in this meeting that Tony Brown was still at the school and was intimidating the children and midday supervisors. Anne Wood disputed this, as there was no evidence. The Claimant said a parent had raised it, but he did not want to get them involved. Anne Wood explained that this should have been raised as a safeguarding issue at the time. The Claimant said Anne Wood was also involved, so it had been raised with the NSPCC who gave advice. Anne Wood explained it should have been raised with the other safeguarding lead (and actioned through the School's procedures).
- 195 I find that the issues relating to H&S training, H&S equipment, and who was responsible in the Claimant's absence were all resolved in this meeting. I also find Anne Wood assured the Claimant that monthly health and safety meetings would take place. The Claimant had repeated his requirement for Tony Brown to still be present at those meetings and Merlyn Vlotman had confirmed that the meetings would be one-to-one.
- 196 I also find that this meeting confirmed that the Claimant's minutes of the Meeting on 3 October 2018 and the Meeting on 8 October 2018 would sit alongside the Respondent's notes. I find that although this resolved where there were omissions in the Respondent's notes, it did not resolve the points in the Claimant's minutes that stated the complete opposite to what the Respondent's notes had said.
- 197 I also find that the Claimant still wanted a written apology from Tony Brown.
- 198 A draft version of the minutes of the meeting on 16 July were emailed to the Claimant at 13.43 on 4 September 2019.
- 199 On 4 September 2019 at 15.00 a staff meeting – absence review was held with the Claimant [C391-C394]. This meeting took place at the Greenwich Adult Carer's Centre. Anne Wood, the Claimant, Merlyn Vlotman and Janice Walker were all present. A clerk attended to take minutes of the meeting.
- 200 At the start of the meeting the minutes of the meeting held on 16 July 2019 were discussed, and corrections were made.
- 201 Mrs. Wood's evidence was that several key areas were settled in this meeting including record books, the Claimant's workload, the Claimant's job description and equipment.

- 202 The minutes do confirm that the Claimant agreed to having a record book in addition to emails and/or verbal instructions when required. I find that this issue was resolved. In respect of equipment the only discussion reflected in the minutes were what items of the Claimant's remained at the School. I find that the Claimant's concerns about equipment had been resolved in the previous meeting on 16 July 2019.
- 203 In respect of the Claimant's workload, the minutes indicate that the Claimant stated he produced a monthly list of outstanding works in addition to weekly lists of urgent repairs. The Claimant felt that all the checks and weekly works could not be completed within 30 hours. Merlyn Vlotman suggested that the SLT could work with the Claimant to review the list and highlight the School's priorities. Anne Wood confirmed that it would be possible to look over the outstanding issues and agree what was most important. There is nothing in the minutes to suggest that the Claimant was happy that his work could be completed in the reduced 25 hours in light of this review of priorities. I do find that Anne Wood wanted to find a solution to the Claimant's workload to enable him to complete it within 25 hours, but how this was to be achieved had not been agreed as yet.
- 204 I also find there is no evidence that the risks arising from the Claimant's working hours being reduced were assessed by the Respondent. Mrs. Wood's evidence was that with a re-focus of priorities, for example, the Claimant not leaf-blowing or supervising the cleaning on a day-to-day basis (because there was an external cleaning company), the Claimant's workload could be completed within 25 hours. There is no evidence that the re-focus of priorities was discussed with the Claimant before the hours were changed on 1 May 2019 or before he left the Respondent's employment.
- 205 Mrs. Wood's evidence also stated that there was shared health and safety responsibility with Tony Brown in the kitchen. I have not seen the contractual documentation with ABC Catering, but I have seen the Claimant's job description. I find that supervising Tony Brown's kitchen hygiene and food preparation was not within the Claimant's remit, but that health and safety issues relating to issues outside of hygiene and food preparation within the kitchen, such as broken electrical sockets and Tony Brown propping open fire doors, were within the Claimant's remit.
- 206 In the minutes under the heading "Job Description" the Claimant also referred to his issue with the on-call list and his discussion with the Chair (Paul Weston) and the previous Principal (Dennis Irwin) at the start of his employment when he had stated that he was his mother's primary carer. He also pointed out that other people on the list lived closer to the School, and that he lived 25-40 minutes from the School. He also mentioned, again, the incident when he had to attend the School, when the fire alarms were going off and he had to leave his mother, and that it kept happening.
- 207 Merlyn Vlotman replied this would need to be discussed with the Claimant's line manager when the Claimant returned to work because it was in the job description. I find this was not resolved in the meeting on 4 September 2019.

- 208 I also find that the incident the Claimant was referencing in this meeting was the incident in August 2017 (see above).
- 209 In respect of the risk assessments the minutes indicate the Claimant stating again that he had not received any training on how to complete them and that prior to Lynn Mason (the Finance Director) leaving he had only completed two of the risk assessments and Lynn Mason had completed the others. The minutes also state Anne Wood confirmed that training for the risk assessments had been arranged for the Claimant to attend but had then been cancelled because the Claimant had been on sick leave. Anne Wood confirmed this would be rescheduled when the Claimant returned to work.
- 210 I find that the Claimant had been asked to complete 20 risk assessments in January 2019 (when previously he had just completed two risk assessments) and at that point (in January 2019) he had not been trained on how to complete those risk assessments. I also find that training was organised for the Claimant on risk assessments, but he did not attend it due to going on sick leave, and that he had been assured that the necessary training would be given to him on his return to work.
- 211 In this meeting the Claimant stated he was unlikely to return to work before 18 September 2018 and he was worried that Tony Brown may continue to be confrontational, and that this behaviour had continued up to the Claimant going on sick leave.
- 212 The minutes state the following: *"...MS said he had put in a grievance which the school is saying has been resolved... AW said she had attended 2 meetings with MS to address this matter. MS said the Minutes of those meetings were not a true reflection of what had happened and that the issue has not actually been resolved... AW said any issues that arise must be reported to her in line with the school procedures so that they can be addressed."*
- 213 I find that there was no appeal hearing under the Respondent's grievance procedure, but that the Claimant had been given an opportunity to discuss his issues concerning Tony Brown in the meetings on 16 July 2019 and 4 September 2019.
- 214 The minutes indicate Merlyn Vlotman said: *"the school would need to consider whether to move to the next stage of the process, which will be to review the policy, meet with Council Members and possibly move to the final stage which according to the policy could ultimately lead to termination of employment"*. I find that the Claimant was told in this meeting that there was a possibility that his employment could be terminated if he remained on sick leave.
- 215 Immediately after the meeting on 4 September 2019 the Claimant and Janice Walker met. They agreed that there had been insufficient time for them to review and discuss the minutes of the meeting held on 16 July 2019. The Claimant expressed to Janice Walker two areas of concern which he felt were not being noted by the Respondent. These were firstly, the false accusation of assault made by Tony Brown at the meeting on 3

October 2019 and secondly, the incident with the Year One Pupil and Anne Wood's actions in respect of that incident.

