



EMPLOYMENT TRIBUNALS

Claimants: Graham Flint and Sharon Flint

Respondent: Unity Schools Partnership Trust

Heard at: Bury St Edmunds

On: 17, 23, 24, 25, 26, 30 May 2023
11 October 2023 (chambers)
12, 13, 16 and 18 October 2023
19, 20 October, 27 November 2023 (chambers)
10 January 2024 (chambers)

Before: Employment Judge Graham

Members: Ms S Elizabeth and Ms S Williams

Representation

Claimants: In person
Respondent: Mr M Palmer, Counsel

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that:

1. The complaints of detriments for having made protected disclosures fail and are dismissed.
2. The complaints of constructive unfair dismissal fail and are dismissed.

REASONS

Introduction and procedural history

1. These matters have a slightly complicated procedural history which will be summarised in the passages below. Mr Flint is the first Claimant, and Mrs Flint is the second Claimant. The Claimants are married and both worked for the Respondent until their resignations.

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2. We will refer to the Claimants as Mr Flint, and Mrs Flint, throughout this judgment for ease of reference.
3. On 27 March 2021 Mr Flint filed his first ET1 claim form (claim 3303372/2021 and 3303373/2021) in which he complained of being subjected to detriments for having made protected disclosures. Mr Flint claimed that he had been constructively dismissed with the principal reason being that he had made protected disclosures, however he said he could not afford to resign during the then economic climate due to the COVID-19 Pandemic. At this time Mr Flint remained employed by the Respondent.
4. On 6 April 2021 Mrs Flint filed her first ET1 claim form (claim 3305331/2021 and 3305332/2021) in which she also complained of being subjected to detriments for having made protected disclosures, and that she had been constructively dismissed. Mrs Flint also said that she could not afford to resign due to the then economic climate during the COVID-19 Pandemic. At this time Mrs Flint remained employed by the Respondent.
5. The Respondent filed an ET3 Response resisting the claims on 7 June 2021.
6. A preliminary hearing took place on 24 November 2021. As the Claimants both remained in the employment at the time their claims were filed, their constructive dismissal claims were struck out by Employment Judge Hanning as there was no jurisdiction to consider them in the absence of a dismissal within the meaning of s. 95 Employment Rights Act 1996. There then followed case management where the issues as regards the alleged protected disclosures and detriments were clarified and agreed with the parties. Directions were issued for the claim to progress to trial including for disclosure.
7. A private preliminary hearing took place on 14 April 2022 before Employment Judge Michell. By this time the Claimants had resigned, Mr Flint had already left the Respondent and Mrs Flint was due to leave in June 2022. The Claimants sought permission to amend their claims to include a complaint of constructive dismissal. Directions were issued as regards further and better particulars in relation to the matters the Claimants sought to include as part of their claims.
8. A further private preliminary hearing took place on 15 June 2022 before Employment Judge Michell where the Claimants agreed the list of issues as regards the alleged protected disclosures (referred to as acts in the Case Management Summary) and also the alleged detriments. The Respondent did not oppose the application to amend the claims to include complaints of constructive dismissal. It was recorded that the Claimants relied on a breach of the implied term of mutual trust and confidence and that they contended that their dismissals were unfair and/or principally by reason of one or more protected disclosures, and that they relied upon the following as constituting such a breach:
 - a. Each of the detriments relied upon for s. 47B ERA 1996 purposes.

- b. The Respondent's alleged failure to deal promptly and properly with their data subject access request made on 14 December 2020 (Mr Flint) and 8 January 2021 (Mrs Flint), specifically that the responses were unduly delayed, and that many documents were inappropriately redacted. It was recorded that the Claimants would identify which documents they would rely on.
 - c. Some 4-6 other acts/omissions they would identify pursuant to an Order from Employment Judge Michell for further and better particulars of claim.
9. The final hearing was due to be heard in July 2022 however it was adjourned until May 2023 given what was then a recent amendment of the claim and there were directions which needed to be complied with.
10. On 29 June 2022 the Claimants duly provided further and better particulars concerning the additional detriments they relied upon and also a list of subject access emails they said should be provided unredacted. This was not strictly what Employment Judge Michell had directed with respect to disclosure, however the list sets out what emails the Claimants allege had been inappropriately redacted. These further acts/omissions are included under the heading of Schedule 3 Additional Detriments below.
11. The Respondent then filed an Amended Response on 5 September 2022 in which it resisted the claims. A List of Issues (inserted below) was then prepared by the Respondent which were agreed with the Claimants.
12. On 29 September 2022 the Respondent applied for a strike out of the complaints of constructive unfair dismissal (or a deposit order in the alternative). On 3 October 2022 the Claimants objected to that application. This application does not appear to have been taken any further.
13. On 15 November 2022 Mrs Flint applied to amend her claim a further time to include a new detriment which arose out of an allegedly factually inaccurate reference provided by the Respondent for Mrs Flint on or around 27 October 2022. The Respondent objected to that application some time later on 6 December 2022.
14. Mrs Flint's application to amend was heard at a preliminary hearing on 9 May 2023 which was a few days before the final hearing was due to start (recorded as 15 May 2023 in the Case Management Summary). The hearing was conducted by Employment Judge Moore. Permission was granted for the amendment as it could not have been made any earlier and it would be for the Tribunal at the final hearing to determine the merits. Judge Moore recorded that there would be little prejudice to the Respondent in granting the amendment, whereas Mrs Flint would plainly be prejudiced if it was not allowed. No additional statements were prepared in order to address the amendment, however Mrs Flint and the Headteacher Emma Wilson-Downes (author of the reference), were both cross examined on the issue of the reference at the final hearing.
15. The Respondent had also applied to convert the final hearing into a hybrid to allow one of its witnesses (Dr Coulson) to give evidence via CVP from

abroad as he may need to go to Australia for family reasons, and for another witness to give evidence via CVP in the UK. Judge Moore refused the application for a hybrid hearing however she stated that it would be open to the Respondent to restate the application for the witness to give evidence via CVP at the commencement of the hearing.

16. At the final hearing, Mr Palmer (counsel for the Respondent) restated his application for one witness to give evidence via CVP to due to medical reasons, and we granted the application due to the extenuating medical reasons. As is transpired this was not necessary as the hearing went part heard on 30 May 2023 and the witness was able to attend the final hearing in person when it recommenced from 12 October 2023.
17. The Tribunal held a reading day on 11 October 2023 due to the passage of time since the hearing went part heard on 30 May 2023. We then heard evidence on 12, 13, 16 October and closing submissions were delivered in writing and orally on 18 October 2023. Whereas this judgment is longer than might normally be expected, this is due to the number of issues and the volume of witness evidence before us. Moreover, in cases where there are disputes as to the contents of alleged protected disclosures, it is necessary to examine in detail what information was conveyed and who would have been aware of it.

Issues

18. The Issues as agreed between the parties and as initially identified by the Tribunal at the preliminary hearing of 24 November 2021 are set out below. The amendments have been incorporated into this list.

The Claimants' claim:

1. *Suffering detriments for making protected disclosures contrary to section 47B Employment Rights Act 1996 (ERA)*
2. *Constructive unfair dismissal for making protected disclosures and additional detriments under section 103A ERA, section 95(1) ERA, and section 136(1) ERA*

The issues to be considered are as set out under the headings below.

Disclosures – section 43B ERA

1. *Are the verbal and written disclosures as set out by EJ Hanning in the Case Management Orders of 24 November 2021, at paragraph 2 of the 'Issues' section, pages 7 to 8 (the **Disclosures**. Please see Schedule 1) qualifying disclosures, namely:*
 - a. *Did the verbal Disclosures occur as alleged or at all;*
 - b. *If disclosures did occur, was there a disclosure of information;*
 - c. *If so, did the Claimants have a reasonable belief that such information tended to show that either:*

- i. A person had failed, was failing or was likely to fail to comply with any legal obligation; or*
- ii. Information tending to show any of these things had been, was being or was likely to be deliberately concealed?*

d. If so, did the Claimants have a reasonable belief the disclosures were made in the public interest.

2. If the Claimants made qualifying disclosures are these protected?

If the Claimants made (a) qualifying, protected disclosure(s) then:

Detriment – section 47B ERA

3. Do any of the actions set out by EJ Hanning in the Case Management Orders of 24 November 2021, at paragraph 3 of the 'Issues' section, pages 8 to 10, including the additional issue set out by EJ Michell in the Case Management Summary of 15 June 2022 at paragraph (7) b. (the Detriments. see Schedule 2.) constitute detriments?

4. If so, were the Claimants subject to any such detriment(s) on the grounds of making (a) protected disclosure(s) within the meaning of section 47B ERA?

Time limits

5. Does the application of the limitation period apply to prevent any of the detriments being considered by the Tribunal? ACAS notification and issue of early conciliation certificate was 27 February 2021 (1st Claimant) and 7 March 2021 (2nd Claimant) and the claims were presented against the Respondent on 27 March 2021 (1st Claimant) and 6 April 2021 (2nd Claimant).

6. Were the complaints of detriment made within the time limit in section 48 ERA, namely:

a. Were the claims made to the Tribunal within three months (plus early conciliation extension) of the acts complained of?

b. If not, was there a series of similar acts or failures (incorporating such acts or failures which fall outside the ordinary limitation period) and were the claims made to the Tribunal within three months (plus early conciliation extension) of the last one?

c. If not, was it reasonably practicable for the claims to be made to the Tribunal within the time limit?

d. If it was not reasonably practicable for the claims to be made to the Tribunal within the time limit, was it (or they) made within a reasonable period?

7. If so, could any potentially out of time detriments be considered part of a series of acts rendering them in time?

Remedy (if required)

8. *What financial losses (if any) has the detrimental treatment caused the Claimants?*
9. *What injury to feelings has the detrimental treatment caused the Claimants and how much compensation should be awarded for that?*
10. *Has the detrimental treatment caused the 1st Claimant personal injury and how much compensation should be awarded for that?*
11. *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures (ACAS CoP) apply in relation to the utilisation of any relevant grievance procedure?*
12. *Did the Respondent or the Claimants unreasonably fail to comply with the provisions of the ACAS CoP?*
13. *If there was a failure to comply with the ACAS CoP, is it just and equitable to increase or decrease any award payable to the Claimants? By what proportion, up to 25%?*
14. *Did the Claimants cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the Claimants' compensation? By what proportion?*
15. *Was the protected disclosure made in good faith?*
16. *If not, is it just and equitable to reduce the Claimants' compensation? By what proportion, up to 25%?*

Constructive Dismissal - s103A ERA

17. *For each Claimant:*

- a. *If the Employment Tribunal determines that the Claimant made protected disclosures and, in consequence, suffered one of the Detriments and/or the additional detriments (if found to have been committed) set out in paragraph 1 of the Claimants' Further and Better Particulars dated 1 July 2022 (the Additional Detriments. Please see Schedule 3.) did such alleged Detriments/Additional Detriments amount to a breach(es) of the term of trust and confidence implied into the Claimant's contracts of employment?*
- b. *If so, did the breach(es) cause a repudiation of the contract(s) of employment?*
- c. *Did the Claimant(s) resign in response to those breaches?*
- d. *Did the Claimant affirm or waive any alleged breach(es) the contract through delay or otherwise?*
- e. *If the Claimants were constructively dismissed by the reason of any alleged detriment, was/were the dismissal(s) unfair or did the Respondent have a potentially fair reason to dismiss?*
- f. *The Respondent relies upon the potentially fair reasons of conduct or SOSR.*

g. If the Respondent had a potentially fair reason(s) to dismiss, did it act reasonably or unreasonably in the circumstances and in accordance with the equity and substantial merits of the case (section 98(4) ERA 1996)?

h. If the dismissal is unfair, what compensation should be awarded under the normal principles?

Schedule 1 – Disclosures

2.1.1.1 On 4 November 2019 the second claimant made an oral disclosure to Debbie Wilson that Liz Clements was giving work to one builder without following due process and therefore was not complying with a legal obligation (C2 ET1 para 3.3);

2.1.1.2 On 22 January 2020 the second claimant made an oral disclosure to Nicola Fairchild that tendering processes were not being followed in line with ESFA policies and procedures by Liz Clements (not in ET1 but no objection by respondent);

2.1.1.3 On 3 February 2020 the first claimant made an oral disclosure to the second claimant that Liz Clements had passed on quotation details to her preferred contractor (C2 ET1 para 3.4,3.5);

2.1.1.4 On 7 February 2020 the second claimant made an oral disclosure to Nicola Fairchild in respect of tendering processes not being followed in line with ESFA policies and procedures (C2 ET1 para 3.1);

2.1.1.5 On 13 February 2020 the first claimant made an oral disclosure to Chris Brown that Liz Clements was not following procedures (C1 ET1 para 3.6);

2.1.1.6 On 20 February 2020 the second claimant made a written disclosure to Nicola Fairchild in respect of tendering processes not being followed in line with ESFA policies and procedures (C2 ET1 para 3.2);

2.1.1.7 On 29 May 2020 the second claimant made a disclosure in an email to Angela Bull repeating previous concerns (C2 ET1 para 3.3);

2.1.1.8 On 22 July 2020 the first claimant made a disclosure in an email to the second claimant regarding Sarah Gardner passing quotation information to a third party (C1 ET1 para 3.12 p19);

2.1.1.9 On 29 July 2020 the second claimant made a disclosure by forwarding the first claimant's email of 22 July 2020 to Tim Coulson and Angela Bull (C2 ET1 para 3.4).

Schedule 2 – Detriments

3.1.1 From November 2019 exclude the first claimant from involvement in the organisation of work being carried out at the School by Liz Clements;

3.1.2 On 27 February 2020, through Emma Wilson-Downes, brush off the second claimant's strategic responsibility for site and buildings and state there was a lot of finance work that needed attention;

3.1.3 On 27 April 2020, through Emma Wilson-Downes, send out a job advert for an Assistant Head Teacher which included oversight of the Cover and Educational Visits and Trips, which had been a responsibility which the second claimant undertook;

3.1.4 On 5 May 2020, at a meeting with Wayne Lloyd and Angela Bull, ask the second claimant to consider an alternative role which she knew would be at a lower level and thereafter plan a restructure which would involve the second claimant taking a role at a lower salary or agreeing to leave;

3.1.5 In June 2020, through Emma Wilson-Downes, tell the first claimant not to contact anyone at the Trust and to have everything go through her in the future;

3.1.6 On 23 June 2020, through Darren Meitiner-Harvey and in a subsequent meeting, through the Assistant Headteacher (in each case at the direction of Emma Wilson-Downes), tell the second claimant that Darren Meitiner-Harvey was taking over performance management of support staff as well as teacher performance management, meaning that she would have had the support staff management role taken away from her;

3.1.7 On 26 June 2020, at a meeting with Tony [Tim] Coulson and Emma Wilson-Downes to discuss her areas of responsibility, reinstate some responsibilities but confirm the loss of others and confirm that no assurances could be given that further changes would not happen in the future nor could a restructure be ruled out;

3.1.8 On 2 July 2020, at a meeting with Tony [Tim] Coulson, remove some of the first claimant's responsibilities undertaken at Langer Primary Academy and give these to Liz Clements;

3.1.9 From July 2020, cause or permit Emma Wilson-Downes to ignore the first claimant and instead speak directly to caretakers under the first claimant in order to instruct them to carry out work;

3.1.10 On 1 September 2020, in an email sent by Tony [Tim] Coulson to everyone in the Trust, notify everyone of a change in the Code of Conduct stating in particular that those in relationships may no longer line manage each other;

3.1.11 Between October and December 2020, fail to deal fairly with the first claimant's grievance in dismissing both it and his subsequent appeal;

3.1.12 Between October and November 2020, fail to deal fairly with the second claimant's grievance in dismissing both it and her subsequent appeal;

3.1.13 On 5 January 2021 at a meeting with Claire Havers and Emma Wilson-Downes, appoint Rachel Baty as the first claimant's line manager in all respects including to authority to discipline him and removed the second claimant's responsibilities in that respect.

Schedule 3 – Additional Detriments

1.1 From February 2020 Claimant 2 was excluded from her role on an interview panel for a caretaker's position.

1.2 On 30 April 2020, Emma Wilson-Downes confirmed by email to Angela Bull that she had already taken away elements on Claimant 2's job description and had removed her from the SLT structure.

1.3 From May 2020, both claimants were receiving excessive emails containing lists of work which were constantly being followed up, particularly outside normal working hours.

1.4 On 19 June 2020, Claimant 1 disclosed to Tim Coulson in a phone call that he was being victimised by Emma Wilson-Downes following the external financial investigation. Tim Coulson then instigated the change of line manager of Claimant 1 to Emma Wilson-Downes.

1.5 During the whistleblowing investigation, details were provided to Emma Wilson-Downes by the Investigator that Claimant 2 had blown the whistle.

1.6 From July 2020, fail to deal fairly with the claimants' grievance investigations in accordance with the timeline of the process.

1.7 From September 2020, as a result of the subject access request, through Emma Wilson-Downes, send draft emails to HR to find fault with the Claimants.

1.8 From December 2020, failed to deal promptly and properly with their data subject access request, specifically that the responses were unduly delayed and many documents were inappropriately redacted.

Additional detriment following permission granted on 9 May 2023

1.9 In or around October 2022, the Second Claimant made a successful application for a position at the Albany school. Prior to her appointment the Albany School sought references from her previous employers, including Ms Wilson Downes, the Head Teacher of the Respondent school. Ms Wilson Downes provided a reference dated 22 October 2022, which the Second Claimant had sight of towards the end of October 2022. She considers that references is factually incorrect as regards the dates she was employed by the Respondent and makes unfounded negative references to her professional capabilities.

19. At the start of the hearing, I asked Mrs Flint to confirm what breaches of contract the Claimants relied upon for the basis of the constructive unfair dismissal claims. Mrs Flint confirmed that the Claimants relied upon those matters listed as Detriments (under Schedule 2) as well as those listed as Additional Detriments (under Schedule 3). Mr Palmer for the Respondent indicated that it was understood that only the Detriments (under Schedule 2) were relied upon as being breaches of contract. Having considered paragraph 7(d) of the Case Management Summary of Employment Judge Michell of 15 June 2022 [**Pleadings and Orders Bundle Page 86**] and also Issue 17a of the List of Issues [**Pleadings and Orders Bundle Page 117**] it was clear to the Tribunal that the Claimants were relying upon both the Detriments under Schedule 2 and the Additional Detriments under Schedule 3.

20. As set out in Issue 17a, it is necessary for the Tribunal to first determine whether the Claimants made a protected disclosure, then to determine

whether they suffered a detriment in consequence of having made a protected disclosure, and if so, whether that detriment then amounted to a breach of the implied duty of mutual trust and confidence. This understanding was consistent with how the parties had presented their cases before us throughout the hearing as well as the contents of their respective closing submissions. The complaints are therefore (i) detriments for having made protected disclosures; and (ii) being constructively and unfairly dismissed for having made protected disclosures.

21. During closing submissions, I asked the parties to confirm their understanding of how the Tribunal should approach issue 1.8 concerning the Respondent's handling of the Claimants' Data Subject Access Requests ("DSARs"), specifically the use of the word "properly" within that issue. The Tribunal was mindful that it is the Office of the Information Commissioner which has jurisdiction over the Data Protection Act 2018, and that this Tribunal would not have jurisdiction to determine if there had been a breach of that Act.
22. The Respondent confirmed that with respect to the word "properly" the Tribunal ought to approach the matter based on how a reasonable employer would have acted. The Tribunal found this to be a sensible approach and it was not opposed by the Claimants. The use of the word "promptly" within that Issue was self-explanatory and did not require elaboration on the approach to be adopted by the Tribunal.