- 216 On 10 September Anne Wood wrote to the Claimant [C397-C398] giving the Claimant a final caution that if he was not back to work within a reasonable length of time (noting the Sickness Policy states between 4 – 12 working weeks since that first date of absence) the Claimant would be referred to the Final Absence Reviewer which could lead to the Claimant's dismissal.
- 217 On 23 September 2019 the Claimant wrote to Anne Wood (copying in Merlyn Vlotman, Paul Weston and Janice Walker) headed "Constructive Dismissal as Premises Manager for Hope Community School A14 5BU"). This stated, "...I believe, the Senior Leadership Team & head of the School Trust, of Hope Community School have not given me the support I need to carry out my duties as Premises Manager, allowed the continuation of bullying and did not make my working environment safe and therefore I have been constructively dismissed as a result of my employer's breach of contract." He further informed them that he would not be returning to the School on 24 September 2019.
- 218 The Claimant's decision was based on there being no progression to address his legitimate concerns (except the provision of Health and Safety Training) raised in: the notes to Anne Wood dated 10 September 2018; the notes sent to Babs O' Hara on 10 September 2018; and the letter to Paul Weston dated 18 September 2018. His decision was also based on the doubling of classes and staff, yet a reduction in the Claimant's working hours without a risk assessment or workload assessment being carried out and Anne Wood's statement on 4 September 2019 that any issues that arise must be reported to her, in line with the School's procedures so that they can be addressed.
219. Anne Wood wrote to the Claimant on 26 September 2019 [C402-C403] refuting that he had been constructively dismissed. Anne Wood also asked the Claimant to confirm whether the Claimant's letter dated 23 September 2019 constituted a resignation letter with a leaving date of 24 September 2019. Anne Wood further wrote to the Claimant on 9 October 2019 [C405] acknowledging the Claimant's response in which he had confirmed that he had reassigned from 24 September 2019. The Claimant's response is not in the bundle.
220. The Claimant presented his claim for constructive unfair dismissal on 23 December 2019.

LAW

Unfair dismissal

- 221 Section 94 of the ERA confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal

under section 111. The employee must show that he was dismissed by the Respondent under section 95.

222 Section 95(1) of the ERA states the following are dismissals for the purposes of unfair dismissal:

“(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) . . . , only if)—

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or

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

223 **Western Excavating (ECC) Ltd -v- Sharp [1978] ICR 221, CA** imported the common law concept of a repudiatory breach of contract into section 95(1)(c) of the ERA. Lord Denning MR stated:

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed.”

224 Firstly, a repudiatory or fundamental breach of the contract of employer by the employer is required.

225 Where an employer tries to impose a unilateral variation on an employee, an employee has four choices (**Robinson v Tescom Corporation [2008] IRLR 408**):

225.1 to agree to the variation (either expressly, or by continuing to work without protest);

225.2 to resign and complain of unfair constructive dismissal;

225.3 to refuse to work under the new terms and force the employer to take such steps as it thinks are appropriate;

225.4 to stand and sue, i.e., continue to work under protest and seek damages (for breach of contract – as per **Rigby v Ferodo [1987] IRLR 516**).

226 **Malik and Mahmud -v- BCCI [1997] ICR 606** formulated the definition of a breach of the implied term of mutual trust and confidence by the employer as follows:

“Without reasonable and proper cause, conducted itself in a manner calculated [or] likely to destroy or seriously damage the relationship of confidence and trust between the employer and the employee.”

227 The **Malik** test is objective, and all the circumstances must be considered. It is not enough to show merely that the employer has behaved unreasonably. The line between serious unreasonableness and a breach of the implied term of mutual trust and confidence is a fine one.

228 A breach of trust and confidence might arise because of a serious of events. **London Borough of Waltham Forest -v- Omilaju [2005] IRLR 35** confirmed if the last straw is completely innocuous or trivial, and none of the preceding matters amount to a fundamental breach of contract, the claim will fail. The last straw does not need to be a fundamental breach of contract, but it must contribute, however slightly, to the breach of trust and confidence.

229 In **Kaur -v- Leeds Teaching Hospitals NHS Trust [2018 EWCA Civ 978** Underhill LJ proposed that the tribunal should ask itself the following questions:

1. What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
2. Has he or she affirmed the contract since that act?
3. If not, was that act (or omission) by itself a repudiatory breach of contract?
4. If not, was it nevertheless a part ... of a course of conduct comprising several acts and omissions which, viewed cumulatively, amount to a (repudiatory) breach of the **Malik** term?
5. Did the employee resign in response (or partly) in response to that breach?

230. The employee must terminate the contract because of the fundamental breach. It need only be a reason for the resignation by the employee. It does not matter if there are other reasons (**Wright -v- North Ayrshire Council [2014] IRLR 4.**

231. The employee must not have lost the right to resign by affirming the contract after the breach. The employee must not delay their resignation too long or do anything else which indicates acceptance of the changed basis of employment **WE Cox Toner (International Limited -v- Crook [1981] ICR 823.** Merely to protest at the time will not prevent such acceptance being inferred. An express reservation of rights may in some circumstances be effective.

232. The right to resign and claim to have been constructively dismissed will also not be lost if the employee delays resigning to give their employer an opportunity to remedy the breach. However, once the employer's response is known, or the employer has been given a reasonable time to respond but fails to do so, then the employee must act promptly.

233. In **Chindove -v- William Morrisons Supermarkets PLC UKEAT/0201/13/BA** Langstaff P stated:

"We wish to emphasise that the matter is not one of time in isolation. The principle is whether the employee has demonstrated that he has made the

choice. He will do so by conduct; generally, by continuing to work in the job from which he need not, if he accepted the employer's repudiation as discharging him from his obligations, have had to do."

234. Langstaff P further stated:

"26. He may affirm a continuation of the contract in other ways: by what he says, by what he does, by communications which show that he intends the contract to continue. But the issue is essentially one of conduct and not of time. The reference to time is because if, in the usual case, the employee is at work, then by continuing to work for a time longer than the time within which he might reasonably be expected to exercise his right, he is demonstrating by his conduct that he does not wish to do so. But there is no automatic time; all depends upon the context...

27. An important part of the context is whether the employee was actually at work, so that it could be concluded that he was honouring his contract and continuing to do so in a way which was inconsistent with his deciding to go. Where an employee is sick and not working, that observation has nothing like the same force.

235. Essentially, if delay in resignation occurs whilst an employee is not otherwise performing the contract (e.g., when on sick leave) this is less likely to amount to an affirmation than if the employee carries on turning up for work.

236. The EAT in **Chindove** did not make any findings of fact, but Langstaff P did observe that six weeks for an employee who had worked eight or nine years in a steady job for a large company was a very short time to infer from his conduct that he had decided not to exercise his right to go.

237. Where there has been a repudiatory breach of contract by the employer, the breach is not capable of remedy in such a way as to preclude acceptance by the other party (**Buckland -v- Bournemouth University Higher Education Corporation [2010] EWCA Civ 121**). The wronged party has an unfettered choice whether to accept the breach or not. All the defaulting party can do is to invite affirmation of the contract by making amends.

Health and Safety dismissals

238. Section 100 of the ERA states:
- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
- ...(c) being an employee at a place where—
- (i) there was no such representative or safety committee, or
- (ii) there was such a representative or safety committee, but it was not reasonably practicable for the employee to raise the matter by those means,
- he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,
- (d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or
- (e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.
- (2) For the purposes of subsection (1)(e) whether steps which an employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including his knowledge and the facilities and advice available to him at the time.
- (3) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in subsection (1)(e), he shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he took (or proposed to take) that a reasonable employer might have dismissed him for taking (or proposing to take) them.
239. An employer has a common law duty to take such steps as are reasonably necessary to ensure the safety of his employees. This includes, amongst others, providing a safe place of work, providing a safe system of work (to take reasonable steps to provide a safe system of work, it includes such things as manning of operations, provision of equipment, and supervision), and providing safe plant and equipment.

240. The Health and Safety at Work Act 1974 contains provisions broadly equivalent to the common law duty of care of an employer to his employees.
241. The Management of Health and Safety at Work Regulations 1999 (SI 1999/3242) require that every employer must make a risk assessment relating to his premises, so as to identify the measures he needs to take to comply with the health and safety and fire precautions requirements applicable to him; the assessment must be reviewed when necessary and recorded.
242. An employer is also under a duty to provide equipment, materials, and clothing to enable his workpeople to carry out their duties in safety. As with the system of work the duty is not an absolute one. The Personal Protective Equipment at Work Regulations 1992 (1992/2966) relate to the use of personal protective equipment "PPE". PPE is defined as all equipment which is intended to be worn or held by a person at work and which protects the employee against health and safety risks. It requires employers to ensure that suitable PPE is provided for their employees.
243. The Health and Safety (Consultation with Employees) Regulations 1996 (SI 1996/1513) require employers to inform their employees and listen to, and take account of their views before making any health and safety decisions including, but not limited to: the likely risks and dangers arising from the employee's work, measures to reduce or get rid of these risks and what they should do if they have to deal with a danger or risk; and the planning of health and safety training.

CONCLUSIONS

Unfair dismissal

Was there a dismissal under section 95(1)(c) of the ERA?

244. Mr Atkins submission was that I only consider the situation after Mrs. Wood became Principal on 3 September 2018. The Claimant did not make submissions on this point.
245. I accept that when assessing the factual issues of whether the Respondent failed to take reasonably practicable steps to provide a safe system of work and whether the Respondent failed to investigate complaints relating to health and safety promptly and reasonably the focus should be on what happened after Mrs. Wood became Principal.

246. Also, in respect of whether there was a standalone repudiatory breach of contract I agree I should assess the situation after 3 September 2018, because the Claimant continued working for some time after 3 September 2018 (before going on sick leave on 25 February 2019) without expressly reserving his rights in respect of any of the incidents prior to 3 September 2018 and, therefore, affirmed the contract by his action of coming into work.

247. However, in respect of whether there was there a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence I do need to consider what happened prior to 3 September 2018. Which means for the factual issues concerning whether there were breaches of the Respondent's grievance procedure and the ACAS Code I have considered all the facts.

Did the Respondent fail to take reasonably practicable steps to provide a safe system of work?

248. The Respondent did not provide the Claimant with safety equipment (including PPE) from the start of his employment. In the Claimant's note dated 10 September 2019 to Mrs. Wood he had requested that the School provide him with tools and safety equipment. Mrs. Wood only acknowledged this, and accepted that it should and would be provided, in the meeting on 13 March 2019. Between 3 September 2019 and 25 February 2019, the Respondent did not provide the Claimant with any safety equipment (including PPE). The wet and dry vacuum cleaner is not PPE or a piece of safety equipment. The School had engaged a cleaning company so, it was not a necessary piece of equipment for the Claimant to have to undertake his principal tasks.

249. The Respondent did not provide the Claimant with any training until 14 February 2019. The Respondent had also booked more training for the Claimant after 25 February 2019, but this was cancelled because he was absent on sick leave. In the Claimant's note dated 10 September 2019 the Claimant had requested training and had provided examples of specific courses. This adversely affected his ability to carry out his duties. The Claimant was not able to complete risk assessments in January 2019 due to this lack of training. I note the Claimant also completed asbestos management and documentation in January 2019, but he did not raise at the time that he felt unable to complete the asbestos management process or documents due to lack of training at the Respondent.

250. Prior to 14 February 2019 the Respondent was not taking reasonably practicable steps to provide a safe system of work for the Claimant because it did not provide him with training to enable him to undertake his work.

251. Also, prior to 13 March 2019 the Respondent was not taking reasonably practicable steps to provide the Claimant with a safe system of work because they failed to provide him with PPE and safety equipment.

Did the Respondent fail to investigate complaints relating to health and safety promptly and reasonably?