The Hearing

23. We were provided with a number of documents for use in the hearing which are listed below:
 - i. Two evidence bundles of 1206 pages.
 - ii. Pleadings and Orders bundle of 294 pages.
 - iii. Cast list, chronology, schedules of loss and additional documents bundle of 49 pages.
 - iv. Supplemental documents bundle of 47 pages.
24. Within the supplemental documents bundle we were also provided with a transcript of a covert recording of Angela Bull (the Respondent's Director of HR) made by Mrs Flint. The circumstances of this recording are set out below, and this bundle also included an amended witness statement from Mrs Bull.
25. During the hearing the panel noted that as one of the issues concerned the handling of the Claimants' DSARs we would need to see what was disclosed. The hearing bundles as produced did not make it clear how the documents were redacted when disclosed to the Claimants in response to those requests. This is not intended as a criticism of those who prepared the hearing bundles as we noted that a lot of work would have gone into preparing and agreeing them.
26. However the Tribunal could not properly decide that particular issue without some understanding of what was disclosed to the Claimants. We therefore asked the Respondent to provide us with a small bundle of the emails

referred to by Mrs Flint in her resignation letter so that we could see for ourselves how they looked when they were disclosed to her under the subject access request, and then make a comparison with how they appeared in the final hearing bundle as they were generally unredacted there.

27. The Respondent's solicitor helpfully provided us with the requested material and a table setting out when each document had be disclosed and to who. This enabled the Tribunal to conduct an assessment of the redactions applied by the Respondent when dealing with the subject access requests.

28. We were also provided with witness statements from the following for the Claimants:

- i. Mr Flint – Former Premises Manager
- ii. Mrs Flint – Former Business Manager
- iii. Julie Cumberland (did not attend) – Former PA/Office Manager
- iv. Ian Roberts – NEU Representative

29. For the Respondent we were provided with the following witness statements, the job titles of those named were as they were at the material times. A number of those witnesses have since left the Respondent.

- i. Dr Tim Coulson CBE – Chief Executive Officer
- ii. Emma Wilson-Downes - Headteacher
- iii. Liz Clements – Premises Manager
- iv. Debbie Wilson – Director of Operations
- v. Nicola Fairchild – Finance Compliance Officer
- vi. Chris Brown – Operations Manager
- vii. Angela Bull – Director of HR of the Trust
- viii. Darren Meitiner-Harvey – Assistant Headteacher
- ix. Claire Havers – HR Advisor
- x. Rachel Baty – Deputy Headteacher
- xi. Stephen Watts – Data Protection Officer

30. As Mrs Cumberland did not attend, we placed little weight on her witness statement as it could not be tested at the hearing. Nevertheless, we did not consider it appropriate to dismiss her evidence altogether as it had some relevance to some of the issues in the case, and it provided some background to the matters. All the other witnesses attended in person to give evidence.

Applications

31. During the start of the hearing Mrs Flint informed us that she had made a covert recording of an online meeting with Angela Bull. The meeting in question was on 5 May 2020 and it had been arranged to discuss a potential opportunity the Respondent wished to discuss with Mrs Flint. Mrs Flint's recording appeared to potentially contradict some of Mrs Bull's statement, in particular Mrs Bull's comment that Mrs Flint had said she had been struggling at work.

32. The Respondent had no knowledge of this recording and no warning that it would be raised by Mrs Flint during the hearing. Mrs Flint sought permission to rely upon the recording. We granted time for the Respondent to hear the recording, and following which the Respondent pragmatically in our view, did not object to its inclusion.
33. We would add that the issue of parties to litigation making covert recordings has previously been considered by higher courts who have at least on two occasions found the practice to be distasteful. As per Underhill J in **Vaughan v Lewisham Borough Council and others [2013] UKEAT/0534/12/SM**:
- “We should say, in order to get this point out of the way, that the practice of making secret recordings in this way is, to put it no higher, very distasteful; but employees such as the Claimant will no doubt say that it is a necessary step in order to expose injustice. Perhaps they are sometimes right... The law is now established that covert recordings are not inadmissible simply because the way in which they were taken may be regarded as discreditable: see in particular the judgment of this Tribunal, Mr Recorder Luba QC presiding, in Dogherty v Chairman and Governors of Amwell View School UKEAT/0243/06.” [12]*
34. Accordingly, whereas we agree that the making of a covert recording, as Mrs Flint has done in this case, is distasteful and we do not condone it, the decision as to whether to allow in the covertly recorded evidence involves consideration of relevance and necessity. In this case the Respondent did not object to its inclusion, and we also formed an initial view that it was quite clearly relevant evidence and necessary to allow it to be admitted at the hearing.
35. We therefore granted Mrs Flint permission to rely on this recording however we directed that the Claimants would be responsible for producing a transcript of it which they should share and attempt to agree with the Respondent after the hearing went part heard.
36. Having heard the recording, the Respondent sought permission to file an amended version of Mrs Bull’s witness statement. This was not opposed by the Claimants, and we granted the application.
37. Both the transcript and the amended witness statement were provided during the period in which the hearing went part heard. We considered both documents on our reading day in chambers on 11 October 2023.
38. No further applications were made during the hearing, and we proceeded to hear the witness evidence. The burden of proof initially rested with the Claimants who gave their evidence first.

Findings of fact

39. From the information and evidence before the Tribunal we made the following findings of fact. We made our findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. We do not set out in this judgment

all of the evidence which we heard but only our principal findings of fact, those necessary to enable us to reach conclusions on the issues to be decided.

40. Where it was necessary to resolve conflicting factual accounts, we have done so by making a judgment about the credibility or otherwise of the witnesses we have heard based upon their overall consistency and the consistency of accounts given on different occasions when set against any contemporaneous documents. We have not referred to every document we read or were directed or taken to in the findings below, but that does not mean they were not considered.

The parties

41. The Respondent is a multi-academy trust and at the time of the hearing it operated 32 schools including the Felixstowe School (“the School”) and Langer Primary Academy (“Langer”). The School has also previously been referred to as Felixstowe Academy. Nine of the schools within the Trust joined after having previously been judged as inadequate by the Office for Standards in Education, Children's Services and Skills (“Ofsted”) and five had been judged as requiring improvement. We understand that since joining the Trust these numbers have reduced to two judged as inadequate and two requiring improvement. The remainder of the Schools within the Trust are judged as good or outstanding. Dr Tim Coulson CBE is the Chief Operating Officer of the Trust, and Sarah Garner is the Deputy Chief Operating Officer, although at the time of the matters giving rise to these claims her role was Trust Finance and HR Director.
42. The School and Langer transferred to the Respondent on 1 September 2019, the background to which will be briefly considered below. Prior to the transfer the School and Langer had been part of the Academies Enterprise Trust (“AET”) for a number of years.
43. Mrs Flint joined the School on 2 May 2000 and was employed as a Business Manager. We were provided with a copy of the job description for the Business Manager role, and this is a comprehensive four page document. An examination of the document shows that this was a very wide role which sat within the School's Senior Leadership Team (“SLT”).
44. Given that part of the claim concerns the removal of aspects of the Claimants' roles, it is necessary for us to go into some detail as to the contents of their job descriptions which have been replicated as far as possible below.
45. We note that the core professional duty was recorded as to provide strategic direction, leadership and management to all aspects of the school finances, health and safety, premises, HR, administration and line management of support staff working at the School.
46. The core purpose of the role was recorded as:

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- i. To ensure a healthy environment for all ensuring that legal and safety requirements with regard to people and property and function of the school is maintained.*
- ii. To be responsible for the school sites and its buildings, their maintenance, development and efficient use.*
- iii. To lead, operate, maintain and develop the financial procedures and systems in co-operation with the Senior Leadership Teams and Governors.*
- iv. The Business Manager will be responsible for those aspects of administration of the school, which do not relate to the teaching, supervision and pastoral care of students*
- v. To manage all support staff, including HR procedures and processes.*
- vi. To be responsible for the recruitment and selection process of all staff*
- vii. To be responsible for safeguarding procedures in relation to recruitment of staff*

47. The Business Manager was the line manager for the Office Manager and the Premises Manager, and reported to the Head Teacher.

48. The key duties within the SLT included

- i. To lead and advise the Senior Leadership Team on matters relating to finance, estates and Health and Safety;*
- ii. To attend all main governing body meetings and assist the Chairs of the sub- committees relating to the areas of responsibility;*
- iii. To act as Educational Visits Coordinator for the school ensuring health and safety compliance using the Evolve system;*
- iv. To take delegated responsibility for financial and premises decisions following appropriate discussions with the Headteacher;*
- v. To deputise for the Headteacher as required in relevant fields of expertise;*
- vi. To monitor the recruitment and selection of all staff is undertaken in line with safeguarding procedures, and HR procedures are followed;*
- vii. To oversee the CPD of all support staff;*
- viii. To produce policy documents in accordance with areas of responsibility as indicated on the Policy Index or relevant policy list;*
- ix. To provide support as relevant to the Headteacher and governing body.*

49. There were six areas of accountability for this role which are as follows:

1. *Health and Safety*

- i. To formulate, monitor, implement the school's health and safety policies including the introduction of all risk assessment procedures;*
- ii. To advise all staff as appropriate;*
- iii. To report to the Headteacher and governing body on Health and Safety matters;*
- iv. In co-operation with the Fire Service, the installation and maintenance of equipment for protection against and escape from fire. Keeping records and initiating regular fire practices.*

2. *Premises*

The Business Manager will be responsible for the overall management and maintenance of the buildings, facilities, grounds, fabric and furnishings of the school, working with the Headteacher and governing body. Specific responsibilities include:

- i. Taking the lead on compiling, and implementing, a 5 year Repairs/Maintenance Plan;*
- ii. Through regular contact with the premises staff, ensuring the proper maintenance and repair of the school is carried out, and progress monitored;*
- iii. Ensuring the appropriate placing and monitoring of all service contracts including cleaning and catering;*
- iv. Advising on all Health and Safety matters, including measures in the event of emergencies.*
- v. Appraise projects for the development of the school;*
- vi. To be responsible to the Headteacher and governing body for the security, maintenance, heating, cleaning and other general site services within the premises;*
- vii. To deal with all external agencies, delivering services to the school and to deal with all aspects of tendering including compulsory, competitive tendering;*
- viii. To be responsible for oversight of the letting of the school premises to outside organisations and school staff, the development of all school facilities for out of school use, with particular reference to the local community;*
- ix. Purchase, repair and maintenance of all furniture, equipment and fittings;*

- x. *To monitor the work of on-site contractors and arrange for estimates for work;*
- xi. *To ensure that the best use is made of premises personnel and to be responsible for their allocation of hours and pay claims;*
- xii. *To monitor and oversee the quality of work by contractors, caretakers and cleaning staff, reporting to the Headteacher and governing body, as appropriate.*

3. Finances

Working with the Headteacher and governing body, the Business Manager will prepare an annual budget to be submitted to the Governing Body and will provide specific expertise in long-term financial management. The Business Manager will be responsible specifically for:

- i. *Ensuring the school has appropriate financial systems and managing all aspects of the school's financial systems in accordance with the agreed policies and timetables; ensuring accurate financial records are maintained, and reporting on a regular basis to the Principal and governing body;*
- ii. *To ensure that the financial transactions in school are carried out in an appropriate manner and that the financial regulations of both the Trust and the school are observed;*
- iii. *Preparation for approval by the governors of annual estimates of income and expenditure. The provision of detailed management accounts for the Headteacher and governing body according to an agreed schedule, reporting immediately any exceptional problems;*
- iv. *The operation of all bank accounts, ensuring that a full reconciliation is undertaken at least once per month;*
- v. *Manage the school's financial IT package giving guidance to other users;*
- vi. *To prepare appraisals for particular projects and the development of long term initiatives for the school;*
- vii. *To co-operate, initiate and manage audit procedures as necessary;*
- viii. *Attend governing body committee meetings related to finance, site and buildings and maintain minutes and set agenda;*
- ix. *To prepare all financial returns for the Trust within statutory deadlines;*
- x. *To lead on writing the financial section of bids for funding as required by the Trust and the school;*

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- xi. Managing the tendering for all service contracts; monitoring all insurance policies, with a view to cost effectiveness; and ensuring that the school maximises it's potential;*
- xii. Submitting capital bids to the Trust, monitoring and control of capital expenditure on buildings and grounds, placing of contracts, appointment and monitoring of contractors;*
- xiii. Promoting the school's activities and premises with the objective of maximising letting income, within agreed policies;*
- xiv. Supporting staff responsible for delegated budgets with procedures which enable them to monitor these budgets;*
- xv. Monitor the standard and cost effectiveness of the school's catering arrangements in conjunction with the catering staff within the agreed performance indicators;*
- xvi. To be responsible for the provision of a comprehensive payroll service for all school staff, with operation of the various pensions schemes and other deductions in which the school participates.*

4. Administration

The Business Manager will be responsible for those aspects of administration of the school, which do not relate to the teaching, supervision and pastoral care of students. Specific responsibilities include;

- i. To coordinate planning for the effective and efficient provision of administrative IT resources at the school including hardware / software;*
- ii. To act as the lead for Data Protection within the school, reporting any areas of concern to the Trust's Data Protection Officer, in line with GDPR;*
- iii. To oversee statutory returns, in particular, the Workforce Census and termly Census.*
- iv. To manage the efficient and effective running of the school office as one of the school's main points of public contact, as well as the centre of daily administration;*
- v. To ensure that effective and efficient marketing strategies are implemented;*
- vi. To ensure inventories of equipment and stock are maintained; all statutory and statistical returns are completed as appropriate.*

5. Line Management

The Business Manager will be responsible for managing finance, premises, office, ICT and all other support staff.

- i. Managing the staffing operation of the school offices and all administrative / caretaking staff;*
- ii. Motivating and facilitating teamwork and good practice in order to achieve excellent standards of service delivery;*
- iii. Monitoring staff attendance and leave to ensure a continuous service throughout the year liaising with members of SLT and the Trust HR, as appropriate;*
- iv. Overseeing support staff career development including the appraisal scheme and reviewing training requirements;*
- v. Monitoring the effectiveness of the support staff establishment to meet the needs of the school.*

6. Safeguarding

The Business Manager will be responsible for safeguarding arrangements with the exception of students.

- i. Managing the Single Central Record;*
- ii. Overseeing the recruitment and selection of all staff in line with safeguarding procedures;*
- iii. Working with the Child Protection Officer in order to carry out an annual audit to ensure compliance with legal requirements.*

50. The reference to Single Central Record (“SCR”) relates to the place information is kept about staff pre-employment and vetting checks.

51. The role of Business Manager was a busy one and we heard evidence that it was normal for Mrs Flint to work between 50 – 60 hours or more per week, including evenings and weekends. This was clearly a role which Mrs Flint enjoyed and was committed to, and we saw evidence that she had commented that she did not mind working long hours as it was part of the job.

52. Mr Flint joined the School as Premises Manager on 14 June 2014. The Premises Manager was managed by the Business Manager; therefore he was managed by his wife Mrs Flint. We note that Mr Flint’s performance management (appraisals etc) was conducted by the headteacher and not Mrs Flint as Business Manager.

53. We have been provided with a copy of the job description for Mr Flint’s role. As indicated above, part of the claim concerns alleged changes to the Claimants’ roles, therefore it is necessary to set out below the contents of Mr Flint’s job description. This was another comprehensive document, although this was limited to two pages.

54. The core purpose was recorded as:

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- i. To be responsible for the smooth running of the facilities in Felixstowe Academy, ensuring a safe, clean and secure environment for learning to take place. This will include line management of a team of caretaking and cleaning staff.*
- ii. To support the Business Manager in ensuring the Academy complies with current legislation relating to Health and Safety, adhering to policy and procedures.*
- iii. To promote and participate in achieving the most efficient and economic use of the Academy premises, facilities, plant, equipment and materials.*

55. The duties and responsibilities of the role comprised:

Line management responsibility for the site team to include:

- i. Undertake the day-to-day management of site staff, organising work programmes, setting work priorities etc.*
- ii. Carry out annual performance reviews of caretakers and cleaning staff, identifying training needs, as appropriate.*
- iii. Arranging the induction of new staff, as appropriate;*

Maintenance of the Site:

- i. Undertake emergency and planned maintenance and repairs within capability; responding effectively and maintaining a log of such works.*
- ii. Maintain all equipment, tools and plant in a safe and good condition; liaising with external suppliers and services, where necessary.*
- iii. Maintain the grounds to a high standard, ensuring grounds are litter free.*
- iv. Assist the Business Manager in the preparation of maintenance and future capital expenditure project / work plans; liaise with contractors and be their main point of contact.*
- v. Manage all contractors on site, ensuring that all health and safety requirements and Safeguarding procedures are met, monitor their performance and inspect completed work.*
- vi. Undertake routine inspections of the site including daily maintenance checks, and addressing any issues as efficiently as possible.*
- vii. Maintain computerised record of all regular checks undertaken.*
- viii. Responsible for maintaining heating and lighting systems throughout the premises using the web based BMS; arrange to remedy any problems and to participate in cost saving projects.*

- ix. *Attend Divisional Leaders meetings and weekly site review with the Principal and Business Manager, as requested.*
- x. *Regularly visually inspect outside areas for defects and potential hazards, including drains, condition of boundaries, building exteriors and trees.*
- xi. *Organise a portering and furniture moving service to ensure supplies are in place.*
- xii. *Ensure the efficient transfer goods and materials delivered to the Academy to appropriate location; assist with assembly of goods received where necessary and report any defects.*
- xiii. *Ensure high standards of cleaning are maintained, ensuring the cleaning staff are efficiently deployed.*
- xiv. *Manage refuse and recycling procedures.*
- xv. *Monitor supplies of cleaning materials, personal hygiene products, drinking water and sundry items.*

Security of the Site:

- i. *Ensure the buildings are locked and unlocked at appropriate times (including daily opening and closing); setting and disarming of alarm systems.*
- ii. *As a primary key holder, be prepared to attend out of normal working hours as and when required.*
- iii. *Ensure internal security procedures are adhered to; reporting any issues to the Principal/Business Manager as appropriate.*

Health and Safety:

- i. *Participate in the continuing development of robust, transparent health and safety systems and procedures.*
- ii. *Assist the Business Manager in ensuring the Academy complies with all current legislation in relation to site safety and facilities management; including the maintenance of appropriate records using the web based Handsam system.*
- iii. *Ensure that the site is kept clean and tidy in order to minimise risks to the health and safety.*
- iv. *Undertake and document risk assessments of the Academy and other risk assessments / health and safety checks as directed by the Business Manager.*

- v. *Ensure effective lettings procedures are in place, ensuring clients are briefed on fire safety and evacuation, the premises are cleaned as required and the site is secure. Some evening and weekend cover will be required in connection with Academy events and lettings.*
 - vi. *Support health and safety training initiatives and deliver components, where appropriate.*
 - vii. *Commit to the growth and maintenance of a positive risk management culture within the Academy; providing training for staff, as appropriate.*
 - viii. *Actively participate in the Health and Safety Committee.*
56. We were provided with a copy of an offer letter dated 20 July 2017 from the then Director of HR at AET to Mr Flint in which it records that Mr Flint's place of work would be within the Felixstowe cluster and that he would be required to work across the cluster, although he would be primarily based at Felixstowe Academy (the School).