250. No health and safety meetings were held after 9 February 2018 – The Respondent did not hold any health and safety meetings with the Claimant in attendance after 9 February 2018. In the Meeting on 8 October 2018 the Claimant was assured that the SLT would meet with the Claimant to discuss the premises. The Claimant again highlighted the lack of health and safety meetings in the Claimant's Spreadsheet dated 7 January 2019. The H&S Governor also stated his concerns about there being no health and safety meetings (with the Claimant present) in the H&S Report. No health and safety meetings took place with the Claimant after Anne Wood became Principal and prior to him going on sick leave on 25 February 2019. I conclude this was not dealt with promptly before the Claimant went on sick leave. The Claimant was told in the absence review meeting on 16 July 2019 that monthly health and safety meetings would be held, and the Respondent did in fact start having monthly health and safety meetings in September 2019.
251. Asbestos present in the building – the Claimant reported this to Mrs. Wood sometime in July/ August 2018. It is not clear when Mrs. Wood gave the Claimant a copy of the regulations concerning asbestos management. The Claimant discussed this issue with the H&S Governor on 8 January 2019. This issue was resolved on 23 January 2019 following the Claimant's inspection of the original building and completion of the documentation, including the method statement for contractors. As this was first raised by the Claimant sometime in July/ August 2018 and was only resolved on 23 January 2019 this was not dealt with promptly, but this health and safety risk was mitigated before the Claimant went on sick leave on 25 February 2019.
252. Inappropriate waste disposal – the photograph of the inappropriate waste disposal is dated 11 September 2018. Although the Claimant mentioned this in the Claimant's Spreadsheet dated 7 January 2019 there is no evidence that it was a continuing issue beyond 11 September 2018.
253. Breakfast club food storage – One of the action points arising from the Meeting on 3 October 2018 was that Babs O'Hara and Anne Wood were to consider the food storage for the breakfast club. This had been raised with Babs O' Hara in February 2018 but was not included in the Claimant's note to Anne Wood dated 10 September 2018. The breakfast club food was being stored in the Sports Hall where any pupil potentially could access it. I conclude that this was a legitimate concern, because if a pupil with an allergy to one of the ingredients ate the food this could potentially make them ill or even be life-threatening. No evidence was presented by the Claimant that there were any pupils with specific food-allergies attending the School at the relevant time, but notwithstanding this the storage of the food in the Sports Hall was unsuitable and a legitimate concern. The Claimant reminded the SLT about this in his email dated 5 November 2018, and in the Claimant's Spreadsheet dated 7 January 2019. This was resolved in Spring 2019. This was resolved before the Claimant left his employment with the Respondent, but it took

approximately 6 months to resolve this after the Meeting on 3 October 2018. I conclude that this was not dealt with promptly.

254. Tony Brown's failure to report damage to the electrical sockets by Tony Brown in November 2018 – Tony Brown did not report the damage to the electrical sockets and by this time there was a kitchen report book in place. The Claimant only discovered this because Tony Brown's assistant told Miss. Martin and Miss. Martin then told the Claimant. The photograph of one of the damaged electrical sockets is dated 2 November 2018. The Claimant informed the Respondent on 5 November 2018 of Tony Brown's failure to report this damage. The Claimant also included this issue in his spreadsheet dated 7 January 2019.
255. This was a serious issue of non-reporting by Tony Brown with potentially life-threatening consequences. The Respondent did not present any evidence to confirm what action they took in response. Clearly ABC Catering did not lose its contract with the School at that point and there is nothing to suggest that the School complained to ABC Catering about this serious non-reporting incident. I conclude that the School did not complain to ABC Catering about this. I conclude the School did not deal with the Claimant's complaint about this promptly and reasonably.
256. Tony Brown's failure to report the broken toilet seat in the toilet he and his assistant used - The Claimant reported this on 5 November 2018 to the Respondent. Again, the Respondent had not presented any evidence to confirm whether they complained to ABC Catering about this. The failure to report this was a minor issue and I conclude it was not a matter the SLT or the H&S Governor needed to raise with ABC Catering.
257. The use of the red topped mop in the kitchen – Red topped mops are used to clean floors in toilets. In December 2018 Tony Brown and his assistant were using a red-topped mop to clean the kitchen floor. Despite the Claimant providing Tony Brown with advice on colour coding of mops on 14 December 2018 the Claimant took a photograph of the red-topped mop in the kitchen sink on 17 December 2018. This was only being used to clean the kitchen floor and was not being used to clean the toilet floor and the kitchen floor. This was still a legitimate concern because someone else might use the mop to clean toilets elsewhere relying on the colour coding and making the assumption that it was a toilet floor mop. This could then lead to cross-contamination if it was then used to clean the kitchen floor.
258. The Claimant included this issue in the Claimant's Spreadsheet dated 7 January 2019. The H&S Governor also included it as an issue in his draft report to the School dated 9 January 2019. This was resolved before 17 January 2019 as confirmed in Anne Wood's email to the H&S Governor and the Claimant dated 17 January 2019. I conclude that this health and safety complaint was dealt with reasonably and promptly.
259. PAT testing – In the Claimant's spreadsheet dated 7 January 2019 the Claimant highlighted that the PAT testing still had not been completed. This was an important health and safety issue because any electrical item

with a plug can cause electrocution if it is not working properly or if the cable is damaged in any way. The PAT testing was not completed until September 2019. I conclude that this health and safety complaint was not dealt with promptly.

Did the Respondent fail to comply with its grievance procedure?