Background

57. As indicated above, the School and Langer transferred to the Respondent on 1 September 2019. We were provided with a detailed witness statement from Dr Coulson about the Respondent's track record in turning around schools which were inadequate. Much of that is not directly relevant to this claim, but it provided the Tribunal with a helpful background as to how the School and Langer transferred to the Respondent. By way of summary, both schools had previously been part of AET however they had a history of being assessed as Inadequate by Ofsted. We were referred to the most recent Ofsted reports from 2017 and 2018 which assessed both schools as inadequate. The decision was made by DfE to require both schools to transfer out of AET and to another trust. Academy trusts were invited to take on the schools and it was the Respondent which was selected to do so. We note that there was considerable political pressure to make improvements at the schools.
58. In May 2019, prior to the transfer to the Respondent, the Headteacher at Langer left and was replaced by Martha Hughes.
59. Prior to the transfer there was information and consultation with the affected employees. A letter dated 6 June 2019 was sent to the staff informing them of the proposed transfer. Under the heading of "Legal, economic and social implications (which may also include measures)" paragraph 3.4 of that letter provided:
- "Admin Support: Post transfer a review of admin support at Felixstowe Academy will be required. The trust supports a model of centralised services, ensuring schools in our trust can benefit from economies of scale. A review can only be undertaken once the Trust's systems and processes have been implemented. Any proposed changes would follow due consultation with affected staff and unions, in relation to economic, technical*

and organisation reasons entailing changes in the workforce.” [bundle page 81]

60. We heard evidence from Dr Coulson that following his visits to the School and Langer, in his view both sites did not appear to have been maintained effectively with significant underfunding and work required. Dr Coulson said that the School had a new building which had issues and there were older buildings which were in a poor state of repair and which posed a risk to health and safety and required immediate attention. There was no suggestion that the state of the premises of either school was the fault of either Mr Flint or Mrs Flint.
61. We also heard evidence from Dr Coulson on the centralised services model of the Respondent whereby services are provided by the centre of the Trust and best practice and resources are shared, and use is made of economies of scale. This sharing of resources can include sharing of staff who have worked across the Respondent at other schools or on other projects.
62. The Respondent appointed Wayne Lloyd to the School as Executive Headteacher with a brief to support rapid improvement at the School from 1 September 2019. Mr Lloyd did not appear as a witness in this hearing however we understand that he worked previously for the Respondent at another school.
63. Dr Coulson’s evidence was that the Headteacher at the School was not sympathetic to the improvements the Trust was trying to make at the School and he left on mutual terms at the beginning of October 2019. The Headteacher was replaced by Emma Wilson-Downes who was appointed Head of School on a temporary basis late in October 2019, and on a permanent basis from January 2020.
64. The Respondent also asked Liz Clements, Premises Manager at Thomas Gainsborough School (“TGS”), to assist at the School and at Langer with respect to premises management. We understand that Ms Clements had been asked on several occasions to assist with other schools within the Respondent organisation. The involvement of Ms Clements at the School is the background to part of the claims which have been brought. It was the evidence of Dr Coulson that Ms Clements was there to provide extra capacity and support the projects to improve premises at the School and at Langer. This sharing of staff was common within the Respondent, and we understand that Ms Clements remained the Premises Manager at TGS during this time. There are disputes of fact as to what Ms Clements’ role was at the School and at Langer and this will be addressed later in this judgment.
65. Ms Clements started to come into the School from the autumn term and it was Mr Flint and Mrs Flint’s view that she was organising building work which was under their remit. This work comprised three projects – (i) replacement of a flue in the boiler room; (ii) repair work to the Maidstone Sports Hall, and (iii) work to create a new Students Services area. We heard evidence on the building work from the witnesses in particular Mr Flint, Mrs Flint, and Ms Clements. It would appear that no point was there any

meeting between the Respondent and Mr Flint or Mrs Flint to explain the role of Ms Clements and what support she would be providing.

66. We have reviewed the job descriptions of both Mr Flint and Mrs Flint, and we find that these were projects which they would be expected to be involved in, or to lead on. We note that the Respondent's witnesses have sought to distinguish these projects in some way by saying that they were financed by the Respondent as Trust projects, however the issue remains that the contents of the job descriptions contain no such delineation between School projects and Trust projects, although we recognise that the job descriptions were not prepared by the Respondent.
67. We heard evidence that like other staff, Mr Flint and Mrs Flint were told to avoid going into the Sports Hall as it was dangerous as building work was going on. We therefore asked Ms Clements what involvement either of Mr Flint and Mrs Flint had in these projects. The response from Ms Clements was very limited and it appeared that they were told where they could view the plans for the building work being done. Ms Clements also told us that she took them on walkarounds to discuss the building work and that Mrs Wilson-Downes was also present on some of these walks. Mrs Flint strenuously denied this and said that she had not been on these walks, although she later accepted that she may have been on one walk with Ms Clements although it appeared that this may have been when Ms Clements first arrived and was given a walkaround the site. Mrs Wilson-Downes candidly told us that she could not remember going on these walks with Ms Clements and Mrs Flint.
68. It appeared to us given the denials from Mrs Flint and the lack of corroboration from Mrs Wilson-Downes that this did not happen as Ms Clements has suggested. We find it far more likely that Mrs Flint was not invited by Ms Clements and that it was Mr Flint who undertook these walks with her, but on a very limited number of times.
69. We have gone on to consider whether either Mr Flint or Mrs Flint were involved in these projects, and we find, having heard evidence on the matter, and the lack of any evidence demonstrating their involvement, that neither of them were included in these projects. At the very most Mrs Wilson-Downes spoke to Mrs Flint to in early 2020 to say that Ms Clements would be overseeing this work. Mr Flint was then given some limited information from Ms Clements on what work was being undertaken and he and Mrs Flint were pointed in the direction of the building plans. Mrs Flint had some very limited involvement in the processing of invoices in connection with the building work which we will come to later. Mr Flint had some minor involvement in dealing with contractors however there is no evidence that he was actively involved in them. It is our finding that both were substantially excluded from these projects by the Respondent which had brought in Ms Clements to lead on them.
70. We note the evidence of Dr Coulson and other witnesses that Ms Clements was simply there to provide extra support at the School. The term "extra support" could be interpreted in several ways – either to assist Mr Flint and Mrs Flint in specific tasks which they would lead on, or to lead on projects leaving them free to concentrate on other duties. We find that it was the

latter situation which existed here. It was clear to us that Ms Clements was brought in to take over leadership on those projects as the Respondent had faith in her abilities from previous experience that she would deliver what was required of her.

71. However, the way the Respondent went about this was very poor as there appeared to be no communication with them about Ms Clements' role in these projects and what Mr Flint and Mrs Flint would be expected to contribute. We were provided with no evidence of meetings with them to discuss their roles or how the projects would be run. It was clear to the Tribunal that both were in effect bypassed or excluded and that Ms Clements was brought in at a Trust level to supplant rather than to supplement their roles in this work. We find support for our finding in the grievance investigation report from Mark Vince, as well as the grievance outcome and the grievance appeal outcomes which we will come to later.

Whistleblowing Policy and Procedure

72. We have been provided with a copy of the Respondent's Whistleblowing Policy and Procedure. This is a comprehensive document, and it makes it clear how staff can raise their concerns. Paragraph 5.1 sets out to whom a disclosure should be made:

“As a general rule, a worker wishing to make a disclosure should raise the concerns in the first instance with the Headteacher or the Chair of Governors. This is appropriate where the concern is about the conduct or practice of colleagues: a concern that the school's policies and procedures are not being properly or fairly applied. This enables the issue to be addressed at school level.

Where a whistleblower believes that s/he cannot approach the Headteacher or the Chair of Governors, the concern should be raised with the Trust's Director of HR. This will be appropriate if the disclosure concerns the conduct of the Headteacher or the Governing Body, or if a disclosure has already been made to them and no discernible or timely action has been taken to address the situation.

In exceptional circumstances a whistleblower may approach the Secretary of State, who will refer it back to the Education Funding Agency. This will normally only be appropriate if s/he reasonably believes that the Trust or sponsor is involved in the malpractice or would for some other reason be unwilling to investigate it.”

73. In addition, paragraph 5.2 provides how that disclosure may be made:

“A disclosure may be made verbally (e.g. by telephone) or in writing. The whistleblower should normally identify him/herself and should make it clear that s/he is making a disclosure within the terms of this procedure.

A whistleblower raising a concern verbally will normally be expected to support and substantiate those concerns in writing, unless there are special circumstances indicating that this is inappropriate. If the whistleblower feels unable to commit their concerns to writing s/he will normally be asked to

meet with an appropriate senior officer, who will compile a written note of the disclosure.”

74. The policy also provides at paragraph 7.1 that staff who raise concerns will be protected:

“The decision to report malpractice can be a difficult one for staff, who may possibly fear subsequent victimisation or harassment. No action will be taken against staff who raise a concern in the proper way, and which they reasonably believe to be in the public interest, even if that concern is subsequently discovered to be unfounded after investigation.”

75. Moreover at paragraph 7.2 it reiterates how staff will be protected, however it makes clear that anonymity cannot be guaranteed:

“To harass, bully, or otherwise subject a person to detriment because they have made a whistleblowing disclosure, or assisted in the investigation of one (for example as a witness), will be considered a disciplinary offence.

Where whistleblowers do not wish to be identified to others in the course of an investigation that wish will be respected in so far as it is reasonably practicable. However anonymity cannot be guaranteed. The process of investigation may reveal the identity of whistleblowers and, especially in serious cases, whistleblowers may be required to give evidence, either by the school or the police. Any person subject to disciplinary action or prosecution has access to all the evidence.

The school will take all reasonable steps to minimise any difficulties whistleblowers may experience as a result of raising a concern. The school will consider sympathetically requests from whistleblowers for special leave, counselling or other support.”

First alleged oral disclosure – 4 November 2019

76. The Respondent has a Finance Policy and Procedures which must be followed when arranging for work to be undertaken at one of the schools within the Respondent. We have read the policy and procedures, and it is a long and prescriptive 50 page document which sets out in very clear language the process by which work may be purchased. It is unnecessary for us to recite the entire contents of the policy, and we note that at page 15 of the policy it provides:

6.17 At least three written quotations should be obtained for all orders between £2,001 and £20,000 to identify the best source of the goods/services. Written details of quotations obtained should be prepared and retained by budget holders for audit purposes.

Please also refer to Appendix A ‘Record of Financial Responsibility’.

6.18 All goods / services ordered with a contract value over £20,000, or for a series of contracts which in total exceed £20,000 must be subject to formal tendering procedures (further guidance below).

77. This is replicated at page 45 of the policy. Under delegated authority it states both headteacher and head of finance – it is not clear if this is intended to be in the alternative or in addition to. Under the heading of supported documents, it refers to three written quotations or a framework agreement. The policy goes on to set out the tender process to be followed.
78. Mrs Flint says that on 4 November 2019 she made an oral disclosure to Debbie Wilson (Director of Operations). There is a dispute of fact between Mrs Flint and Mrs Wilson about what was said. Mrs Flint says that she spoke to Mrs Wilson regarding a number of works projects that Ms Clements was organising at the School and Langer and she mentioned the fact that it was being awarded to one builder by Ms Clements without following the Respondent's procurement processes and as mandated by the Education and Skills Funding Agency ("ESFA"). Mrs Flint's evidence was that "*In conversations we had, Debbie Wilson seemed concerned as well and said that she didn't know what was going on either, although she was reluctant to talk to Tim Coulson, CEO, about this.*"
79. Mrs Wilson's account is different. Mrs Wilson states that she did not have regular meetings with Mrs Flint but they had a good working relationship and if they visited where the other worked they would tend to catch up. Mrs Wilson said that she remembers speaking to Mrs Flint as they bumped into each other at the Trust's offices and Mrs Flint asked to speak to her. Mrs Wilson says that she remembers it being a very informal conversation and Mrs Flint told her that she and Mr Flint had been used to AET and since they joined the Respondent the pace of change was fast with lots going on and they did not know where they stood, and further that they saw Ms Clements being involved in work at the School and were not sure of their roles within the Trust.
80. Mrs Wilson says she explained why there was so much to do and explained why Ms Clements was assisting, and she says told Mrs Flint that Mrs Wilson-Downes was new to the headteacher role at the school and that it might be helpful to share her job description with her and to have a conversation with her about what Mrs Wilson-Downes could ask Mrs Flint to do.
81. We were referred to an email from Mrs Flint to Mrs Wilson dated 1 November 2019, whereby Mrs Flint asked to speak to Mrs Wilson as she would be at the Respondent's offices at Haverhill on the Monday for software training. Mrs Wilson replied "*Yes that's fine. I am in the office until about 1:30.*" It does not therefore appear to be accurate that Mrs Wilson bumped into Mrs Flint as she says, as it looks as though this was a prearranged discussion initiated by Mrs Flint.
82. We were also referred to a subsequent email from Mrs Flint to Mrs Wilson dated 6 November 2019, in which Mrs Flint said "*Hi Debbie, just to let you know I had a positive meeting with Emma yesterday and hopefully things will settle and we can move forward. Many thanks for listening on Monday*" to which Mrs Wilson replied, "*Good and any time.*"

83. Nowhere within that email chain does Mrs Flint make any reference to having raised financial concerns. The email of 6 November 2019 suggests that whatever problem Ms Flint raised with Mrs Wilson-Downes it had been resolved during that conversation.
84. Mrs Wilson gave evidence that Mrs Flint's concerns were about the change in pace of the new Trust, and she also gave evidence that as Director of Operations, and with many years' experience of procuring and managing works, and complying with legal obligations and guidance, she understands the process and requirements for procuring works. Mrs Wilson said that she was confident that if Mrs Flint was raising concerns about processes not being followed then she would have picked up on this and escalated it accordingly, or at the very least referred Mrs Flint to Emily Vigor who was Head of Procurement at the Trust.
85. Mrs Wilson also gave evidence that she is familiar with and aware of the importance of whistleblowing and the Respondent's policy on whistleblowing, and she was confident that if a member of staff had raised a concern or made a disclosure, that she would have recognised that and dealt with it appropriately.
86. We find that Mrs Flint was aware of how to make a whistleblowing disclosure. It was clear that there had been some training on this since the Respondent took over the School, and whereas Mrs Flint may not have attended both sessions, we find that she had a sufficient understanding of the process so that she would have known how to make a disclosure. We also find it is likely that Mrs Flint would have known about whistleblowing from her employment under the previous Trust, AET, and by virtue of Business Manager at the School where she would have a very good awareness of whistleblowing and how to make a disclosure.
87. In addition, Mrs Flint has demonstrated a thorough awareness of the Respondent's procurement procedures and policies, and it is clear that she follows procedures closely and takes compliance with process very seriously. We therefore find that had Mrs Flint intended to make a disclosure at that time then she would have been explicit about it.
88. We note that the discussion on 4 November 2019 had been requested by Mrs Flint and was not a case of bumping into each other as Mrs Wilson has suggested. It was clear that Mrs Flint wanted to tell Mrs Wilson something.
89. The burden is upon Mrs Flint to persuade us that she said the made the comments she now alleges, and if we are satisfied that she did, then we will need to consider whether it amounted to a protected disclosure.
90. However, we are not satisfied to the level that we need to be (on the balance of probabilities) that Mrs Flint made all the comments she now relies upon, specifically we do not find that she made comments about her concerns about finance or procurement.
91. The email from Mrs Flint of 6 November 2019 about her discussions with Mrs Wilson-Downes would appear to be at odds with having raised concerns about non-compliance with legal obligations or procurement rules by Ms Clements. The email appears to support Mrs Wilson's version of

events that Mrs Flint was focussed on not being involved in work and not knowing where she fitted in.

92. We have also taken into consideration what was discussed at the meeting the day before on 5 November 2019 between Mrs Flint and Mrs Wilson-Downes. We note that during the grievance hearing on 16 October 2020 Mrs Flint informed the panel that she handed over her job description and appraisal to Mrs Wilson-Downes as it was *“a subtle way of saying these are my responsibilities.”*
93. It appears to us that Mrs Flint was simply seeking to tell Mrs Wilson-Downes in a very subtle way that she felt excluded, and that Ms Clements was encroaching on her role. The manner adopted by Mrs Flint was so subtle that Mrs Wilson-Downes later explained that she thought it was *“random”* for Mrs Flint to have handed over those documents as she did.
94. We therefore do not find that Mrs Flint explicitly made the comments to Mrs Wilson about finance that she now alleges as it is at odds with her subsequent email on 6 November 2019, and it is not supported by what we find was discussed on 5 November 2019. The most we are able to find is that Mrs Flint told Mrs Wilson on 4 November 2019 that she was feeling excluded.

SLT Structure chart

95. During November 2019 a new structure chart was produced. Mrs Flint had previously appeared on the SLT structure charts at the School under the previous Trust. After the School joined the Respondent Ms Baty prepared this new chart but it only included the members of the SLT who were teachers at the School but it did not include Mrs Flint. We have heard evidence from Ms Baty that she had prepared this chart and that it only included educationalists as that was how things were done at the previous school she had worked at (TGS). We have accepted Ms Baty's evidence in this regard as it appeared entirely plausible. We of course note that no one at the School thought to discuss this with Mrs Flint at the time.

Second alleged oral disclosure – 22 January 2020

96. Mrs Flint alleges that on 22 January 2020 she made an oral disclosure to Nicola Fairchild (then Finance Compliance Officer) that tendering processes were not being followed by Ms Clements in line with EFSA policies and procedures. Mrs Flint said that she made this disclosure because nothing had changed since her first alleged disclosure and the same builder was carrying out several other projects at the School without the procurement process being followed, and that no other contractors were coming in to quote for work.
97. Mrs Flint says that Ms Fairchild told her to raise her concerns with Mrs Wilson-Downes, however she says that she could not do so this was against the very person involved in approving the works managed by Ms Clements, and she says that she did not report it to the Chair of Governors as she was a personal friend of Mrs Wilson-Downes. We should note that we have

found no evidence that Mrs Wilson-Downes was a personal friend of the Chair of Governors.

98. Mrs Flint says that she told Ms Fairchild that she was aware that only one quote had been obtained for work to the Student Services area (approximately £25,000) and for the Maidstone Sports Hall (approximately £80,000) and that it was the same contractor coming in each time and no others were coming in to quote, and no specification for the works had been compiled. Mrs Flint says that whenever she asked Ms Clements for the specification, she was told that there was not one and that they were in Ms Clements' head.
99. Ms Fairchild's recollection is somewhat different. Ms Fairchild recalled being at the School on that date working with Mrs Flint on opening balances and budgets and she recalled Mrs Flint making a passing comment that she was not involved in some works going on at the School whereas with the previous trust she would have been involved in getting quotes from suppliers, that she felt out of the loop and that she had not used the current supplier before, and she had not seen all the quotes for the two premises works.
100. Ms Fairchild was clear that Mrs Flint did not tell her nor did she suggest that tendering processes were not being followed, and that the most she gained from the conversation was that Mrs Flint felt out of the loop. Ms Fairchild says she recalled telling Mrs Flint that it was a Trust led project and that it was not usual for a school to be involved in the supplier quote aspect of the works, however she denies saying that she would pass on anything to senior managers.
101. Ms Fairchild gave evidence that as her work was very process driven she was required to ensure that financial policy and procedure is followed and that she was familiar with the whistleblowing process, therefore she is confident that had Mrs Flint raised this concerns about processes not being followed then she would have acted accordingly and either referred Mrs Flint to the Whistleblowing Policy or urged her to speak to her line manager or she would have acted in accordance with the policy herself.
102. Again, there is a dispute of fact over what was said which the Tribunal must resolve. We have two different narratives with some overlap over what was said. We are not satisfied to the level that we need to be (the balance of probabilities) that Mrs Flint made explicit reference to policies or procedures or regulations not being followed. We are able to find that Mrs Flint expressed frustration at being kept out of the loop, and we are able to find that she said she had not seen any quotes from the supplier, as this was clear from Ms Fairchild's evidence, however we can go no further than that as there is no evidence from which we can infer that anything further was said by Mrs Flint.
103. We note that Ms Fairchild is no longer employed by the Respondent as she works for another Trust in the same geographic area, therefore there is little or no incentive for Ms Fairchild to seek to support the Respondent in

her evidence. We prefer the evidence of Ms Fairchild in connection with this specific allegation.

Third alleged oral disclosure – 3 February 2020

104. Mr Flint alleges that on 3 February 2020 he made an oral disclosure to his wife, Mrs Flint, that Ms Clements had passed on quotation details to her preferred contractor. The events giving rise to the alleged disclosure allegedly occurred on 24 January 2020.

105. We understand that the allegation relates to a boiler flue replacement and Mr Flint had obtained a quote of £13,400 from one supplier which he passed to Ms Clements following which she telephoned Mr Flint to say that she had then received a quote of £13,000 from her builder. This individual was not a witness in these proceedings, and it is not necessary for them to be named. We will refer to them as Builder A.