260. The Respondent did not treat the Claimant's formal complaint on 11 September 2017 as a grievance. Given the content of the Claimant's letter and that it was headed as a formal complaint the Respondent should have treated this complaint as a grievance. On receipt of this formal complaint the Respondent's grievance procedure states a meeting should have been organised as soon as possible (and normally within ten working days). There was a breach of the Respondent's grievance procedure because there was no meeting with the Claimant on his own to discuss his grievance before Dennis Irwin (the Principal at that time) wrote to him on 13 September 2017. The letter dated 13 September 2017 did not mention the Claimant's right to appeal under the Respondent's grievance procedure.
261. When the Claimant submitted his formal grievance on 19 July 2018 the Respondent did not organise a meeting with the Claimant on his own to discuss his grievance. This was a further breach of the Respondent's grievance procedure. Babs O' Hara emailed the Claimant on 12 August 2018 enclosing a letter dated 24 July 2018. In this letter she suggested a joint meeting with Tony Brown but did not suggest an individual meeting with the Claimant to discuss his grievance prior to the joint meeting. The Claimant wrote to Babs O' Hara on 10 September 2018 concerning his grievance and again Babs O'Hara did not organise a meeting with the Claimant on his own to discuss the Claimant's concerns before she responded on 26 September 2018.
262. The Meeting on 3 October 2018 took place two and a half months after the Claimant submitted his formal grievance on 19 July 2018. This delay breached the Respondent's grievance procedure to hold a meeting as soon as possible (and normally within 10 working days).
263. Anne Wood's response to Tony Brown accusing the Claimant of assault in the Meeting on 3 October 2018 clearly drew a line in the sand for Tony Brown. The Claimant was supported by Anne Wood in the Meeting on 3 October 2018. Tony Brown also admitted that he had sworn at the Claimant and accepted that it was unacceptable. Clear action points were also discussed at the Meeting on 3 October 2018. I conclude the Respondent was making reasonable efforts to resolve the Claimant's grievance against Tony Brown in the Meeting on 3 October 2018.
264. Following the Meeting on 3 October 2018 the Respondent did not send the Claimant a Resolution Letter as required by its grievance procedure. This was a breach of the Respondent's grievance procedure. The Respondent instead sent the Claimant the notes of the Meeting on 3 October 2018. The Claimant received these on 23 November 2018. Clear action points were included in the Respondent's notes of the Meeting on 3 October 2018.

265. The Claimant had also included a complaint against Paul Weston in his formal grievance submitted on 19 July 2018. The Respondent's grievance procedure does not envisage the scenario of a grievance being brought against the Chair of the Trust, and who would be suitable to hear such a grievance. However, it would have been reasonable for the Respondent to use a HR Consultant to hear this grievance and to hold a meeting with a Claimant on his own to enable the Claimant to explain his grievance against Paul Weston prior to any joint meeting with Paul Weston.

266. The Meeting on 8 October 2018 took place two and a half months after the Claimant submitted his formal grievance on 19 July 2018. This delay breached the Respondent's grievance procedure to hold a meeting as soon as possible (and normally within 10 working days).

267. In the Meeting on 8 October 2018 Paul Weston apologised to the Claimant and made it clear he did not and has never thought bullying in the workplace was acceptable. Paul Weston also confirmed that he had spoken to Tony Brown about the importance of good manners between staff and visitors at the School. I conclude that Paul Weston was making reasonable efforts to respond to the Claimant's grievance against Paul Weston.

268. Following the Meeting on 8 October 2018 the Respondent did not send the Claimant a Resolution Letter as required by its grievance procedure. This was a breach of the Respondent's grievance procedure. The Respondent instead sent the Claimant the notes of the Meeting on 8 October 2018. The Claimant received these on 11 December 2018.

269. The Claimant's letter dated 14 January 2019 to Anne Wood referenced the Respondent's grievance procedure, because it stated that the Claimant at the end of the week would be progressing his grievance to the Stage 2 Resolution Manager. The Stage 2 Resolution Manager hears appeals under the grievance procedure. The Respondent should have treated this letter as an appeal under its grievance procedure. It did not, and the letter dated 14 January 2019 was ignored with no response. I conclude that the Respondent breached its grievance procedure by not organising a meeting with the Claimant as soon as possible (and normally within 10 days) to hear the Claimant's appeal following the receipt of the letter dated 14 January 2019. The meetings on 13 March 2019, 16 July 2019 and 4 September 2019 in which the Claimant did have an opportunity to explain his concerns about the Meeting on 3 October 2018 and the Meeting on 8 October 2018 were not meetings under the Respondent's grievance procedure.

270. This further meant that no Final Resolution Letter under the Respondent's grievance procedure was sent to the Claimant. This was a breach of the Respondent's grievance procedure.

Did the Respondent fail to comply with the ACAS statutory Code of Practice on discipline and grievance procedures ("the ACAS Code")?

271. Paragraph 33 of the ACAS Code states that employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received. The Respondent breached this paragraph because no meeting was arranged in respect of the formal complaint made by the Claimant on 11 September 2017. Also, no meeting was arranged after the Claimant submitted his formal grievance on 19 July 2018 prior to Babs O'Hara's response on 12 August 2018. When the Claimant raised further issues in respect of his grievance on 10 September 2018 a meeting was not arranged prior to Babs O'Hara responding on 26 September 2018. The Meeting on 3 October 2018 was a joint meeting with Tony Brown. At no time was the Claimant invited to attend a meeting without Tony Brown to discuss his grievance. This was a breach of paragraph 33 of the ACAS Code.
272. The letter confirming the Meeting on 3 October 2018 was sent on 2 October 2018. This letter did not notify the Claimant of his right to be accompanied to the Meeting on 3 October 2018. It did enclose the Respondent's grievance procedure which did outline the right to be accompanied. As the letter was sent the day before the Meeting on 3 October 2018 it did not provide the Claimant with enough time to arrange a companion if he had wanted one. Paragraph 35 of the ACAS Code states the statutory right to be accompanied by a companion applies when the grievance meeting deals with a complaint about a duty owed by the employer to the worker. Part of the Claimant's grievance did concern not holding monthly meetings with the Claimant to consult with the Claimant on health and safety issues (which is a statutory requirement).
273. Paragraph 40 of the ACAS Code states that following the meeting the employer should decide what action, if any, to take. Decisions should be communicated in writing without undue delay and, where appropriate should set out what action the employer intends to take to resolve the grievance. The Respondent did not send the Claimant a letter after the Meeting on 3 October 2018. The Respondent's notes of the Meeting on 3 October 2018 did include action points for the SLT, the Claimant and Tony Brown. There was an unreasonable delay in breach of paragraph 40 because the notes of the Meeting on 3 October 2018 were not sent to the Claimant until 23 November 2018.
274. Paragraph 40 of the ACAS Code also states that the employee should be informed that they can appeal. The Claimant was not notified of his right to appeal in Dennis Irwin's letter dated 13 September 2017 or the Respondent's notes of the Meeting on 3 October 2018 in breach of paragraph 40 of the ACAS Code.
275. No meeting was arranged with the Claimant on his own to discuss his complaint against Paul Weston (this was part of his formal grievance that he submitted to Babs O'Hara on 19 July 2018) prior to Babs O'Hara's response on 12 August 2018. The Meeting on 8 October 2018 was a joint meeting with Paul Weston. At no time was the Claimant invited to attend a meeting without Paul Weston to discuss his grievance. This was a breach of paragraph 33 of the ACAS Code.