106. Mr Flint said that he then obtained a third quote for £5,250 which he passed to Ms Clements who told him that she would speak to Builder A and she later reported back that Builder A had said that there was no way that the work could be done for £5,250, therefore she would award the contract to Builder A. Mr Flint says that he told Ms Clements that the third quote had come from someone who was on the flue manufacturer's approved installer list therefore they should go with that quote.

107. Mr Flint says that he passed this information to Mrs Flint who agrees that he did. There is no independent evidence that Mr Flint did so. Mrs Flint then says that she passed this information on to Ms Fairchild on 7 February 2020 (fourth alleged disclosure below). Mr Flint says he also passed this information to Mr Brown on 13 February 2020 (fifth alleged disclosure below). Mrs Flint also gave evidence that she had relayed this information to Mrs Wilson by email but there was no such email in the hearing bundle. Mrs Wilson denied that there was such an email but that she had searched for it and had not been able to locate it.

108. It is for the Tribunal to decide whether Mr Flint passed this information as he alleges. This is of course an unusual situation as it concerns an alleged exchange between a husband and wife employed by the same Respondent whom both have brought litigation against. There are no contemporaneous documents which would corroborate this exchange. We have no independent evidence that Mr Flint passed this information to Mrs Flint on 3 February 2020. As will be seen below, with reference to the alleged fourth and fifth disclosures, we have not found that this information was passed to Ms Fairchild or to Mr Brown.

109. We cannot find that Mr Flint passed Mrs Flint the information he now alleges that he did on 5 February 2020 simply because we have no independent evidence to support that he did. We are not satisfied to the level that we need to be (on the balance of probabilities) that this information was passed from Mr Flint to Mrs Flint as alleged.

Fourth alleged oral disclosure – 7 February 2020

110. Mrs Flint alleges that on 7 February 2020 she made an oral disclosure to Ms Fairchild in respect of tendering processes not being followed in line with EFSA policies and procedures. There is scant reference to this allegation in Mrs Flint's witness statement save for a reference in the fourth paragraph that she raised her concerns with Ms Fairchild verbally on 22 January and 7 February. No background is provided for the latter alleged disclosure. We have reviewed Mrs Flint's ET1 claim form and again there is little reference to this alleged disclosure there, although Mrs Flint says that Ms Fairchild told her that she had passed on her concerns to senior managers of the Trust.
111. We have found Mrs Flint's evidence in this regard to be slightly ambiguous. Under cross examination Mrs Flint appeared to concede that she had not explicitly mentioned the tendering process, her evidence was that she did but *"in a different way. But basically that was what I was saying."* Mrs Flint also went on to concede that she was not certain of the facts at the time.
112. Ms Fairchild's evidence that this was again Mrs Flint informing her that she felt out of the loop and not being involved, and that had Mrs Flint raised concerns about tendering or financial procedures being followed then she would have recognised it, however she denies that Mrs Flint did so.
113. In the absence of any corroborating evidence at all, we cannot find that Mrs Flint said anything about tendering in her conversation with Ms Fairchild, the most we are able to find is that she repeated earlier comments about feeling excluded and out of the loop.

Fifth alleged oral disclosure – 13 February 2020

114. Mr Flint alleges that on 13 February 2020 he made an oral disclosure to Chris Brown (Operations Manager). Mr Flint's evidence was that he met with Mr Brown on 13 February and expressed concern about Ms Clements' and her role at the School and at Langer, and that she was bringing in her builder to do a lot of work, and not following financial procedures in terms of number of quotes obtained and approval levels sought. Mr Flint says he told Mr Brown he had not seen any of Ms Clements' preferred builder's quotes for work (which we understand is Builder A), or other companies coming in to quote for these projects.
115. Mr Flint says that Mr Brown asked if it was Builder A (asking specifically by name) and when Mr Flint confirmed this, Mr Brown made notes of his comments and said he would raise them with Mrs Wilson, as there were other concerns regarding the amount of work Builder A did at TGS.
116. Mr Brown provides a different version of events and whilst he agrees that he met Mr Flint on that date and walked around the School and also Langer, he denies that Mr Flint said anything about Ms Clements not following financial procedures. Mr Brown says that Mr Flint told him that he was not being kept informed about site works being carried out and not

being part of the process of selecting contractors for the work at the School and he also said that he might not be included in interviews for new site staff. Mr Brown denies saying that he would raise the issues with Ms Fairchild (Finance Compliance Officer) as there would have been no reason to do so.

117. We have the benefit of an email which Mr Brown sent to Mrs Wilson that evening in which he passed on what he says that Mr Flint had told him. The email notes that Mr Brown had also spoken to the caretaker at the School who said he was not happy working there since “Liz took over” which we understand is a reference to Ms Clements. The email records Mr Flint as saying that he was also unhappy as Ms Clements had claimed to be the new Operations Manager and that “*she is his new boss!*”.

118. We also note the following was included in the email:

“Graham is being kept in the dark of any works being carried out and any works he tries to have quoted for or done is rebuffed by Liz and her contractors brought in. The main concern Graham has is even though he is the facilities manager at both schools he is not being consulted on any of the works that are being carried out at either site and at the moment it is not looking like he is going to be involved with the interviews of the new site staff either. I personally cannot see how he is not being involved in the interview process as he would be managing them, also how he is not being included in the planning and organising of contractors carrying out works at his sites.”

119. Mr Brown said that when he met the administrative staff at Langer one of them said “*so is Liz your boss as well as apparently, she is head of operations.*” Mr Brown went on to state “*Obviously, this is just what I have picked up today and I have limited knowledge of the situation at Felixstowe however this does seem to be a recurring theme I hear from sites that have had Liz come in.*”

120. We also had the benefit of a copy of Mr Brown’s notebook from that day. Whilst we could not easily read the handwriting, we were provided with typed versions of his notes which reads:

- *TGS not using Pargo so same being put forward at Felixstowe*
- *Liz Clements – She is Hub Operations Manager of Ipswich area?*
- *Graham not being included in any interviews for new site staff and being left in the dark on contractors on site also works being done*
- *06:30 – 22:00*
- *Langer 4hrs a day Caretaker*
- *2 x Full time caretakers + 1 Facilities Manager*
- *Caretaking staff leaving + looking to leave*
- *Quotes for buildings works not seen by him*
- *Evac Chairs currently none however 6 sets of stairs*

121. We therefore find that Mr Flint told Mr Brown that he was not being involved and that he had not seen quotes for building work being carried out. Given that Mr Brown appears to have made contemporaneous notes of the discussions we find that these are a reliable record of what was discussed. Moreover, given that Mr Brown felt able to pass on concerns about Ms Clements raised by Mr Flint and staff at Langer to Mrs Wilson, we find that had Mr Flint explicitly told him that she was not following financial procedures that Mr Brown would have both recorded this in his notebook and included this in his email to Mrs Wilson. Mr Brown did not do so, he denies that the comment was made, and we accept his evidence in that regard as we had the benefit of the contemporaneous material and no reason to disbelieve that written record.
122. We also note the contents of a subsequent email from Mr Flint to Mr Brown of 26 February 2020, copied to Mrs Wilson and Mrs Flint. In the email Mr Flint expressed concern about being excluded by Ms Clements. The email reads:
- “I would like to clarify my role/future in Unity Schools Partnership. I am continually not being included in the work that is happening at both Felixstowe and Langer Academies I am getting my orders from Liz Clements who has told Langer Academy she is the Operation Manager and my boss. I am being made to feel I am surplus to requirement as both heads are going straight to Liz rather than talking to me. Liz is also doing the interviews at both schools for the new caretakers posts. I have now removed myself from the interview panel as I feel so strongly about this. As Liz Clements is now running both academies, what is my role/future?”*
123. The email replicates much of what Mr Brown recorded Mr Flint as having said on 13 February. We note that there is no reference in that email to any alleged failure to follow financial procedures, nor any reference that he had previously raised such concerns. This lends support to our finding that Mr Flint did not make the comment about failure to follow financial procedures which he now alleges.
124. As regards the email of 26 February 2020 Mr Brown’s evidence was that this email was copied to Mrs Wilson whom he spoke to about it and he asked her what she would like him to do. Mr Brown said that Mrs Wilson informed him that she would follow up on Mr Flint’s concerns.
125. Mr Brown has denied informing Mr Flint that Ms Clements used Builder A rather than going through a procurement process. Mr Brown’s evidence is that he said that Builder A was used throughout the Trust, however he denied mentioning procurement processes on the basis that this was not something he would have been aware of. We accept that evidence.
126. We note that Mr Flint chose not to attend the caretaker interview because he says that he felt that Ms Clements had come on board and was taking over and that he feared being relegated to the role of caretaker rather than Premises Manager. We find that in this instance it was Mr Flint who chose to remove himself rather than being excluded by the Respondent.

127. We note that Mrs Wilson sent a draft response for Mr Flint to Mrs Bull for her to review. Within her draft response Mrs Wilson said:

“Sorry about not getting back to you before now. It is a shame that you felt it necessary to remove yourself from the caretaking interviews at Langer. In order to move forward I am writing to clarify the situation. Chris is the Head of Operations of the Trust and as such is responsible for Health & Safety across the Trust, this includes compliance, condition issues and fire safety.

Liz Clements acts as the Operations Manager for Thomas Gainsborough, Felixstowe Academy and Langer. In this role her responsibilities include overseeing any specific site issues at those schools, any premises related matters, building projects and premises staff. She acts as first point of contact for the Headteachers in an advisory capacity.

I would suggest that you and Liz meet on a regular basis so you can both discuss any site/staffing issues, any planned maintenance and projects.”

128. However, the proposed response from Mrs Bull was quite different and it read:

“I am sorry about not getting back to you sooner. It is a shame that you felt it necessary to remove yourself from the caretaking interviews at Langer and I would strongly encourage to you review your decision as we would very much like you to be part of the process.

I note the concerns that you have raised and in order for me to provide clarity over the situation it would be helpful for you to provide me with a copy of your most recent job description which accurately reflects your roles and responsibilities. I would then like to meet with you to ensure you are clear on who is doing what within the school and trust.

If you can please reply to me as soon as possible, we can then look at dates to arrange a meeting.”

129. The Tribunal found the contents of both emails to be surprising. It appeared to us from having considered those emails, together with other documents in the bundle and the witness evidence, that there was some confusion as to not only what Ms Clements’ role was intended to be, but also what Mr Flint’s role was. We can appreciate that perhaps job descriptions were not held centrally by the Respondent and were held by individual schools with the Trust, however the fact that it had been requested in this way (coupled with the removal of the reference to Ms Clements’ role) did suggest to us that perhaps the Respondent had not properly considered what role Ms Clements was intended to perform at the school, nor how this would fit in with roles of other staff. We note that this email was not subsequently issued by Mrs Wilson and that it was recorded in the subsequent grievance outcome that the trail had gone cold with Mrs Wilson who was described as a bottleneck in the grievance investigation report.

130. Mrs Flint says in her witness statement that *“On 26 February 2020, at a meeting with David Chambers (Respondent’s HR Business Partner) and Martha Hughes (Headteacher of Langer Primary School), following the*

interview for a new caretaker at Langer primary School, I raised concerns regarding how Graham Flint (Claimant 1) was feeling and that I was concerned about his health. I informed David Chambers that Liz Clements was taking away his role by organising work that should have been his responsibility and excluding him from all discussions. I also raised concerns with how I was feeling as Liz Clements had been taking actions that should have been my responsibility.”

131. This appears to be corroborated with the notes which Mr Chambers made below which appear in the hearing bundle **[page 185]**:

“Caretaker interviews – 1 good candidate – offer job. Issues between GF, and LC – SF comments. Need clarity on situation and roles – including LC’s role – sit down meeting with everybody to discuss and clarify? – SF mentioned GF feeling constructive dismissal? Comments made for my purposes only? See notes for full info SF’s own feelings on her situation? Reference to job description given to EWD – everything bar teaching and learning – responsibility – member of SLT”

132. We were not referred to any documents setting out what Mr Chambers did with this information, accordingly we find that he also took no action in response to concerns raised by Mrs Flint that she and Mr Flint were feeling excluded.

First alleged written disclosure - 20 February 2020

133. Mrs Flint referred the Tribunal to an email she sent on 20 February 2020 to Ms Fairchild where she says she disclosed that tendering processes were not being followed in line with EFSA policies and procedures. The circumstances of this email are as follows. On 17 February 2020 at 8:19pm **[bundle pages 177, 827]** Ms Clements sent an email to Mrs Wilson-Downes and the Claimant, copied to Mr Lloyd, in which she attached an invoice for work on the Student Services area and she asked for it to be paid as quickly as possible. On 19 February 2020 at 1:51pm **[bundle pages 177, 826]** Mrs Wilson-Downes then emailed Mrs Flint and the then finance assistant to ask for it to be paid ASAP and to confirm when it had been done.

134. Mrs Flint then forwarded this to Ms Fairchild and Trish Townsend (Head of Finance) on 20 February 2020 at 4:04pm in which she said:

“Hi Nicola

Please see email trail below. The attached invoice is for work carried out over recent weeks that has been arranged by Liz Clements to be paid from our DFC. I have not seen the quote, despite asking for it, and the work has not been finished to date. The same company is carrying out work on our Maidstone Sports Hall, which I am told is being funded centrally and may account for the request for payment now in terms of their cash flow.

Please can you advise whether we should process this invoice at our end as usual. Please also note this is higher than our budgeted DFC, so the shortfall will have to come from our other premises costs which is worrying.

I am also concerned with auditors coming in next month that I will be unable to produce the required quotes to satisfy that we are following ESFA financial procedures.”

135. Mrs Flint’s evidence in her witness statement is that *“Regarding my e-mail of 20 February 2020, I was making a formal protected disclosure expressing my concern as auditors were coming in next month and that I would be unable to produce the required quotes to satisfy that we are following ESFA financial procedures in relation to the works on the Student Services area to be paid by Devolved Formula Capital funding. Trish Townsend confirmed she had shared this information with Debbie Wilson and Sarah Garner via email on 20 February 2020, saying that it had been discussed earlier that week.”*
136. Mrs Flint added *“Although I understood that by whistleblowing this would have an impact on my working relationship with Wayne Lloyd, Emma Wilson-Downes and Liz Clements, I felt morally it was the right thing to do as this involved public money.”* [8]
137. We will address later in this judgment whether this was a protected disclosure. We understand that the reference to DFC refers to capital funding from the Department for Education.
138. For some reason the email chain at hearing bundle pages 176-177 is incorrect. The email at the bottom of bundle page 176 is not the start of the remainder of the email at the top of bundle page 177. It appears that the complete and accurate email chain is at bundle pages 824-828, although that appears to have been pasted in as an appendix for Mrs Flint’s subsequent grievance. In any event we can piece together the chronology despite this. We should add that we do not draw a negative inference on this. Whilst it is frustrating that an important email alleged to be part of a protected disclosure has been included in part and joined wrongly to another email, there is nothing to suggest that this was anything other than a simple error when producing the bundle.
139. What we can establish from the email chain is that Mrs Townsend then replied to say that she had copied in Mrs Wilson and Mrs Garner as they had been talking about this matter on the Monday so one of them may know more **[bundle page 825]**. Mrs Garner then replied and made reference to the previous trust and she added *“In terms of the works that the Trust is paying for Debbie has confirmed with Wayne and Liz but is limited to the Sports Centre works.”*
140. Nothing further appears to have happened with the email until 25 February 2020 at 6:03pm **[bundle page 824]** when Ms Fairchild sent an email to Mrs Garner, Mrs Townsend and Finance (copied to herself) in which she asked if the matter had been progressed and confirmed that it was an invoice from Builder A for £24,987 for the refurbishment works at the Student Services area. Ms Fairchild asked if there would be any further invoices and she discussed funding the work. We note that Ms Fairchild stated that as the invoice was over the School’s approval level, based upon the new finance policy so it would need Trust approval before it can be paid, and she asked that they notify Mrs Flint once it was approved.

141. We can then see what appears to be a separate email trail on 25 February 2020 at 6:03pm [**bundle page 828**] where Ms Fairchild then forwards on an email from Ms Clements with the subject line “*Construction Invoice for Student Services works £24,987*” to Mrs Garner, Mrs Townsend and Mrs Flint copied to Mrs Wilson and the finance team. The email is blank but an attachment appears there which we believe to be a invoice.
142. On 25 February at 9:24pm Mrs Townsend replied by email to ask Ms Clements “*Can you confirm about the work below and provide a copy of the quotes so I can get the invoice processed at our end?*” On 26 February at 5:35am Ms Clements replied “*Yes I’ll get them scanned across to you. I did give Debbie copies of the quotes when I meet with her a few weeks ago, just so she knew what was going on.*” No-one else was copied in on that string.
143. Then at 6:34am that day [**bundle page 827**] Ms Clements emailed the quotes to Mrs Townsend and Mrs Wilson-Downes (who had not been on the original chain) and she copied in Mrs Garner. Mrs Flint was not copied in.
144. At 8:50am Mrs Townsend shared the quotes with Mrs Flint and asked her to keep them safe and that she would ask the team there to process the invoice and pay it.
145. In a separate email string that day (26 February) Ms Clements replied to the email from Mrs Townsend the day before (25 February at 9:24pm) but solely to Mrs Wilson-Downes. This was essentially the same as forwarding the email. Ms Clements said “*Just read the email from Sharon. She clearly has issues with me! I will send Trish the quotes as requested.*” Mrs Wilson-Downes replied “*Can you send me the quotes, I will speak to her!*”
146. What we can take from that exchange is that both Ms Clements and Mrs Wilson-Downes had sight of Mrs Flint’s email of 20 February 2020. We will address whether that amounted to a protected disclosure in our conclusions and analysis below. It is our finding, given the contemporaneous emails, that none of those people copied in on the email string, recognised Mrs Flint’s email of 20 February 2020 to be anything other than mundane and that they did not view it as a protected disclosure at the time.
147. Mr Flint says that from February 2020 Mrs Wilson-Downes started putting pressure on him and that he was being treated differently, such as excluding him from discussions about work at the School or not speaking to him unless it was in the presence of someone else. Mr Flint attributes this to him having raised concerns about financial procedures. We were not provided with any independent evidence that Mrs Wilson-Downes was ignoring Mr Flint as alleged.
148. Mrs Flint attended a line management meeting with Mrs Wilson-Downes on 27 February 2020. There is a difference of recollection between them about what was discussed. We find that Mrs Flint did mention that her husband Mr Flint had previously suffered with depression and that she also

reminded Mrs Wilson-Downes that she had responsibility for site and buildings at the School.

149. We also find that Mrs Wilson-Downes encouraged Mrs Flint to focus on the financial work to be undertaken. Mrs Wilson-Downes says that she did not say this in a dismissive way but was keen to ensure that Mrs Flint was not overworked, and she was concerned that the job was too big for her and that mistakes were being made in orders as well as delays processing them, and that budget holders did not know how much money they had to spend. We find support for this conclusion in a later email from Darryl Woodward (Director of Education (Primary)) which will be referenced later in this judgment where he expressed concern about the lack of data in a budget spreadsheet which clearly caused him concern.

Caretaker interview – March 2020

150. An interview was due to take place on 5 March 2020 for a caretaker at the School. This is a different recruitment to one at Langer which Mr Flint had elected not to attend.

151. It is clear from Mrs Flint's job description that she would have been expected to have taken part in this recruitment. However, the documents are clear that she was excluded by Mrs Wilson-Downes and Ms Clements. It was not clear to the Tribunal why Ms Clements was on the interview panel at all as according to the Respondent's witness evidence she was only there to provide extra support.

152. We have been referred to the contemporaneous documents. On 25 February 2020 Mrs Flint updated Mrs Wilson-Downes about the interview arrangements and asked to be on the interview panel with Ms Clements and Mr Flint. Mrs Wilson-Downes replied *"I don't think you need to be on the panel as we have Graham, Liz and a governor should also have been invited to be on the panel as well as we agreed."* Mrs Wilson-Downes then sent this email to Ms Clements and said *"Just so you know what I've said"* to which Ms Clements replied the following day *"That will make an interesting meeting this morning! Thanks for the head up."* Mrs Wilson-Downes then replied *"How about I ask her to tour the candidates? At least that way she's involved?"* Following which Ms Clements replied *"Sounds good to me!"*

153. We were then referred to a separate email string from 28 February 2020. In this string Mrs Flint asked Mrs Wilson-Downes if she would like to schedule the interviews for the following week so that someone named Susan could be involved. We understand this to be a governor. Mrs Wilson-Downes then sent this to Ms Clements with the word *"Thoughts?"* to which Ms Clements replied *"I think the sooner we can interview the better. Is there another governor that could help?"* Mrs Wilson-Downes then replied *"I can ask Rosemary"* to which Ms Clements replied *"Prince?? That would really piss Sharon off! Yes lets ask her."*

154. Just over an hour later Mrs Wilson-Downes replied:

"Rosemary is up for it ;-)"

I have asked Sharon to arrange the interview for the morning as Rosemary needs to leave by 2, but can you tell me what ones you think are good. Sharon told me I needed to go through and short list so that the rest of you also could but that doesn't look right now that I have started doing that...."

155. Mrs Flint was unaware of the above email until it was released to her on or around 7 April 2021 as part of the response to her Data Subject Access Request ("DSAR"). Several conclusions can be drawn from these two exchanges. Firstly, it appears to us that Ms Clements was playing a far more active role in the management of the schools than simply providing additional support with the premises, contrary to the evidence of the Respondent's witnesses. It appears Mrs Wilson-Downes was reliant on Ms Clements in a number of respects, including with a recruitment exercise. The Tribunal found this to be surprising as given the contents of Mrs Flint's job description we would have expected this recruitment to have fallen within her remit. Ms Clements' evidence to the Tribunal was that the governors did not want Mrs Flint on the panel and the Respondent did not think that it was appropriate for a husband and wife to interview someone. This was not explained to Mrs Flint at the time, and nor did this reason appear in any of the emails to which we were referred. If the Respondent had such a serious concern, it is surprising that no one thought to document it at the time.
156. In her evidence Mrs Wilson-Downes has suggested that Mrs Flint was involved in the interview process as she greeted the candidates and took them on a tour of the school. We find that this is hardly the same as being on the interview panel and having a role in deciding who is appointed.
157. The Tribunal also did not understand why Ms Clements was involved in this recruitment exercise at all as she was the premises manager at TGS and was brought in only, according to the Respondent, to provide additional support. Again, we have not been referred to any documents where it was explained to Mrs Flint what role Ms Clements would have. This was a recurring feature in this case, essentially a failure to be clear with Mr Flint and Mrs Flint about the purpose, and extent of Mrs Clements involvement in the work of the School. Tasks which had hitherto being performed by Mr Flint and Mrs Flint, and which formed part of their job descriptions, appeared to have been handed over to Ms Clements with no explanation.
158. Ms Clements' involvement in this recruitment exercise does lend support to the assertions from Mrs Flint that Mrs Wilson-Downes had agreed that Ms Clements was the Operations Manager. This also supports assertions from Mr Flint that this is what he had been told as well. It was clear to us that Ms Clements' involvement at the School, and to a lesser degree at Langer, was more than simply lending additional support.
159. We asked Ms Clements in the hearing why she had sent that message about "that would piss Sharon off" and she told us that she did not want to "piss her off" but she wanted to annoy her but she could not explain to us why. We asked Ms Clements why putting Rosemary Prince as Governor on that interview panel would have that effect on Mrs Flint, and again Ms Clements could not tell us why.

160. We find that Mrs Wilson-Downes was an active participant in this exchange. It was Mrs Wilson-Downes who communicated the decision to exclude Mrs Flint from that interview panel and she appeared to lend support to Ms Clements' behaviour. When Ms Clements suggested inviting Rosemary Prince, the Governor, on the basis "*That would really piss Sharon off! Yes lets ask her*" Mrs Wilson-Downes encouraged that behaviour by apparently contacting Mrs Prince to ask her to join the panel and then her use of the following " ;-)" in reporting back to Ms Clements. We take that text to be the text equivalent of a smiling or laughing emoji.

161. At no point did Mrs Wilson-Downes challenge Ms Clements' use of the profanity in connection with her colleague Mrs Flint who was a member of the Senior Leadership Team of the School. Nor did Mrs Wilson-Downes seek to query why Ms Clements would want to upset Mrs Flint. The conclusion we draw from this exchange, combined with other emails concerning Mrs Flint's role which will be referred to below, is that Mrs Wilson-Downes did not expect Mrs Flint to remain in post in the long term. The Tribunal found it concerning that two senior members of the Respondent's staff were speaking in this way about another colleague who was also a member of the SLT.

Fencing emails

162. We have been referred to a separate email string between Mrs Wilson-Downes and Ms Clements of 13 May 2020. At the start of this string Mr Brown confirmed to Mr Flint that the Respondent had agreed to fencing works being undertaken. Mr Flint emailed Mrs Wilson-Downes as follows:

"Hi Emma.

Good news – they have agreed the fencing replacement.

Regards

Graham."

163. We were not provided with a reply from Mrs Wilson-Downes to Mr Flint, although it is possible that one was sent. We were however provided with a copy of Mrs Wilson-Downes' email to Ms Clements where she said:

"He's actually emailed me this time" followed by what appears to be a smiling or a laughing emoji.

164. Ms Clements then replied to state "*Wow!! That's progress!! And he didn't copy in his wife!!!*" The reply was interspersed with thumbs up emojis. Mrs Wilson-Downes then responded to state "*He's still in a mood with me, which is hilarious*" followed by another smiling or laughing emoji. Ms Clements then responded to state "*it's so childish!*" together with another smiling or laughing emoji. A copy of this emailed was released to Mr Flint as part of his DSAR on or around 12 March 2021, however the latter two comments about him being in a mood and being childish, were redacted by the Respondent. The unredacted version was released to Mr Flint as part of litigation disclosure at some point between December 2021 and mid February 2022.

165. The Tribunal also found this exchange to be concerning and inappropriate, in particular for people holding senior positions within the Respondent organisation. In this instance it was Mrs Wilson-Downes who was the instigator of the exchange where Mr Flint was ridiculed and also demeaned.

Assistant Head Teacher advertisement

166. On 27 April 2020 Mrs Wilson-Downes sent out an internal advertisement for a new Assistant Headteacher role. One of the functions of the role was for Cover and Educational Visits and Trips. Mrs Flint says that this formed part of her role and that there was no discussion with her before the role was advertised. Mrs Flint accepts that the Cover aspect does not appear in her job description, but she had oversight of this with Jason Wanner (Assistant Headteacher) and Mrs Cumberland (Office Manager) for over two years and it was something that Mrs Wilson-Downes was aware of. Mrs Flint says that she was completely taken aback by the advertisement and was worried for the future of her role.

167. We have reviewed the job description for this role and note that under the heading of responsibilities it states (amongst other things) that it would include Cover, and Trips and visits (Educational Visits Coordinator).

168. Under the heading of purpose of job, it states (amongst other things)

- a. To ensure that cover within the school is managed at a strategic level, including maintaining a balanced cover budget.
- b. To act as Educational Visits Coordinator, and to oversee a calendar of trips and visits that offers a broad and balanced experience of both curriculum based, and enrichment trips to students across the school.

169. Under the heading of specific responsibilities, it states (amongst other things):

- i. To oversee deployment of cover staff and the cover budget via the cover manager.
- ii. To act as EVC alongside the school business manager, to evaluate the curriculum purpose of trips and ensure a broad and accessible offer.

170. We understand that Cover in this context means ensuring that staff absences are covered. Whereas this had not been part of Mrs Flint's written job description, it had become part of Mrs Flint's job role as she had performed it for in the region of two years by this time, and moreover it was confirmed in Mrs Cumberland's witness statement.

171. We also find that it was clear from Mrs Flint's job description that the role of EVC was part of her job description [**bundle page 814**] which states:

- a. *To act as Educational Visits Coordinator for the school, ensuring health and safety compliance using the Evolve system;*

172. We note that Mrs Flint is not a teacher or what might be described as an educationalist, therefore she would not have been in a position to have assessed the educational value of trips and visits as a teacher would have. We also note that the advertisement is unclear and poorly drafted because under the heading of purpose of the job it states that it is to act as EVC and to oversee the trips, whereas under specific responsibilities it states that it is to act as EVC alongside the school Business Manager.

173. We have been provided with no evidence that the removal of either of these aspects from Mrs Flint's role (both Cover and EVC) were ever discussed with her by the Respondent prior to their removal. We will consider this matter further when addressing the handling of her grievance.

Informal discussions with Mrs Flint

174. On 6 February 2020 Mr Chambers in the Respondent's HR department emailed Mrs Bull and said that he wanted to provide her with an update on a pension estimate for Mrs Flint following an earlier discussion. Mrs Bull forwarded this to Mrs Garner who replied:

"Why are we looking at this? I thought we had other plans for SF? Did I miss something?"

175. Mrs Bull replied to say that she undertaken a support staff review with Mrs Wilson-Downes and Mr Lloyd and she offered to update Mrs Garner. We were not referred to any earlier emails in the hearing bundle which referred to these plans for Mrs Flint.

176. On 29 April 2020 Mrs Bull contacted Mrs Flint and asked to have an informal meeting with her via Teams on 5 May 2020 with Mr Lloyd to have a chat about restructuring, and she said that she could bring a union representative with her. This meeting was informal and outside of the Respondent's Organisation Change Management Policy.

177. It was clear that there had already been some discussions about what to do with Mrs Flint's role and changes to her job description as an email from Mrs Bull to Mr Lloyd of 28 April 2020 made reference that Mrs Wilson-Downes would be passing Mrs Bull an annotated version of Mrs Flint's job description to her *"to identify the changes which have been made to date"* and that she would link up with Mrs Townsend and Mrs Garner on *"on the finance support to date."*

178. On 30 April 2020 Mrs Wilson-Downes confirmed by email to Mrs Bull that she had noted a few things and that *"some are changing, some have changed."* Specifically, Mrs Wilson-Downes said that she wanted Mrs Cumberland to manage the SCR, HR matters would transfer to Mrs Wilson-Downes, and that she would be line managing the Premises Manager from now on.

179. On 4 May 2020 Mrs Bull passed this information to Mr Lloyd together with a redundancy estimate for Mrs Flint with a pension cost estimate.

180. The pre-arranged meeting took place online on 5 May 2020 between Mr Lloyd, Mrs Bull, Mrs Flint, and Mr Roberts as her union representative. As indicated at the start of this judgment, Mrs Flint made a covert recording

of that meeting. As a result of that recording the Respondent was granted permission to amend the witness statements of Mrs Bull. Only a small number of changes were made, some of which were more significant than others.

181. We have reviewed the agreed transcript of that meeting. It is unnecessary to recite the entire contents of the meeting, but it is sufficient to note that Mrs Bull and Mr Lloyd raised the issue of another role they wished Mrs Flint to consider – this was a hub finance manager role which would cover the School, Langer, The Bridge and Sir Bobbie Robson schools. We do not find that pressure was placed upon Mrs Flint in this meeting to take that role, however it was quite clear to us that Mr Lloyd was very keen for Mrs Flint to do so.

182. As a result of the covert recording Mrs Bull was given permission to amend her witness statement. One of the changes Mrs Bull made was to remove the following sentence:

“During the meeting Sharon explained that she was struggling with the change of pace within the Trust and the sense of urgency to pull the School out of the inadequate rating and the impact that has on the business support function.”

183. In her amended witness statement Mrs Bull replaced that sentence with the following:

“During the meeting, it was mentioned that there had been changes within the School. There was a sense of urgency to pull the School out of the inadequate rating and the impact that has on the business support function.”

184. These sentences have very different meanings. Nowhere within the transcript did Mrs Flint state that she was struggling with the change of pace within the School or the sense of urgency. The reference to the sense of urgency was no longer attributed to Mrs Flint in Mrs Bull’s witness statement. There is no specific reference to such a comment in the transcript of that meeting.

185. The reference to struggling may have come from an email of 20 May 2020 where Mrs Bull relayed to Dr Coulson, Mrs Garner and Mr Lloyd, a conversation she said she had with Mr Roberts where she says he told her that Mrs Flint was *“just feeling undervalued and is struggling to accept the changes happening to her.”* We note that we were not provided with any evidence that Mr Roberts ever made that comment. The Claimants have alleged that Mrs Bull was therefore proven to have been dishonest, however we do not agree. We find that the reference to Mrs Flint struggling within Mrs Bull’s statement was inaccurate, but it was not dishonest. At most this was a genuine error on the part of Mrs Bull. We have therefore treated Mrs Bull’s evidence with a degree of caution given the change to her witness statement, although we accept that Mrs Bull may have felt that Mrs Flint was struggling with the pace of change, however those comments were not made by Mrs Flint during the meeting of 5 May 2020.

186. Mrs Bull provided Mrs Flint with a copy of the job description for the finance hub manager role on 6 May 2020 however there were no pay details

included. When the pay information was received Mrs Flint said that it was 45% - 55% lower than her Business Manager salary. Mrs Flint states that the post was significantly different to her then role and was not comparable with her responsibility, as it was not on the SLT for any of the schools. We note that being part of the SLT was important to Mrs Flint.

187. Mrs Flint says that following the meeting she received constant communication from the Respondent and was being pressured to accept the new role.

188. We have been referred to a copy of an email string concerning discussions between Mrs Flint and the Respondent about the hub manager role and possible alternative options. We note that on 13 May Mr Roberts informed Mrs Bull that Mrs Flint would like to hear about alternative proposals from the Respondent. Mrs Bull had asked Mr Roberts if he would be able to speak on a without prejudice basis to which he confirmed he would. Mrs Bull responded with a potential settlement agreement proposal of £30,000, an agreed reference and announcement, and a leaving date of 31 August 2020. On 17 May Mrs Flint emailed Mrs Bull and asked a number of questions about the hub finance manager role to which Mrs Bull provided a response on 18 May. Mrs Flint had asked what would happen to her role if she did not accept the settlement proposal, the response from Mrs Bull was:

“We would need to continue with a review and look at your grade as per our Organisational Change Management Policy. Internal and external benchmarking has indicated that there is a case for re-evaluation. The job evaluation process is in line with the National Joint Council for Local Government Services. A key part of the process is to achieve single status on all jobs within scope of the “Green Book” and will have to be graded on a common basis in accordance with equal pay legislation. If the grade were to change, salary protection would not normally apply.”

189. Mrs Flint also asked why her role was no longer needed, to which Mrs Bull responded:

“It is not that your job is not needed, as per the measures letter issued under TUPE, it was explained that the trust supports a model of centralised services, ensuring schools in our trust can benefit from economies of scale. We are now at the stage of discussing this with you in regards to your role as Business Manager and potential changes due to our central functions including finance.”

190. When asked who would take over the aspects of Mrs Flint’s role not covered by the hub finance manager role, Mrs Bull responded:

“To be clear, no decisions have been made, but I can confirm in our other trust schools HR administration is undertaken by the Headteacher’s PA/Office Manager, line managers (overseen by the headteacher) deal with HR matters, health and safety by caretaking/premises staff, finance processing some onsite and some by central team, finance budget by Hub Finance Managers and HR advice by central team HR Business Partners.”

191. It was clear to the Tribunal that the situation was that the Respondent wished to remove the role and instead to deliver some of the functions of

that role through its established central services model, and that some aspects of the role had already been removed and given to other staff.

192. Mrs Flint responded to Mrs Bull on 19 May. It is unnecessary to repeat the entire contents of that exchange but we note that Mrs Flint indicated that she felt that a decision about her role had already been made, the hub finance manager role was not a suitable alternative role and she also stated that the Respondent was in effect saying that her role was no longer needed and that she was being forced out. We note that Mrs Flint also stated:

“It is clear that a decision has already been made. Since the Trust has taken over, my responsibilities regarding site and buildings have been given to Liz Clements, Premises Manager at TGS. However, I have been advised by Liz Clements and Emma Wilson-Downes, that Liz is the Trust Operations Manager, which has been denied by various senior managers of the Trust on numerous occasions, despite asking for clarity on this point due to the stress and anxiety it was causing. More recently, another area of my responsibility, Education Visits Coordinator, was advertised as a responsibility for the new post of Assistant Headteacher with no prior discussion with me. There are other areas of responsibility you have not covered, GDPR for example, which makes me wonder whether you have seen my current job description and, therefore, whether the correct benchmarking has been applied.”

193. We note that upon receipt of Mrs Flint’s reply, Mrs Bull reported back to Dr Coulson in which she stated:

“...unfortunately not quite going to plan. I haven’t updated Wayne and Emma yet and just wanted check if we need to agree the next stage with them?”

194. Mrs Bull also suggested that she then speak to Mr Roberts to say that this was an informal offer prior to a formal consultation process, the settlement agreement was on offer until 22 May, otherwise they would proceed with a formal process but Mrs Flint’s role would be re-evaluated and that it was likely that her pay would reduce, and that after Friday they would not be inclined to revisit a settlement.

195. We asked Mrs Bull what the plan was. Mrs Bull told us that there wasn’t a specific plan. We found that evidence to be implausible and at odds with her own contemporaneous emails. It was clear that there was a plan and that it had been discussed and agreed between Mrs Bull, Mr Lloyd and Mrs Garner for some time. We find that the plan was to remove the Business Manager role as it was not a role which the Respondent traditionally had in its schools due to its central services model, and that Mrs Flint would likely be moved to another role in finance. This was clear from the emails up to this date, in particular that from Mrs Garner where she had queried why pension figures were being obtained as they had *“other plans for SF.”*

196. Dr Coulson then responded to confirm his agreement and we note he also stated:

“She’s gearing up for a fight

But we’ll need to draw back to stop her resigning to claim unfair dismissal?”

197. It was not clear from Dr Coulson’s response what he had actually agreed to, however we note that Dr Coulson clearly appreciated that the Respondent’s handling to date put it at risk of a constructive dismissal claim from Mrs Flint. We did not interpret this email as agreeing that the Respondent had been in breach of contract thus far, but it was a recognition that if the Respondent continued to act as it was then there was a risk of a claim being brought. It was clear that the Respondent recognised that aspects of Mrs Flint’s role had been removed without a discussion and that it was at risk of a legal claim.

198. We note that Mrs Bull then replied to state:

“Morning, she could resign and claim for constructive dismissal (current capped at £88,519). I can make it clear to Ian that should she have any complaints we have policies for dealing with anything she wishes to raise i.e. grievance policy.

Are you ok with me speaking to Ian and setting a deadline of Friday? I could also respond to Sharon as per the highlights in green below?”

199. Dr Coulson then provided his agreement and Mrs Bull replied to confirm that she had spoken to Mr Roberts who said that Mrs Flint just wanted answers and she would likely accept what Mrs Bull was explaining and that Mrs Flint was *“just feeling undervalued and is struggling to accept the changes happening to her. He is 99% sure she is now moving towards taking a settlement agreement.”*

200. Mrs Bull said that she had extended the deadline for Mrs Flint to respond until the following Tuesday. Dr Coulson again confirmed his agreement and copied in Mr Lloyd for his comment. We were not provided with a response from Mr Lloyd, but we note that on 20 May 2020 Mrs Bull updated Mr Lloyd by email and said that *“I am still trying to persuade SF to take a package as ultimately things will not stay the same.”* Mrs Bull also asked Mr Lloyd to *“update Emma”*. Accordingly, it was clear to us that it was clear that Mrs Wilson-Downes was fully aware of the Respondent’s plans and proposed changes to Mrs Flint’s role as she had been involved in removing some part of it.