276. The Respondent did not send the Claimant a letter after the Meeting on 8 October 2018. The Respondent's notes of the Meeting on 8 October 2018 did include action points for the SLT and the Claimant. There was an unreasonable delay in breach of paragraph 40 of the ACAS Code because the notes of the Meeting on 8 October 2018 were not sent to the Claimant until 11 December 2018.
277. The Claimant was not notified of his right to appeal in the Respondent's notes of the Meeting on 8 October 2018. This was a breach of paragraph 40 of the ACAS code.
278. The failure to hold an appeal hearing with the Claimant after receipt of the Claimant's letter dated 14 January 2019 breached paragraph 42 of the ACAS Code. Paragraph 42 of the ACAS Code states that appeals should be heard without unreasonable delay.
279. This failure to hold an appeal hearing meant the outcome of the Claimant's appeal was not communicated to the Claimant in writing without unreasonable delay. This breached paragraph 45 of the ACAS Code.

Conclusion on these factual issues

280. I conclude that taking into account the above there was a course of conduct comprising the breaches of the Respondent's grievance procedure from 11 September 2017 up to the Claimant's letter of 14 January 2019 not being treated as an appeal (with no appeal hearing being arranged before the end of January 2019), the deliberate omission of the allegation of assault by Tony Brown in the Respondent's notes of the Meeting on 3 October 2018, a failure to deal with Tony Brown's non-reporting of the broken electrical sockets in November 2018, the failures to rectify the breakfast club food storage issue and the PAT testing prior to 25 February 2019, a failure to provide safety equipment prior to the Claimant going absent on sick leave on 25 February 2019, and before 14 February 2019 a failure to provide training that impacted on the Claimant's ability to carry out his assigned work. This course of conduct cumulatively viewed amounted to a breach of the implied term of trust and confidence and the Respondent did not have a reasonable and proper cause for its conduct. The Claimant also stated in cross-examination that he had lost trust in the Respondent by February 2019. I will turn to whether the Claimant resigned in response to this breach and whether he affirmed the contract below after I have considered other possible repudiatory breaches of contract.
281. Although the failure to hold health and safety meetings was a breach of health and safety legislation health and safety was not completely ignored by the SLT (apart from Tony Brown's non-reporting in November 2018), it was just taking a long time to rectify the issues as they arose. Also, the H&S Report specifically stated that in respect of physical safety the situation at the School was one of improvement. I conclude the Claimant cannot rely on the failure to hold health and safety meetings as being part of the breach of the implied term of trust and confidence.

282. The Respondent did not breach the Claimant's contract by not always reporting issues in the premises manager's report book itself and instead by giving instructions verbally or by email.

Other possible repudiatory breaches of contract?

The on-call list issue

283. The Claimant's job description did require the Claimant to be prepared to attend the School out of hours. This job description did not specifically state that this includes those weeks when the Claimant was not employed by the School.

284. The discussion in May 2016 between Dennis Irwin, Paul Weston and the Claimant about the on-call list that those people who live nearest would be first on the list and the person who lived the most far away would be last on the list did not vary the Claimant's job description. Though clearly if the Claimant was always attending the out of calls this would have been unreasonable, particularly given his caring responsibilities.

285. During 2016 the only people on the on-call list who responded were generally Dennis Irwin, a full-time staff member and the Claimant, despite other people being higher on the on-call list.

286. The Claimant's attendance in August 2017 in a week when he was not employed by the School, because no one else on the on-call list attended, was a breach of his contract of employment by the Respondent.

287. This continued to be an issue in January 2018 and was specifically discussed in the health and safety meeting with Babs O'Hara on 9 February 2018. Babs O'Hara suggested a solution in that meeting that those on the on-call list could take it in turns, which would mean one week in five for each person, possibly one in six, if Babs O'Hara was also added to the on-call list. Babs O'Hara's letter to the Claimant dated 24 July 2018 (emailed on 12 August 2018) confirmed that the out of hours system was in place and was working. I conclude this issue was remedied before it became a repudiatory breach of the Claimant's contract.

288. The Claimant has not included any evidence that he attended the School in response to out of hours calls outside of his weeks of employment post July 2018, or that it was only the Claimant who attended out of hours calls post July 2018. I conclude that this was not a continuing issue after that date, and when the Claimant raised the on-call list in the absence review meeting on 4 September 2019 he was referring back to incidents prior to July 2018.

The incident with the Year One Pupil

289. The incident in February 2019 with the Year One Pupil was a safeguarding incident, and not a health and safety incident. The Claimant

was not involved at all. He had concerns about the way in which Anne Wood had dealt with the situation. I found that Anne Wood did speak to the Year One Pupil first, then spoke to Tony Brown and finally had a reconciliation meeting in private where they could not be overheard. The Claimant's job description clearly states that in such a situation any concerns must be reported to either the School's child protection officer or to the Principal. Given that the Claimant had concerns about how Anne Wood had dealt with the situation, his response should have been to report his concerns to the School's child protection officer. As this incident did not involve the Claimant, nor was it a health and safety matter, I conclude that this was not a repudiatory breach of his contract.

Not allowing the Claimant to supervise the chef (Tony Brown)

290. After reviewing the Claimant's job description and the Respondent's health and safety policy I conclude that the Claimant did not have a supervisory role in respect of kitchen hygiene, food preparation or catering activities.
291. Outside of these areas the Claimant did have a remit to ensure that health and safety requirements were met, particularly relating to site safety. Any defects in the premises were to be dealt with in consultation with the Principal (as outlined in the Respondent's health and safety policy).
292. In the Meeting on 8 October 2018 an action point for the Claimant was that any breach of health and safety guidance in the building should be recorded and monitored by the Claimant and reported to the SLT. The Claimant's case is that this prevented him from supervising Tony Brown.
293. The Claimant admitted in cross-examination that he did not have any line manager responsibilities, nor did he have the power to remove Tony Brown.
294. Ultimate responsibility for health and safety within the School lay with the SLT, and in particular the Principal. That the Principal had health and safety responsibility and was accountable as far as practical is confirmed in the Respondent's health and safety policy.
295. Given the above I conclude it was not a breach of the Claimant's contract of employment to ask him to monitor any breaches of health and safety and report it to the SLT. Nor was it an unreasonable request.