201. We note the replies from Mrs Bull to Mrs Flint’s questions. Mrs Bull said that the Respondent had not determined that her role was not needed and that there was no intention of dismissing Mrs Flint, that this was an informal discussion and Mrs Bull suggested ceasing informal discussions and reverting to a formal process. Mrs Bull said that the Respondent had not proposed to move her duties to other employees, and she asked Mrs Flint to provide specific examples. We also note that Mrs Bull confirmed that she had seen a copy of Mrs Flint’s job description. Mrs Bull also said that if Mrs Flint had any matters to raise the Respondent has HR policies and procedures in place should she wish to raise anything informally or formally.

202. Mrs Flint says that on 22 May 2020 she received information about a settlement agreement to leave the school which she believed was punishment for raising concerns about Mr Lloyd, Mrs Wilson-Downes and Ms Clements. We note the contents of Mrs Flint's witness statement where she states:

"I feel the timeline of communication with Angela Bull, the unilateral changing of my role and the offer of a settlement to get me to leave demonstrates the intention of the Respondent to force me out of my job (please see emails and timeline on page [199] of the bundle). The Data Subject Access Request I later raised revealed that Tim Coulson had asked the HR team to calculate the cost of making my role redundant, which I believe is partly why elements of my role were being taken away from me (to force a redundancy situation) (see email at page [156-157] of the bundle). However, the cost of doing so (particularly with regards to my pension) meant that the Respondent instead elected to carry out a campaign of bullying and harassment to get me to leave of my own volition (as detailed above and below)."

203. And further:

"Other areas of my line management of staff – ICT, Exams, performance management of support staff (mentioned below) and site and premises were also being taken away informally, with no discussion with myself."

Second alleged written disclosure - 29 May 2020

204. During a conversation between Mrs Bull and Mr Roberts towards the end of May 2020 where they had discussed a potential exit for Mrs Flint, Mr Roberts raised the issue that Mrs Flint had been reporting financial misconduct in February 2020 to which he says that Mrs Bull seemed shocked. Mrs Flint's witness statement states that *"..it became apparent that Angela Bull was unaware of the formal protected disclosure I made on 20 February 2020 by her reaction when Ian Roberts raised this."*

205. Mrs Bull asked that Mrs Flint provide a timeline of what she said she had reported to the members of the Central Finance Team. On 29 May 2020 Mrs Flint sent an email to Mrs Bull entitled "Whistleblowing Timeline."

206. The Respondent has already conceded that this was a protected disclosure, however we will provide a summary below:

- i. Mrs Flint said she raised concerns with Mrs Wilson on 4 November 2019 (and subsequent to that) regarding information about the building work organised by Ms Clements not being shared with Mr Flint and Mrs Flint;
- ii. Ms Clements brought in her preferred builder (Builder A) on 24 January 2020 to look at the music room ducting replacement and he had quoted £13,000 and after Mr Flint had provided her with a cheaper quote of £5,250 she had spoken to Builder A about that quote and that she wanted to award it to him. Mrs Flint said that Mr Flint raised this with Mr Brown on 13 February 2020 where he said he had not seen quotes for work. Mrs Flint said that Mr Brown said that there were concerns about how much work Builder A was doing at TGS;

- iii. Mrs Flint said she raised her concerns before and on 7 February 2020 about quotes not being sought in line with financial regulations by Ms Clements, and that only one quote had been obtained for work to the Student Services area (for approximately £25,000) and the Maidstone Sports Hall (for approximately £80,000). Mrs Flint said that financial information was not shared with her despite asking for it on several occasions;
- iv. Mrs Flint referred to her email of 20 February 2020 where she said she was expressing concern that auditors were coming in the next month and that she would be unable to produce the required quotes to satisfy that they were following ESFA financial procedures in relation to the works on the Student Services area to be paid by DFC funding.
- v. Mrs Flint also referred to receiving one quote for £24,987 on 27 February 2020 whereas according to the Trust Finance Policy, this would have needed approval by the Procurement Officer and Director of Finance and HR with three written comparable quotations. Mrs Flint said that she also raised concerns that the works to the Sports Hall (which she said she understood was in the region of £80,000) had not been put out to tender with three written comparable quotations.
207. Mrs Flint said *“Having reported these concerns and breaches of financial regulations, I have not seen evidence of the Trust investigating financial practices at the Academy, and the culture of not following processes/procedures in line with policy is ongoing.”* We further note that Mrs Flint alleged that *“the current review of my role at the Academy has been influenced by financial whistleblowing in writing on 20 February.”*
208. It was at this point the discussions with Mrs Flint about the alternative role and the offer of a settlement agreement ceased and a whistleblowing investigation was launched which will be considered further below.
- Excessive emails and lists of work
209. Both Mr Flint and Mrs Flint have accused Mrs Wilson-Downes of sending them excessive emails and lists of work to do which were constantly being followed up, particularly outside normal working hours.
210. We have reviewed a series of exchanges from 22-24 March and 4-5 May 2020 concerning premises work, including painting [**bundle pages 159-164**] but we did not observe anything which might be considered inappropriate as the exchanges between the two appeared to be the normal communication one might expect. There was a discussion about obtaining quotes for the painting work, and we understand that it was valued between £41,000 - £70,000, however it appeared to us that Mrs Wilson-Downes was aware that more than one quote would be needed as she asked Mr Flint to check how many quotes Ms Clements had obtained and she suggested that he may need to link up with her to avoid duplication when he obtained quotes. We saw nothing unusual in these exchanges.
211. We have been referred to an email exchange dated 24 April 2020 between Mrs Garner and Mrs Wilson-Downes with the subject line of AET Outstanding bills. The email string is incomplete. We note that Mrs Garner has sent an email to Mrs Wilson-Downes which we were not provided with.

Mrs Wilson-Downes' response was *"Funnily enough, I have asked Sharon to set aside a time she and I can talk about [redacted] and what we do. This is not the only concern or mistake that has been made."* Mrs Garner replied *"Excellent. It is something to hold on Sharon – if she isn't managing her staff properly!!"*

212. We have redacted the name of the person referred to in this judgment, however their role was that of Finance Manager. Without the full email string it is difficult to draw any conclusions as to what is being discussed, nevertheless what we have been provided with is suggestive of performance issues with the finance function within the School and a keenness on the part of Mrs Garner to rely on this in some way against Mrs Flint. Mrs Garner did not attend as a witness therefore we did not have the opportunity to hear her evidence on this.

213. We note that on 12 May 2020 there was an email exchange between Ms Clements and Mrs Wilson-Downes about the painting and other work being undertaken. It would appear, by reference to the times, that the email string is again out of sync, however we noted that at 2:31pm Ms Clements told Mrs Wilson-Downes that Mr Flint was his usual self which, given the subsequent emails, we understand was intended to be a criticism.

214. Ms Clements suggested in that email that Mr Flint would be getting *"a couple of his mates"* to quote for the painting work. We did not interpret that comment from Ms Clements to be an allegation of impropriety against Mr Flint as it was sent as more of an update to Mrs Wilson-Downes who would be involved.

215. At 2:48pm Mrs Wilson-Downes replied and to discuss the work, but she also said *"He is being a bit off with me as well. I have already requested he give me a time for a line management! I've got that list I asked him about that I want updates on so he won't be happy I have asked for a line management."*

216. Ms Clements then replied at 3:09pm to state *"Sometimes it's like dealing with a child isn't it! He's got to stop with the grumpiness!"* to which Mrs Wilson-Downes replied *"I can't deal with the grumpiness!!!!"*. The email exchanged also briefly discussed other work such as banners.

217. We were also referred to another email string from 18 May 2020. The string begins with Mrs Wilson asking Mr Flint to provide some support to Ms Hughes the headteacher at Langer. This was copied to Ms Clements who then forwarded this to Mrs Wilson-Downes who said that she would be catching up with Mr Flint that week, to which Ms Clements replied *"Good luck with that! Let's hope he doesn't throw a tantrum!!!!"*

218. There was then a further series of emails in which Mrs Wilson-Downes said:

"I am sure you have guessed, but I am just using this as a way of keeping tabs on what Graham is organising. I've BCC'd you into my replies!!!"

These are too expensive, we can just have sanitiser on tables."

219. There then followed a further series of emails where Ms Clements discussed hand dryers. We were unfortunately not provided with the remainder of that email from Ms Clements [bundle page 227] however it is possible that it referred to either Mr Flint or Mrs Flint as the reply from Mrs Wilson-Downes discussed the hand dryers and then said:

“Sharon is organising the cleaning rotas to get the cleaners in to clean the tables.

I have a list for them both and I keep asking them about various aspects of the things on my list. They are going to get pretty fed up quite soon I think!”

220. Ms Clements responded to this and whilst she discussed the hand dryers and other matters she also said:

“I’m sure they are getting well and truly pissed off at the moment, but that’s the point isn’t it?!”

221. We spent some time during the hearing attempting to ascertain from Ms Clements what was meant in the last email referred to. We were told that she had been frustrated by inaction on the part of Mr Flint and that other staff at other schools had still been able to source things in the COVID-19 Pandemic which Mr Flint had not. It appeared that what was being alleged was that there were performance concerns about both Claimants and Mrs Wilson-Downes and Ms Clements were trying to get work done.

222. We have heard evidence from Mrs Wilson-Downes that she had to use work lists and to ask for updates from Mr Flint because he was not communicating with her and it appeared to her in the absence of these updates that work was not getting done. One issue Mrs Wilson-Downes mentioned in evidence was a long delay of months in obtaining plastic shields. We have been referred to emails from June 2020 where we can see that Mrs Wilson-Downes asking Mr Flint for updates on work and providing him with lists. Given the contents of those emails we do find that Mrs Wilson-Downes was frustrated at what she perceived to be a lack of communication from Mr Flint and delays in getting things done.

223. However, the use of the words *“the point”* by Ms Clements would suggest either an intention or a purpose behind what they were doing, and we did find the contents of this correspondence, when coupled with other email exchanges between Ms Clements and Mrs Wilson-Downes to be concerning. At no point did Mrs Wilson-Downes as headteacher seek to caution Ms Clements about her language or to remind her of her obligations, it appeared that she was a willing participant in that the dialogue – she certainly did nothing to stop it and appears by her inaction to have condoned it.

224. There is no evidence that Mrs Wilson-Downes attempted to commence formal performance improvement measures with respect to Mr Flint therefore we find it likely that Mr Flint may have been confused as to why he was starting to receive lists of work which were being chased up.

225. We heard evidence from Mrs Wilson-Downes that she was absent from the School due to family reasons at this time and she was using lists as a way to keep track of work, and she was frustrated with the pace of work

at the School. We accept that evidence, however the reference to Mr Flint and Mrs Flint becoming fed up was indicative of a desire or an intention to cause them annoyance. We found this to be a very strange comment for a headteacher to have made, particularly about a member of the SLT, and to then share it with a more junior member of staff such as Ms Clements. Nevertheless we did not find that the emails and the lists of work we were referred to were excessive, and we also did not find that Mrs Wilson-Downes had or displayed any expectation that emails that she sent out of hours should be responded to immediately.

226. We also note that Mr Flint has alleged that Mrs Wilson-Downes would ignore him, and instead speak to the staff that he line managed. Mr Flint also alleged that she gave his staff thank you cards and sweets but ignored him. We were not provided with any evidence that this had occurred other than the bare allegation from Mr Flint.

227. This was denied by Mrs Wilson-Downes who explained that she may give instructions, but only in passing or if it so happened that the caretaker was near and a lightbulb needed changing or a door handle needed fixing. Mrs Wilson-Downes gave the example that if she walked into an English classroom, she would speak directly to the teacher if something needed to be addressed, and she would not in the first instance speak to the Deputy Head Teacher, who would then speak to the Assistant Head, and then the Head of English before finally speaking to the teacher.

228. Mrs Wilson-Downes said that there are management structures in place, but sometimes it was easier for her to speak directly to the person concerned. We found that to be a plausible explanation.

Exclusion from Maidstone Sports Hall and direction not to approach the Trust

229. Within his witness statement Mr Flint said that he had been told by Mrs Wilson-Downes that all staff, including Mr Flint and his team, were not to go into the sports hall during the refurbishment work and that he was excluded from the project. Mr Flint said this had happened as he had raised concerns that there were no data points in the room. Mr Flint says that the contract given to Builder A by Ms Clements was valued at approximately £80,000.

230. Mr Flint says that work was completed on the Maidstone Sports Hall on 4 June 2020, but after visiting the sports hall on 8 June he was very concerned with the standard of work that had been carried out, and noted that there were 25 leaks, external doors had been boarded up rather than replaced, flooring issues had not been repaired, new cubicles for the toilets were second-hand and some were damaged. Mr Flint said that as he had not received a copy of the specifications or detailed quote, he did not know what work had been agreed with Builder A. Mr Flint said for the money involved he thought that these issues would have been addressed and he raised his concern with Mr Brown by email dated 11 June 2020.

231. Mr Brown notified Mr Flint that he would not be able to carry site visits at that time, but he asked for detailed emails stating what the problems were with pictures so that he could get the issues resolved. This email string

had a subject line of "Maidstone Sports Hall". We have another email string in the bundle on the same date between Mr Flint and Mr Brown with the subject line of "Felixstowe Academy Decoration". Within this chain, there was some discussion about three quotes that had been received for the decorating of the corridors, stairwells, and holes at the school. Mr Flint said that with the other two detailed quotes being over £50,000, he thought it would be advisable to have a detailed specification drawn up and sent out to tender. Mr Brown replied, and it appears from the email that they had a telephone call as well, and he provided some advice on the way forward.

232. Mrs Wilson-Downes was copied in on this exchange and we note that later that evening she shared it with Mr Lloyd and said, "*Can you please tell me what I need to ask Graham to do here?*" to which Mr Lloyd responded:

"you need to sit Graham down and be clear with him. Everything goes through you. Put that in writing via email and then if he continues to disregard you then we can begin disciplinary actions. I suggest you also get out his job description and go through it with him. Make sure you change the line of accountability. Ring me in the morning if you can. We can talk more."

233. We heard evidence from Mrs Wilson-Downes and Ms Clements that Mr Flint did not always keep Mrs Wilson-Downes updated or communicate with her effectively, and that this was one example, where he would go directly to other members of staff. Mrs Wilson-Downes said that Mr Flint should have informed those who needed to know at the School level, which was either her or Mrs Flint, and then they would progress things as appropriate and by not doing so Mr Flint had caused Mrs Wilson-Downes to feel undermined. On 12 June 2020, Mrs Wilson-Downes met with Mr Flint and explained that in future if he had queries or worries over things, he should run them past her and not go directly to the trust. Mr Flint has described this as being told that he could not speak to anybody at the trust. We have been provided with a copy of an email dated 12 June 2020 from Mrs Wilson-Downes to Mr Flint in which she makes it clear that if he had further queries or worries over things like the painting contract, he should run them past her. We therefore prefer the evidence of Mrs Wilson-Downes as we have the benefit of a contemporaneous email. There was no suggestion that Mr Flint could not speak to staff at Trust level.

234. Following on from this, we understand that Mr Flint then emailed Mrs Wilson-Downes, to say that he needed to order some PPE like gloves and masks, and he asked her if he could contact the trust about it. Mrs Wilson-Downes informed Mr Flint, that he could copy her in about things like this, but she had been referring specifically to anything strategic or new. We have found the emails from Mrs Wilson-Downes to be entirely reasonable.

Whistleblowing investigation

235. Following the email from Mrs Flint to Mrs Bull on 29 May 2020, Dr Coulson immediately engaged an external investigator, the Cambridge Meridian Academies Trust, to investigate the concerns raised by Mrs Flint as set out in her email to Mrs Bull. The investigation was conducted by

Helen Anderson (Finance Director) and Sue Tolomeo (Trust Accountant and Head of Internal Control).

236. We note that the conduct of that investigation is not one of the issues to be decided in this hearing, nor are there factual disputes between the parties about that investigation. We therefore do not intend to recite the whole contents of that investigation process.

237. We note that Mr Flint and Mrs Flint say they were told that they did not need to be seen by the investigators as it was felt that they had sufficient evidence. However, we note that upon their request, the investigator did speak to Mr Flint and Mrs Flint on 17 June 2020. It was explained by the investigator that they would not be looking at alleged treatment of Mr Flint and Mrs Flint by the Respondent, and that the focus of the investigation was to be on the alleged breaches of financial procedures and processes. We understand that the investigator said that allegations about treatment of Mr Flint and Mrs Flint would be passed on to Dr Coulson.

Whistleblowing investigation report

238. We have been provided with a copy of the ten-page report prepared by the Cambridge Meridian Academies Trust. The report is undated however we find that it was issued before the end of June 2020.

239. We note that the investigators interviewed a large number of the Respondent's employees including Mr Flint, Mrs Flint, Sarah Garner (then Director of Finance and HR), Debbie Wilson (Director of Operations), Chris Brown (Head of Operations), Trish Townsend (Head of Finance), Nicola Fairchild (Finance Compliance and hub lead), Wayne Lloyd (Executive Head Felixstowe Academy), and Liz Clements (Premises Manager, Thomas Gainsborough School).

240. We note that within the introduction Ms Clements' role is also recorded as "*Head of Operations at Felixstowe Academy and Langer Primary Academy, tbc.*"

241. The terms of reference of the investigation were as follows:

- i. the non-adherence to the Financial Policy and Procedures of the works procured by Ms Clements in her role at the School;
- ii. the lack of follow up by Mrs Wilson, Mr Brown, Mrs Townsend, and Ms Fairchild of concerns made to them by Mr Flint and Mrs Flint regarding three projects raised for concern:
 - a. Boiler room at the School (approximate cost between £5,000 - £13,000), funded by the School
 - b. Maidstone Sports Hall at FA (approximate cost £80,000), funded by SCA
 - c. Student Services Area at FA (approximate cost £25,000), funded by the DFC and the School.

242. We understand that the reference to SCA relates to school capital funding from the Government. We do not intend to recite the entirety of the

findings in that report as the facts are not in dispute and they do not directly go to the Issues to be decided in this case. Nevertheless, it may help to understand how some of the matters in this case have developed if we make reference to some of the findings in that report.

243. The investigators found inconsistency in the then procurement process as to how many quotes staff must obtain. It was also identified that there was some inconsistency between the authorisation levels for headteachers, the same document referred to two different figures. It was also noted that whilst most staff were aware that there was an agreed procurement process, there were differing understandings of the thresholds for the authorisation and procurement processes and that *“No staff were able to confirm when tenders were necessary and few were able to confirm the details in keeping with the Financial Policy.”* It was also noted that the authorisation for projects between the schools and the central team was not clear and that *“Staff at the school and in the central team were at times disjointed in their understanding of where the works were being funded from and as such who should be the authorising individual. This was also the case as to the ownership of and location of the retention of paperwork.”*
244. The report then goes on to examine the procurement process followed in each of the three projects identified above. We note that with respect to the boiler room flue replacement works the investigators found that the authority for Ms Clements to lead on the procurement for the School and Langer was unclear, and that Mr Lloyds said his understanding was that Ms Clements had delegated authority from Mrs Wilson to act on behalf of the central team, however it was not confirmed by the central team, nor Mr Flint or Mrs Flint, that this arrangement was formalised or communicated effectively. It was recorded that this was not an explicit breach but that it was not best practice.
245. The investigators found three specific breaches to have occurred with respect to the boiler room flue replacement which were:
- a. Only two quotes were evidenced, the third was a verbal quote by Builder A to Ms Clements and there was no documentation detailing with the contractor was awarded to the successful contractor.
 - b. There was no authorisation from the headteacher or the Respondent for the works to come from the SCA budget but that Ms Clements was clear that it had been gained despite the incomplete paperwork relating to three quotes.
 - c. The value of the contract was estimated at £5,000-£13,000 requiring sign off from the Head of Finance, however, Mrs Townsend confirmed no knowledge of this procurement.
246. As regards the work on the Student Services Area, the investigators found a potential breach (subject to clarity around the Financial Policy) as no formal tender process was undertaken. We understand that this is referring to confusion within the policy as to whether a tender process was required for work of that value.

247. The investigators found a breach in that the works were due to come from the Schools' DFC budget however no authorisation from the Headteacher was seen, and whereas the Financial Policy and Procedure provide that the spend must be approved by the Head of Finance, there was no prior approval of quotes. Further it was recorded that whilst three quotes were provided and seen, there was no documentation detailing why the contract was awarded to the successful contractor which it was noted was the cheapest. We understand that this was Builder A and that Mrs Wilson confirmed that Builder A's previous work was good, they work hard and get the job done, and that similar feedback was provided by Ms Clements.
248. As regards the Maidstone Sports Hall project, we note that the investigators identified a breach as no formal tender process was undertaken and no reason was given by staff as to why one was not done. We also note that a potential breach was identified as the works were to come from the core SCA budget however no authorisation was seen from the Director of Finance and Director of Operations, but both confirmed they were aware of the works. The investigators noted that there were anecdotal reports which implied that sign off was retrospective. Finally, it was noted that three quotes were provided and seen, however there was no documentation detailing why the contract was awarded to the successful contractor. Again, we understand the successful contractor to be Builder A, and it was recorded that whilst the successful quote was the cheapest, Mrs Wilson and Ms Clements confirmed that Builder A's previous work was good as they work hard and get the job done. It was recorded that this was not an explicit breach, but it was not best practice.
249. The report then goes on to consider the allegations of a lack of follow up by the Respondent to concerns raised by Mr Flint and Mrs Flint.
250. With respect to the conversation between Mrs Flint and Mrs Wilson on 4 November 2019 the investigators recorded that Mrs Flint raised concerns to Mrs Wilson around non-sharing of information by Ms Clements and that Mrs Wilson confirmed that no follow up action was taken by her. The investigators recorded Mrs Flint said that these issues were raised to Mrs Wilson again subsequently, however this was not verified by Mrs Wilson.
251. It was noted that Mrs Wilson felt that this was a general conversation about Mr Flint and Mrs Flint not feeling involved in works being undertaken at the School by Ms Clements and that she did not believe a follow up was warranted. The investigators found that clear communication around the role of Ms Clements at the School to the staff, particularly to Mrs Flint and Mr Flint, would have resolved much of the issues raised here and in subsequent correspondence. We note the investigators also found that it had been acknowledged that Mrs Wilson was "*a bottleneck in the procurement process due to the huge volume of works she oversees*", however Mrs Wilson should have followed up on the concerns raised by Mrs Flint with the headteacher at the School, Mrs Wilson-Downes.
252. With respect to concerns raised by Mrs Flint to Ms Fairchild on 7 February 2020, it was recorded by the investigators that these related to insufficient quotes and non-sharing of financial information with the finance lead at the School, and that Ms Fairchild confirmed that they had spoken

and that she had sympathised and advised Mrs Flint to speak to the headteacher. The investigation finding was “*no follow-up required, advice given.*”

253. We noted that the investigators examined the comments allegedly made to Mr Brown by Mr Flint on 15 February 2020. It was recorded that Mr Flint said that he had raised concerns regarding the procurement of services for the boiler room work not being compliant with financial policy, and he was also concerned around the lack of clarity around Ms Clements’ role at the school, as well as raising his view that Builder A was receiving much of the work being undertaken at the School and at Langer. We noted the investigators said that Mr Brown had no recollection of this. We further note that the investigators recorded this should have been followed up with Mrs Wilson. It was not immediately clear to us who the investigators said should have followed this up with Mrs Wilson as they had recorded that Mr Brown denied recollection of this information being passed to him. It was not clear to us whether the investigators accepted Mr Brown’s version of events.

254. There was also consideration of the 20 February 2020 email exchange where Mrs Flint had emailed Mrs Townsend and Ms Fairchild to raise concerns about the lack of quote information, she had been provided with for the works to the Student Services area. It was recorded that Mrs Townsend emailed Ms Clements who then provided them to her, and Mrs Townsend then sent them to Mrs Flint to keep on file. It was recorded that Mrs Townsend believed that the action was closed, and we note that the investigators found “*no follow up required, action taken.*”

255. The investigators then made a detailed list of recommendations with respect to the Respondent’s Financial Policy and Procedures, roles and responsibilities, and practical aspects of the procurement process.

256. Whereas the contents of the report were not in dispute, the Tribunal has found that once Mrs Flint sent her email on 29 May 2020 raising her concerns, Dr Coulson swiftly arranged for an investigation to be commenced and that this was conducted thoroughly. The resulting investigation report is comprehensive and a helpful document which has helped to clarify how some of the matters in this case have developed. We should make it clear that nowhere within the report was it found or even suggested that the failures to comply with policy were motivated by self-interest or anything of a similar nature. It is clear to the Tribunal that the failures identified were largely due to the Respondent’s staff either rushing or not being clear on what was required of them. It appeared to the Tribunal that whilst Mrs Flint was a relative newcomer to the Respondent as an employee, she appeared to have a far more detailed understanding of the procedures the Respondent was required to be working to (including EFSA requirements and the Respondent’s own policies) than those who had worked there considerably longer. We take from this that Mrs Flint took her responsibilities very seriously and was motivated to do what she believed was the right thing to do.

Discussions about job descriptions

257. During the investigation the investigator informed Dr Coulson that Mr Flint and Mrs Flint had raised concerns about the way they were being treated. On 15 June 2020 Dr Coulson emailed Mr Flint to ask him to share his concerns with him. Mr Flint replied and referred to Mrs Wilson-Downes who he said had questioned him about finance and procurement and told him he was no longer allowed to contact Mr Brown or Mrs Wilson, and that anything to do with the trust had to go through her. Mr Flint said he was continually being questioned about outstanding work that had already been discussed and he was concerned about confidentiality.
258. On 16 June 2020 Dr Coulson emailed Mrs Wilson-Downes and stated:
- “I am hoping Helen will finish her report tomorrow after talking tomorrow with Sharon.*
- I suggest I pop by when I have the report to discuss next steps. Sharon has written to Angela to say she is ‘being victimised as a result of raising these financial concerns under the Whistleblowing Policy’. I think we need to agree how to handle this. Helen has told me that her report will conclude that the finance procedures have not been adhered to in some of the work commissioned at Felixstowe. She will make some recommendations and I will draft an action plan to share with you.*
- I wondered if I could pencil in (subject to receiving Helen’s report) dropping in. Would 1.30pm on Thursday be convenient? I’m hoping to drop by and chat to Wayne earlier on Thursday.”*
259. It was clear therefore that Mrs Wilson-Downes knew by at least this stage that Mrs Flint was alleging that she had made a whistleblowing disclosure.
260. We note that in an email exchange on 18 June 2020 Mrs Wilson-Downes had asked Mr Flint for an update on site ticket however he replied that it was work for Langer to which Mrs Wilson-Downes replied that she knew that but still wanted an update as his line manager. We understand the reference to a site ticket in this context to refer to requests for work to be undertaken in connection with premises or the site. Members of staff can raise a site ticket which was then passed to Mr Flint’s team to deal with.
261. On 19 June 2020 Dr Coulson spoke to Mrs Flint and Mr Flint separately inform them of the outcome of the whistleblowing investigation. During his call Mr Flint told Dr Coulson that he did not think that he should report to Mrs Wilson-Downes about his work at Langer.
262. Mr Flint has suggested that he told Dr Coulson that he was being victimised by Mrs Wilson-Downes, however Dr Coulson denies this. There was no reference to victimisation in Mr Flint’s email of 15 June 2020. We also have a copy of Dr Coulson’s email to Mrs Wilson-Downes of 22 June 2020 where he shared Mr Flint’s concerns about who he should report to. There was no mention of victimisation in that email. We note that Dr Coulson had mentioned Mrs Flint had said she was feeling victimised in his email of 16 June to Mrs Wilson-Downes. It appears to the Tribunal that had Mr Flint told Dr Coulson that he was being victimised then it is highly likely that Dr Coulson would also have put that in his email to Mrs Wilson-Downes

as he had done so with respect to Mrs Flint. As there was no mention of this in the email, and no corroborating evidence, we find that it was not said at that time.

263. We also find, based upon the contemporaneous emails throughout June 2020 from Mrs Wilson-Downes, in particular one with a list of work dated 12 June 2020, that there was a considerable amount of work to be done at School, but also at Langer as well as seventeen items had been listed. Having read those emails it appeared to the Tribunal that Mrs Wilson-Downes was trying get to grips with what work needed to be done whilst she was absent from the School due to personal or family circumstances that she had referred us to. We are mindful that this was during the COVID-19 Pandemic where it would have been more difficult to obtain supplies and taken longer to complete jobs, and moreover this was starting to approach the end of the school year which would inevitably have been a busy period even under normal circumstances for one school.

264. On 23 June 2020 Mrs Flint was copied in on an email exchange by Darren Meitiner-Harvey who was then an assistant headteacher. We note that the signature on Mr Meitiner-Harvey's email was:

*"Assistant Headteacher – Communications
Literacy, BTEC and Appraisal"*

265. The exchange was with a colleague, Sara Parry, and it concerned technician appraisals – two members of staff were named, and we understand that both were technicians, thus support staff. Ms Parry had asked:

"Hi Darren,

Do you have the appraisal paperwork for [redacted] and [redacted]?

They mentioned to [redacted] yesterday that their appraisals were due in April but they obviously weren't done, I'm happy to do with them with [redacted] if that works for you?

Sara"

266. The Tribunal has redacted the names as they are not directly relevant to this claim and they did not attend as witnesses.

267. The response from Mr Meitiner-Harvey as follows:

"Most appraisals were halted due to Corona. I have only recently picked up whole school appraisal - I was previously just looking after teacher appraisals.

I have cc'd Sharon in so that she can let me know what the state of play is with regards to support staff."

268. Mrs Flint replied to Mr Meitiner-Harvey and asked, "Are you overseeing all support staff appraisals now as well as teachers?" to which Mr Meitiner-Harvey responded "Hi Sharon, From next academic year, yes. I was going to pop down and chat to you about it. I hope you're well."

269. It is clear from Mrs Flint's job description that responsibility for appraisals for support staff (non-teaching staff) fell to her.

270. Mrs Flint says that this was directed by Mrs Wilson-Downes, however there is nothing within that email exchange where Mr Meitiner-Harvey said this was the case. Mrs Flint says that she then met Mr Meitiner-Harvey on 24 June 2020 to discuss support staff performance reviews. Mrs Flint's evidence was:

"When I specifically asked him about support staff, Darren Meitiner-Harvey confirmed again that Emma Wilson-Downes had spoken to him 2-3 weeks ago and that he would also be over seeing support staff from September 2020, as well as teaching staff which he had overseen in the current academic year. This made me feel sick to the stomach, that yet another area of my responsibility was being taken away without any discussion with me."

271. Mrs Flint says that she subsequently asked Mrs Wilson-Downes about this however she looked very flustered and denied it and said that it was just teaching. Mrs Flint says, *"I felt this was untrue as Darren Meitiner-Harvey is an intelligent man and wouldn't have misunderstood her request."*

272. We have carefully considered the evidence of Mr Meitiner-Harvey who said that he is passionate about personal and professional growth and development and that he is critical of the typical secondary school appraisal processes which he said in his experience usually involves tick box exercises which staff do not value. Mr Meitiner-Harvey said that he had previously improved staff appraisals when he worked at Suffolk New College, and he hoped to do the same at the School.

273. There is a clear dispute of fact between Mr Meitiner-Harvey and Mrs Flint about their conversation on 24 June 2020. On the one hand Mrs Flint states that Mr Meitiner-Harvey told her that Mrs Wilson-Downes *"had spoken to him 2-3 weeks ago and that he would also be over seeing support staff from September 2020."* Mr Meitiner-Harvey denies making this comment and denies discussing his ideas with Mrs Wilson-Downes, or any other senior leader at the School or Trust. Mr Meitiner-Harvey said that Mrs Flint informed him that she had oversight of support staff appraisals and did not have any intentions to change the support staff appraisal process, and that he acknowledged this and said that it was his misunderstanding of roles and agreed support staff appraisal would stay as it was Mrs Flint's responsibility and not his.

274. Mr Meitiner-Harvey says that following this he took no actions in relation to support staff appraisals, he did not assume and responsibility for them, and when emails about support staff appraisals came to his attention, he would direct them to Mrs Flint. We have also noted the contents of Mr Meitiner-Harvey's witness statement where he said:

"On reflection, I realise that in my emails to Sharon on 23 June 2020 I got carried away and overly excited with ideas about improving staff appraisal. During my conversation with Sharon on 24 June 2020 I realised this and that if I had ideas about improving staff appraisal they should be fed in through the proper channels. I got carried away because I had not been a

part of a Trust previously and had been given a great deal of autonomy in my previous roles.”

275. Mr Meitiner-Harvey’s account is corroborated by Mrs Wilson-Downes in her evidence as she stated:

“I was not involved in these conversations and I do not know if this is a miscommunication or misunderstanding but I did not tell Darren Meitiner-Harvey to take over appraisals of support staff and in fact that is not the case and never has been. I confirmed in the meeting with Sharon on 26 June 2020 that Darren Meitiner-Harvey was not taking over support staff performance management and I understood that this resolved the matter. Sharon continued to have responsibility for the oversight of appraisal for support staff.”

276. In her oral evidence Mrs Wilson-Downes again denied that there had been any discussion about this with Mr Meitiner-Harvey, and she went further to say that this is how he is and that he is enthusiastic. Mrs Wilson-Downes gave evidence that there had been a couple of other occasions where Mr Meitiner-Harvey had taken over work which belonged to someone else.

277. We have spent a great deal of time considering this issue. We note that Mr Meitiner-Harvey joined the School in September 2019. It appears to the Tribunal to be a particularly unusual thing for a relatively new member of staff to unilaterally decide that they were going to take over all support staff appraisals without discussing it with someone else or at least enquiring who had that responsibility in the first place. We have looked carefully at the words used by Mr Meitiner-Harvey in his email of 23 June 2020 to Ms Parry. Mr Meitiner-Harvey said, *“I have only recently picked up whole school appraisal – I was previously just looking after teacher appraisals.”* The email does not say he was allocated these or that he had been asked to take them, it merely says that he had picked them up. Given the dispute of fact between the parties, the choice of language used in that email is of particular importance to the Tribunal. The use of the words “picked up” rather than say “allocated” or “asked to take over” would, on balance, suggest it was more likely to have been his decision than something which was given to him. This then leads us to ask the question why Mr Meitiner-Harvey “picked up” the appraisals as he says.

278. One issue which neither party has addressed in their evidence is why Ms Parry contacted Mr Meitiner-Harvey in the first place and not Mrs Flint. We did not have the benefit of Ms Parry as a witness to answer that question, however we note the SLT organogram from October 2019 [bundle page 822] which lists Mr Meitiner-Harvey as responsible for appraisals as does his email signature. Mrs Flint is absent from that chart which is a matter which will be addressed separately. It is therefore possible that Ms Parry emailed Mr Meitiner-Harvey for either of these reasons, although it is not something which we heard evidence on and therefore we make no finding about why Ms Parry acted as she did.

279. We have treated Mr Meitiner-Harvey’s evidence with a degree of caution given the implausibility of someone unilaterally taking over support staff appraisals in this way. We are prepared to accept that Mr Meitiner-

Harvey was enthusiastic to the point of being over-zealous, however we struggle to understand why someone in his position would have unilaterally taken over part of the role of a long-established member of staff who sat on the SLT. We find it highly unlikely that Mr Meitiner-Harvey did so out of the blue as he would have us believe.

280. We note that there had been conversations going on for a long time between senior members of the Respondent that there were plans for Mrs Flint's role. Mrs Wilson-Downes, as we have seen from the emails, was kept up to date about those plans and she had already confirmed which aspects of Mrs Flint's role had been given to other staff. We of course note that there was no mention on email about support staff appraisals, however it would be a remarkable coincidence at that time for Mr Meitiner-Harvey to have acted as he did.

281. We find that it is far more likely that as an assistant headteacher, Mr Meitiner-Harvey had in some way become aware that Mrs Flint's role was planned to come to an end, and that at some point in the future he would be taking over all staff appraisals. However due to either Mr Meitiner-Harvey's apparent over-zealous nature, or due to a misunderstanding, he attempted to take over support staff appraisals when he did. We do not find that Mrs Wilson-Downes told him to take them over when he did, we find it far more likely that he misunderstood when he would be taking them over.

282. We also find that there was no evidence at all that Mr Meitiner-Harvey was aware of any whistleblowing on the part of Mrs Flint. We note that this matter was in any event swiftly resolved as Mr Meitiner-Harvey stepped back and it was confirmed to Mrs Flint three days later by Dr Coulson (below) that she retained this part of her role.

Meeting of 26 June 2020 to discuss Mrs Flint's job description

283. Dr Coulson and Mrs Wilson-Downes held a meeting with Mrs Flint on 26 June 2020 to discuss her job description. Mrs Flint was accompanied by Mr Roberts. We find that this meeting arose out of concerns Mrs Flint had raised with the whistleblowing investigator which had been passed to Dr Coulson, and because of their telephone conversation on 19 June 2020.

284. We find that prior to this meeting Dr Coulson and Mrs Wilson-Downes had formed the view that both schools were busy, and that Mrs Flint had a lot of work to do across both sites. This is clear from the witness evidence and the contemporaneous emails within the hearing bundle. Mrs Flint's own evidence was that she was working 50-60 hours per week. We also find that Dr Coulson and Mrs Wilson-Downes indicated to Mrs Flint that they wanted her to focus her work on the School as she had taken on some work for Langer which was not part of her role. We find that during the meeting Dr Coulson informed Mrs Flint that she would cease work at Langer (which we find was not part of her job description in any event) and that she should focus on the School. We also find that Mrs Flint expressed concern about Ms Clements' work at the School and that Dr Coulson confirmed to Mrs Flint that would cease.

285. We have found no evidence that Dr Coulson had agreed that Ms Clements would no longer work at Langer, and in any event, this is something which would be a matter for Dr Coulson to decide.
286. The issue of the staff appraisals was discussed, and it was confirmed by Dr Coulson that these remained part of Mrs Flint's role. There was also discussion about the EVC role and Mrs Flint was informed that she would continue to have some involvement with health and safety but that she would be working alongside the new Assistant Headteacher who would have responsibility for the educational aspect of this function.
287. We also find that Dr Coulson raised the issue of Mrs Flint line managing her husband and said that it would be difficult for someone to manage the performance of someone they were married to, or words to that effect. We are satisfied that Dr Coulson and Mrs Wilson-Downes had some concerns about the work to be done at the School which we understand was one of the Respondent's largest schools, and that there was a desire to have Mr Flint as Premises Manager of the School to dedicate his time to that site. We find that Dr Coulson formed the view that if Mr Flint was having difficulty completing some of the work that he believed that Mrs Flint would not be able to manage his performance as she was married to him.
288. Following the meeting Dr Coulson emailed Mrs Flint a draft amended job description which showed via track changes the alterations the Respondent proposed to make to the role. We have already set out above the contents of the original job description, the changes are set out below. The text in bold is what was added, the text struck through is what was removed.
289. Under core purpose the following changes were proposed:
- a. To **oversee and coordinate performance management of line** ~~manage all~~ support staff, including HR procedures and processes.
 - b. To **ensure effective** ~~be responsible for the~~ recruitment and selection processes **for** ~~of~~ all staff
 - c. To be responsible for **working with the HR team on** safeguarding procedures in relation to recruitment of staff
290. As regards the heading of responsible to, the following changes were proposed:
- a. Line Manager for the **Finance Assistant, for supporting the** Office Manager, **for providing direction to the** Premises Manager, ~~ICT Network Manager,~~ to the Headteacher
291. Under the heading of key duties on SLT, the following changes were proposed:
- a. To attend, **as requested**, all main governing body meetings and assist the Chairs of the sub-committees relating to the areas of responsibility;
 - b. To ~~act as~~ **assist the** Educational Visits Coordinator for the school **with financial oversight of trips and visits**, ~~ensuring health and safety compliance using the Evolve system;~~

292. Under the heading of health and safety the following changes were proposed:
- a. To **oversee and monitor** ~~formulate, monitor,~~ **implementation** of the school's and ~~review the school's~~ **Hhealth & sSafety** procedures, policies including ~~the introduction of all rRisk aAssessment~~ procedures;
293. No changes were proposed with respect to premises.
294. Under the heading of finances, the following changes were proposed:
- a. ~~Ensuring the school has appropriate financial systems and managing all aspects of the school's financial systems in accordance with the agreed policies and timetables; ensuring accurate financial records are maintained, and reporting on a regular basis to the Principal and governing body;~~
 - b. ~~The operation of all bank accounts, ensuring that a full reconciliation is undertaken at least once per month;~~
 - c. ~~Manage the school's financial IT package giving guidance to other users;~~
 - d. Attend governing body committee meetings, **as requested**, related to finance, site and buildings ~~and maintain minutes and set agenda;~~
 - e. ~~Submitting capital bids to the Trust, mMonitoring and control of capital expenditure on buildings and grounds, placing of contracts, appointment and monitoring of contractors;~~
 - f. ~~To be responsible for the provision of a comprehensive payroll service for all school staff, with operation of the various pensions schemes and other deductions in which the school participates.~~
295. Under the heading of administration, the following changes were proposed
- a. ~~To coordinate planning for the effective and efficient provision of administrative IT resources at the school including hardware / software;~~
 - b. To **manage support** the efficient and effective running of the school office as one of the school's main points of public contact, as well as the centre of daily administration;
296. Under the heading of line management, the following changes were proposed:
- a. The Business Manager will be responsible for managing finance **staff, providing direction to** premises **staff and supporting**, office, ICT and ~~all other support staff.~~
 - b. ~~Managing the staffing operation of the school offices and all administrative / caretaking staff;~~
 - c. **Coordinating and overseeing performance management of** ~~Overseeing~~ support staff **and their** career development including the appraisal scheme and reviewing training requirements;
297. Under the heading of safeguarding, the following changes were proposed:
- a. **Managing-Monitoring** the Single Central Record;

- b. Working with the ~~Child Protection Officer DSL~~ in order to carry out an **on the** annual audit to ensure compliance with legal requirements.