The change in hours

296. The Respondent unilaterally varied the Claimant's hours of work from 30 hours per week down to 25 hours per week. This unilateral variation took effect from 1 May 2019.

297. The Claimant informed Anne Wood on 13 March 2019 that the Claimant already had too much work to do, even within the current 30 hours per week. In an email dated 23 April 2019 he also stated his view that the School would not be able to fulfil its legal obligations regarding health and safety regulations with the Claimant on reduced hours. The original job description and the new job description attached to the letter dated 12 April 2019 are identical apart from the hours of work.
298. Anne Wood did not inform the Claimant how he could refocus his priorities to complete the work within 25 hours per week before either the letter dated 12 April 2019 (enclosing his new job description) or 1 May 2019 when the change in hours took effect. The Respondent also did not provide evidence of a risk assessment in respect of the reduction of the Claimant's hours. Hours of work are a fundamental term of the contract of employment, and I conclude that this change in hours was a repudiatory breach of the Claimant's contract of employment and this repudiatory breach took place on 1 May 2019.
299. In addition, the Respondent only had one meeting (on 13 March 2019) with the Claimant to discuss the proposed change in hours. The Claimant had not been provided with the restructure information, or the proposed change to his hours prior to the meeting on 13 March 2019. This on its own was not a breach of the implied term of trust and confidence, but it could be part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a breach of the implied term of trust and confidence.

The purpose specified in the letter inviting the Claimant to the absence review meeting

300. The first absence review meeting with the Claimant took place on 17 May 2019. The letter inviting him to this meeting was dated 9 May 2019. Although this letter referred to an occupational health report that was not available at that date, I conclude that this letter was still clear that the meeting was to review the Claimant's absence. I conclude that this was not a breach of the Claimant's contract of employment (repudiatory or otherwise).

Did the Claimant resign in response to the breaches?

301. Mr. Atkins submission was that the Claimant was focused on Tony Brown and his concerns that Tony Brown would continue to be confrontational despite there being no incidents between the Claimant and Tony Brown since the Meeting on 3 October 2018. This clearly was still in the forefront of the Claimant's mind as he mentioned his concern that Tony Brown would continue being confrontational in the absence review meeting on 16 July 2019, and he specifically asked if Tony Brown was still at the School in the absence review meeting on 4 September 2019.
302. It is not necessary for the Claimant to establish that the breach was the main reason for his resignation. The repudiatory breach just needs to have played a part in the resignation.

303. With the exception of the failure to conduct the PAT testing I conclude that in respect of the Respondent's course of conduct leading to the Claimant losing trust in the Respondent by February 2019 the Claimant did resign in response to those breaches. His evidence is that he resigned because there was no progression to address his legitimate concerns (except for the provision of health and safety training) raised in his notes to Anne Wood on 10 September 2018, Babs O' Hara 2018 and the letter to Paul Weston on 18 September 2018. The Claimant's letter dated 14 January 2019 also explained what he considered was outstanding at that point, including Tony Brown being dismissive of health and safety issues.

304. I conclude that he did not resign in response to the failures in respect of the PAT testing because the only place this is mentioned in the documents (including notes of meetings) after 3 September 2018 is in the Claimant's Spreadsheet dated 7 January 2019.

305. In respect of the change in his hours that took place on 1 May 2019 I find that this was part of the reason for his resignation. It is clear from the notes/ minutes of the meetings on 13 March 2019, 16 July 2019 and 4 September 2019 that the Claimant did not accept that he could complete the work within the reduced hours, and I accept the Claimant's evidence that the reduction in hours without a risk assessment or workload assessment was a part of his decision to resign.

306. For the failure to properly consult with the Claimant prior to the change in hours on 1 May 2019 I conclude that this was not part of the reason for his resignation. He did not state in his evidence that this was part of the reason for his resignation, nor he did not raise this as an issue in the meetings on 16 July 2019 and 4 September 2019.

Did the Claimant affirm his contract of employment?

307. The Claimant did not resign in February 2019 because he wanted the issues relating to his grievance and the health and safety issues to be resolved. The issues outlined in his letter dated 14 January 2019 included (but were not limited to) the errors and omissions in the Respondent's notes of the Meeting on 3 October 2018 and the Meeting on 8 October 2018, that the Claimant had never received an apology from Tony Brown (and he wanted a written apology from Tony Brown), the SLT had held meetings with Tony Brown (but not any with the Claimant on his own), that Tony Brown had been dismissive of health and safety issues (and this had been brought to the attention of the SLT), the Claimant's strong suggestion that both Tony Brown and the Claimant meet with the SLT on a monthly basis, that it was still unclear who took responsibility for the premises when the Claimant was not in the building and the breakfast club food storage issue.

308. The Claimant also did not resign in May 2019 after the change in hours took effect from 1 May 2019.

309. The Claimant resigned on 23 September 2019. This was approximately six months after February 2019 (and he was on sick leave for the majority of that time) and was over four months after 1 May 2019 (and he was on sick leave for all these four months).
310. To be able to assess whether the Claimant affirmed the contract before 23 September 2019 I need to look at the Claimant's conduct and what action the Respondent took to make amends to the Claimant prior to 23 September 2019.
311. The Claimant reluctantly went on sick leave on 25 February 2019. In his letter to Anne Wood on 12 March 2019 he repeated the issues that he had included in his letter to Anne Wood on 14 January 2019, and he also included new issues (amongst others) on safeguarding training, the risk assessments, and the Claimant's health and safety role in respect of the building and the equipment. On 8 May 2019 he emailed Anne Wood requesting that she confirm that his minutes of the Meeting on 3 October 2018 and the Meeting on 8 October 2018 were the true versions. He wrote to Anne Wood on 4 June 2019 referring to the issues in his letter dated 12 March 2019 and on 14 June 2019 reminding Anne Wood of his letters/ emails of 12 March 2019, 8 May 2019 and 4 June 2019.
312. The Respondent held meetings with the Claimant on 13 March 2019, 17 May 2019, 16 July 2019 and 4 September 2019. These were not under the Respondent's grievance procedure; but in all but one of these meetings the Claimant's concerns were discussed. The Claimant was accompanied to the meetings on 16 July 2019 and 4 September 2019 by Janice Walker, and he had been informed of his right to be accompanied to the meeting on 17 May 2019 in the letter dated 9 May 2019. The breakfast club storage issue had already been resolved in spring 2019.
313. In the meeting on 13 March 2019 the Claimant was given assurance on many issues, including training, safety equipment, that Anne Wood was responsible for health and safety when the Claimant was not on site and that his job description did include a health and safety role including ensuring that contractors meet health and safety requirements.
314. In the meeting on 16 July 2019 the Respondent gave further assurances about the training, the safety equipment, that Anne Wood was responsible for health and safety when the Claimant was not on site, and that health and safety meetings would take place. The Respondent did make it clear in this meeting that ultimately the responsibility for health and safety (including in respect of the School's contractors) lay with the SLT, and the Claimant was again told that if the Claimant observed an issue he should raise it with Anne Wood. The Claimant also still wanted Tony Brown to attend the monthly health and safety meetings. The Respondent made it clear that meetings would be held one-to-one between the Claimant and the SLT and the SLT would have separate one-to-one meetings with Tony Brown.
315. The meeting on 16 July 2019 partially resolved the issue of the minutes of the Meeting on 3 October 2018 and the Meeting on 8 October 2018 because it was confirmed that the Claimant's minutes of the two

meetings would sit alongside the Respondent's notes. This meant the lacuna in the Respondent's note of the Meeting on 3 October 2018 regarding Tony Brown's false accusation of assault and Anne Wood's challenge to it was rectified.

316. This did not, however, rectify the part of the Respondent's notes of the Meeting on 8 October 2018 which had said the Claimant stated he would continue to focus on his key responsibilities and tasks, because the Claimant had not said that. Also, there was a remaining subtle difference between the Claimant's version of the minutes on the Meeting on 8 October 2018 when he stated in response to each item that he had complete confidence that Anne would deal with it, compared with the Respondent's notes saying that the Claimant was completely satisfied and had no further issues.
317. It is clear from Janice Walker's evidence that the Claimant's main concern in respect of the Respondent's notes was the omission of the false accusation of assault by Tony Brown and Anne Wood's response to it from the Respondent's notes of the Meeting on 3 October 2018. This omission was resolved in the meeting on 16 July 2019 by having the Claimant's minutes sitting alongside the Respondent's notes of the Meeting on 3 October 2018.
318. In the meeting on 4 September 2019 the Respondent assured the Claimant that the risk assessments training that had been cancelled due to the Claimant going on sick leave would be rescheduled on his return. Anne Wood had again repeated in the context of the Claimant's grievance that any issues must be reported to her in line with the School's procedures.
319. By the end of the meeting on 4 September 2019 there were still some issues that the Claimant was not happy with. He wanted a written apology from Tony Brown, he wanted to have joint meetings with Tony Brown and the SLT (not one-to-one meetings) and he had not accepted that his workload could be completed within 25 hours, but Anne Wood had given an assurance that it would be possible to look at the outstanding issues on the Claimant's Spreadsheet dated 7 January 2019 and agree what was most important.
320. The Claimant also alleged in this meeting that Tony Brown's behaviour had continued after 3 October 2018 up until the Claimant left on sick leave (on 25 February 2019). I have found no evidence that Tony Brown was confrontational with the Claimant after the Meeting on 3 October 2018.
321. In respect of the breach of the implied term of trust and confidence that crystallized in February 2019 the Claimant did want the Respondent to remedy the breach, he kept on communicating with the Respondent and he wanted a resolution. I conclude the Respondent's response to the Claimant on those acts/ omissions that had led to the breach of implied term of trust and confidence was clear by the end of the meeting on 16 July 2019. The Claimant still did not resign at this point and waited a

further two months before he resigned on 23 September 2019. This was not prompt. I conclude that the Claimant did affirm his contract of employment in respect of the breach of the implied term of trust and confidence that crystallized in February 2019.

322. In respect of the change in hours the Claimant did not make an express reservation of rights (nor was it the focus of his communications with the Respondent after 1 May 2019, and before the meeting on 16 July 2019) after the change in his hours on 1 May 2019. He was not attending work at that time because he was on sick leave; he was not actually working under the reduced hours after 1 May 2019. Here the Claimant had worked for the Respondent for over three and a half years, and the Respondent was a small employer, not a large company. In this context over four months is a sufficiently long period of time to infer that the Claimant had decided not to exercise his right to go in response to this breach. I conclude that the Claimant did affirm his contract by his conduct. Even if the Claimant was wanting the Respondent to remedy this breach the Respondent made its position clear on this point in the meeting on 16 July 2019. The Claimant did not resign in July 2019 and waited until 23 September 2019. This was not prompt.

The last straw doctrine

323. The Claimant's case is the Anne Wood's comment in the meeting on 4 September that, "*any issues that arise must be reported to her in line with the school's procedures so that they can be addressed*" was the last in a series of acts or incidents that cumulatively amounted to a repudiation of the contract by the Respondent.

324. This statement was said in the context of a discussion about the Claimant's grievance. The Claimant still wanted a letter of apology from Tony Brown, but it was not unreasonable for the Respondent to rely on what had happened in the Meeting on 3 October 2018 and in the Meeting on 8 October 2018 to demonstrate that reasonable efforts had been made by the Respondent to resolve the Claimant's grievance. The lacuna in the Respondent's notes concerning Tony Brown's false accusation had been resolved in the meeting on 16 July 2019. Given also that Anne Wood had listened to the Claimant's concerns in three further meetings (albeit not meetings under the grievance procedure) Anne Wood's comment was not a breach of the Claimant's contract of employment and did not constitute the last in a series of acts or incidents that cumulatively amounted to a repudiation of the contract by the Respondent.

325. I have, therefore, concluded that the Claimant's resignation was not a dismissal under section 95(1)(c) of the ERA.

326. Because there has been no dismissal under section 95(1)(c) of the ERA the Claimant's claims for automatic constructive unfair dismissal under Section 100 of the ERA and for constructive unfair dismissal under section 98 of the ERA are both unsuccessful.

Case No: 2300010/2020

Employment Judge Macey

Date: 1 August 2022

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