298. Whereas a small number of these proposed amendments may reflect the different ways of working under the previous Trust as compared with the Respondent, it was clear to the Tribunal that these were significant changes to Mrs Flint's role and that in many respects it was a dilution of her responsibilities and seniority within the Respondent. We noted in particular that Mrs Flint would only attend governing body meetings upon invitation rather than as of right, and that in many respects the role would change from managing various functions, to monitoring or supporting and assisting with them, and some functions were removed altogether. Clearly this would have represented a significant reduction in her responsibilities and her seniority within the Respondent.

299. We find that Mrs Flint's role was changed and that her work on Cover (which was not recorded in her job description) and leading on EVC were removed and given to the Assistant Headteacher role that had been advertised, and that her role would be to assist rather than to lead. Mrs Flint no longer managed the ICT Manager or Exams Officer, her HR work was diminished, and her responsibility for SCR was reduced. We should point out that the Cover and management of the Exams Officer were not recorded in the job description but did form part of her role until this change as she had performed them for several years. Many of the other proposed changes to Mrs Flint's job description were not resolved formally as she subsequently issued a grievance which will be considered below.

300. Mrs Flint asked Dr Coulson for an assurance that her role would not be restructured, and she was advised that assurances could not be given. We found Dr Coulson's response to be entirely understandable as it would be very rare or unusual for an employer to guarantee that no changes would ever be made.

301. We understand that the then Finance Manager left the School at this time and her role was not replaced, and some of her functions were allocated to Mrs Flint. We also understand that a Finance Assistant was later recruited but she experienced frequent long term sickness absence which meant that her duties also fell in part to Mrs Flint.

Meeting of 26 June 2020 to discuss Mr Flint's job description

302. On 26 June 2020 Dr Coulson and Mrs Wilson-Downes also met with Mr Flint who was accompanied by Mr Roberts. The purpose of this meeting was to discuss Mr Flint's job description.

303. We find that during this meeting Dr Coulson informed Mr Flint that he would need to work solely at the School and not Langer as there was a lot of work to do at the School. We also find that Dr Coulson informed Mr Flint that Ms Clements would cease working at the School. We do not find that Dr Coulson said that Ms Clements would stop working at Langer.

304. There was a discussion about Mr Flint's line management however there is a difference in recollection about what was discussed. Mr Flint's recollection was that he was told that Mrs Wilson-Downes would carry out his performance management, however when he received his draft

amended job description from Dr Coulson it showed Mrs Wilson-Downes as his line manager and not Mrs Flint.

305. Dr Coulson says that he told Mr Flint that he felt that it was inappropriate for Mrs Flint to be his line manager and that this should be changed, although he would continue to work closely with Mrs Flint as the business manager for day-to-day matters, such as health and safety. We prefer the evidence of Dr Coulson in this regard as it was clear to us that the Respondent, specifically Dr Coulson, had decided that it was inappropriate for Mr Flint to be managed by his wife. We also find support for this from the emails from Mrs Bull in March 2020 where this change to the Code of Conduct had already been discussed with respect to reporting of relationships and spouses managing each other. Given that change was already in train it would appear more likely that Dr Coulson had said that Mrs Wilson-Downes was to become Mr Flint's line manager.
306. Following the meeting Dr Coulson emailed Mr Flint an amended version of his job description. The following changes were proposed. The additions have been indicated in bold and the removed functions have been struck through. The first change was to make the role responsible to the Headteacher rather than the Business Manager.
307. Under the heading of maintenance of the site, the following changes were proposed:
- a. Assist **and direction from** the Business Manager in the preparation of maintenance and future capital expenditure project / work plans; liaise with contractors and be their main point of contact.
 - b. Attend ~~Divisional Leaders~~ **trust-wide** meetings and weekly site review with the Principal **Headteacher and Business Manager**, as requested.
 - c. ~~Organise a portering and furniture moving service to ensure supplies are in place.~~
 - d. Ensure the efficient transfer **of** goods and materials delivered to the Academy to appropriate location; assist with assembly of goods received where necessary and report any defects.
308. No changes were proposed with respect to the security of the site function.
309. As regards the health and safety function, the following changes were proposed:
- a. Assist the Business Manager in ensuring the Academy complies with all current legislation in relation to site safety and facilities management; including the maintenance of appropriate records using the web-based Handsam system. **Parago**
 - b. ~~Actively participate in the Health and Safety Committee.~~
310. It appeared to the Tribunal that there were only very small changes made to Mr Flint's job description.

311. On 30 June 2020 Mr Flint replied to Dr Coulson and stated that the amendments were not what had been agreed at the meeting, in particular with respect his line management. A further meeting took place between them on 2 July 2020, during which Mr Flint resisted any change in line manager. Dr Coulson agreed to postpone making a change, and this was confirmed by way of an email dated 14 July 2020. It would appear that the reason for delaying this was due to Mr Flint's subsequent grievance which will be addressed below.

Alleged written disclosure – 22 July 2020

312. On 22 July 2020 Mr Flint sent Mrs Flint the following email. As the contractor referred to did not appear as a witness in this claim their name will be replaced with **Contractor B**. For the avoidance of any confusion, Builder A and Contractor B are different people. The email reads:

"Hi Sharon

*On 10 July 2020, you will recall you asked me to show **Contractor B**, Decorating Contractor, around the Academy. This was because only one of the three contractors who had submitted quotes had returned the tender documentation by the deadline, and Sarah Garner said we needed at least another. During our walk around, **Contractor B** and I were joking about the need to paint around the large letters on the wall, and he said 'no wonder the other quote was £70,000 if you have to do that'. I had not told him the amount of the other quote, but he clearly knew what it was.*

*On 14 July, I received a copy of a pecuniary interest form from Sarah Garner, where she stated she knew the wife of someone who worked for **Contractor B's** decorating company. It would appear that she had disclosed the amount of the other quote to her friend which had been passed on.*

I feel I need to raise this in line with our whistleblowing policy, and particularly in light of the recent formal investigation into financial practices."

313. Mr Flint says that he made this disclosure to Mrs Flint as his line manager. The Respondent has already conceded that this was a protected disclosure. Mr Flint says that he made it to Mrs Flint *"because I reasonably believed Wayne Lloyd and Emma Wilson-Downes would subject me to a detriment if I made the disclosure to them, having been victimised for previously whistleblowing. I also believe that if I made the disclosure to Wayne Lloyd or Emma Wilson-Downes, they would conceal the evidence and the relevant disclosure was of a serious nature."*

Alleged written disclosure – 29 July 2020 and second whistle-blowing investigation

314. On 29 July 2020 Mrs Flint forwarded a copy of Mr Flint's email of 22 July to Dr Coulson. The Respondent again concedes that this was a protected disclosure. On this occasion Dr Coulson engaged Waveney Valley Academy Trust to investigate and this was undertaken by Alison O'Connor, Chief Operating Officer, who authored the final report.

315. The specific allegation related solely to Mrs Garner and was as follows:

“It has been alleged that you may have passed information, relating to a quotation process at Felix Academy, to a third-party organisation, with whom you had previously declared a pecuniary interest.”

316. Ms O’Connor interviewed Mrs Garner, Mr Flint, Mrs Flint, Mrs Wilson-Downes, and Mrs Wilson. We also note that Contractor B was not interviewed on the basis that it would *“represent a disproportionate reputational and operational risk”* to both the Respondent and the School. This alleged risk was not sufficiently explained within the report.

317. Ms Vigor, who deals with procurement, was also not interviewed due to availability, however questions which would have been posed to her were put to the other witnesses.

318. The investigation findings can be briefly summarised as follows. It was noted that the initial three quotations led Mr Flint to advise colleagues of the requirement for a full tendering process. It was clear that the tendering process would need to be completed within very tight time constraints. When asked to submit tender documentation, two of the contractors who provided the initial quotations declined to offer their services. With only one week of term left, the tendering process was unable to be followed appropriately, but it was still considered imperative that the work was undertaken.

319. Mrs Garner suggested to colleagues that she could contact the local company where her friend’s husband works, and this was verbally agreed by Mrs Wilson and Mrs Wilson–Downes. Mrs Garner then telephoned her husband to obtain a contact number for the company. Mrs Garner then made a subsequent telephone call to the company and arranged for a visit to the school later that same day. Contractor B visited the school at very short notice and provided a quotation the next day. Mr Flint had said that Contractor B did not take measurements during the visit and but was aware the approximate value of the only other tender which had been received.

320. Mrs Garner completed a pecuniary declaration form following her telephone call with Contractor B, and the decision was agreed verbally by Mrs Garner, Mrs Wilson-Downes and Mrs Flint. Mrs Flint subsequently confirmed to Mrs Garner that the work was satisfactory and that the initial payment could be made.

321. Mr Flint and a school caretaker subsequently had conversations with Contractor B’s subcontractors regarding the daily rates they were receiving from Contractor B. Mr Flint said he performed calculations based upon these figures and concluded that the cost of the contract could or should have been much lower. Mr Flint and Mrs Flint said that they felt that the work did not represent best value based upon those calculations. Mrs Flint became very concerned that the Respondent’s financial procedures had not been followed.

322. It was recorded that Mrs Garner said she was confident that she would not have shared the value of the other quotation during the telephone

calls, but she did recall advising that it was a large job, and she also recalled outlining the urgency with which the work needed to be completed.

323. Mr Flint said that he advised Mrs Flint of his concerns immediately after Contractor B's visit to the School on 10 July 2020. Mrs Flint was involved in a discussion with Mrs Garner and Mrs Wilson on the 13 July where it was agreed that the work should be awarded to Contractor B. Mr Flint did not formally raise his concerns until 22 July 2020, and he stated this was due to his mind being focused on another grievance meeting.

324. In conclusion, Ms O'Connor recorded that with no witnesses to the conversations it was not possible to prove whether Mrs Garner shared the value of the other quotation with Contractor B, nor was it possible to prove that Contractor B made the comment to Mr Flint regarding the other quotation during his visit to the school.

325. Mrs O'Connor found that whilst the Respondent's financial policy outlines the procedure for a declaring pecuniary interest, it does not enlarge upon how these relationships should be managed. Mrs O'Connor said that had it been possible to substantiate the allegation, it would still not have represented a direct breach of the Respondent's policy, although it could have been considered an implicit expectation for Mrs Garner not to share such information. In conclusion the allegation was not upheld.

326. However, we also note that Mrs O'Connor provided additional information arising from the investigation which she described as areas for concern. It was noted that this may be outside of the scope of the investigation, but it was included within a supplementary report for information. Various issues were identified by Mrs O'Connor, and these included having a named individual managing the project; insufficient time had been allowed which meant that the work took priority over policy compliance; where there is a pecuniary interest or other potential conflict the staff member should be excluded from the process; and approvals should be documented. We also noted that Ms O'Connor made the following statement:

"A manager from the school was very concerned that the Trust's financial procedures had not been followed. The IO considered that the staff member was genuinely anxious that, alongside the details of this particular case, the requirements of the Trust's Finance Policy were frequently not being met."

327. The Tribunal concludes that the manager being referred to was Mrs Flint, and that Mrs O'Connor had formed the view that her concerns were genuinely held.

328. We also note that Mrs O'Connor found that it was inappropriate for a member of the School's staff to have had conversations with Contractor B's sub-contractors about their day rates as it appeared unlikely to her that they would have volunteered this information without having first been asked. We conclude that the member of staff being criticised was Mr Flint or possibly the caretaker. Mrs O'Connor went on to make six recommendations for the future, however it is not necessary for these to be repeated here.

Grievances

329. We have been referred to a copy of the Respondent's Grievance Policy. This is an 11-page document which we have found to be clear and which sets out in detail how a member of staff may raise a complaint about their treatment, and it sets how it is expected that a grievance will be addressed, including an investigation stage, a grievance hearing, the option to ask for an appeal where new evidence may be considered. We note that the Policy is clear that it discourages the harbouring of grievances and as such there it would appear that staff are encouraged to be open about their complaints. Whereas the Policy is not prescriptive about timing it records as one of its aims that grievances should be dealt with fully, promptly, and fairly. The Policy provides that a grievance hearing should be arranged within ten working days of a written grievance being received subject to an investigation being carried out. It also provides that a decision should be issued within two weeks of the end of a grievance hearing or 5 days of an appeal hearing. The Policy envisages a number of outcomes from a grievance including an apology or mediation.

330. On 6 July 2020 Mrs Flint filed her grievance and Mr Flint did so on 10 July 2020. These are comprehensive grievance documents, and it is not necessary for their entire contents to be repeated here, and moreover some of the matters referred to do not directly relate to the Issues to be decided in this case. We note that within her ten-page grievance Mrs Flint's complaints concerned:

- a. Treatment since September 2019 regarding changes to her job description as Business Manager and responsibilities;
- b. Failure of Wayne Lloyd, Executive Headteacher, and Emma Wilson-Downes, Headteacher, to follow appropriate HR procedures which also impacted upon other staff; and
- c. Treatment since formal whistleblowing since February 2020.

331. We note that within his nine-page grievance, Mr Flint's complaints concerned:

- a. Treatment since September 2019 regarding changes to his job description, line management and responsibilities by Wayne Lloyd, Emma Wilson-Downes and Liz Clements;
- b. Failure to provide clarity around his role despite raising this with Academy and senior Trust staff; and
- c. Treatment to undermine him and make him look incompetent, in particular, following whistleblowing.

332. We note that Mrs Flint said that she had completely lost trust and confidence in the leadership of the School, and the Trust more generally and that she had been victimised since raising concerns. Mrs Flint said that it had been the intention of Mr Lloyd to give the premises part of her role to Ms Clements and that once Mrs Flint raised her concerns it became clear that Mr Lloyd and Mrs Wilson-Downes intended to get rid of Mrs Flint's role entirely. Mrs Flint said that the alternative employment offered to her was entirely unsuitable, and that it was offered with the intention that she refuse it and leave. Mrs Flint said that steps had been taken since raising her

concerns to make the role redundant which could not be reversed now that significant changes have taken place. Mrs Flint therefore asked to be made redundant and to be compensated for her treatment following her formal and informal whistleblowing. Mrs Flint said that a settlement would need to compensate her for the lack of other suitable employment opportunities during the Pandemic.

333. Similar comments were made by Mr Flint who said that he had completely lost trust and confidence in the leadership of the School, and the Trust more generally, that he had been victimised since raising concerns. Mr Flint said that it was the intention of Mr Lloyd to have Ms Clements manage the site team and to make him subordinate to her and that the moment he raised concerns about Ms Clements' behaviour, Mr Lloyd and Mrs Wilson-Downes intended to get rid of him. Mr Flint said that they had done this by excluding him at every opportunity, belittling him, and making him fight simply to do his job.
334. Mr Flint said that the fact that he had been removed as Premises Manager of Langer by Dr Coulson, and that this was awarded to Ms Clements whom he had blown the whistle about both informally and formally, was all the more insulting. Mr Flint asked to be compensated for his treatment and that such a settlement would also need to compensate him for the lack of other suitable employment opportunities during the Pandemic. Mr Flint said that he failed to see how he had not already been made redundant in retaliation for whistleblowing.
335. This was allocated to Schools Choice an external organisation to conduct an investigation. The specific investigator was Mark Vince. Mr Flint and Mrs Flint have suggested that the company was not independent as it had been used by the Respondent on multiple occasions previously, and that Mrs Bull had a personal relationship with the investigator. We have no evidence to support such an assertion. Whereas Mrs Bull may have worked previously with Mr Vince on occasion, this is not unusual and moreover we note that the grievance was sent to an external body to investigate rather than dealing with it internally which suggests to us that the Respondent intended for the grievance to be investigated impartially.
336. Mr Flint was interviewed by Mr Vince on 21 July 2020 and Mrs Flint was interviewed on 3 August 2020.
337. At the beginning of September 2020 Mr Roberts contacted Mr Vince to chase up the process due to the time being taken.
338. We note that further disparaging comments were made about Mr Flint by Ms Clements and to a lesser degree Mrs Wilson-Downes on 14 September 2020. Mr Flint had been asked by a colleague to provide advice on wall hangings and fire regulations. Mr Flint provided some advice which he copied to Mrs Wilson-Downes and others. Mr Flint's email set out ten bullet point measures to ensure compliance with fire safety requirements, for example the use of fire-retardant display materials and keeping displays away from curtains, light fittings and heaters.
339. Upon receipt Mrs Wilson-Downes asked Ms Clements the following:

"Hi Liz,

does this mean that we can hang up art work from the rails without breaching any of these rules???

Trying very hard to ensue [sic] that we absolutely adhere to every single rule possible.....

Thanks”

340. Ms Clements replied:

“Hi Emma

There’s not many things that make me speechless but this is one of them! Really?????? Does he not have anything else to do???”

341. We found this exchange to be surprising given the subject matter of the email was about fire safety and moreover Mr Flint had been asked for advice from a colleague which he had provided within 39 minutes of that request. The suggestion that Mr Flint had nothing better to do was therefore a surprising comment for Ms Clements to have made, as was Mrs Wilson-Downes’ comments about “trying very hard” to ensure absolute adherence, which we understood to have been intended as some form of sarcasm. This exchange was solely between Ms Clements and Mrs Wilson-Downes, Mr Flint was not copied in.

342. We also note that during September 2020 that the Respondent’s staff were informed of changes to the Staff Code of Conduct and that they should disclose any workplace relationships to allow the Respondent to take pre-emptive steps to avoid a conflict of interest, such as changing reporting lines in the case of an employee reporting to their partner. We have been provided with documents in the hearing bundle, specifically an email string between Mrs Bull and Mr Watts dated 5 and 6 March 2020 where this was discussed. Whereas the change was notified until September 2020 it was clear to us that the decision was made in March 2020. Dr Coulson has given evidence that the decision was made following an incident at another school in the Trust in January or February 2020 and that there was a need to protect staff from controlling or coercive behaviour - described in error as cohesive behaviour in Dr Coulson’s witness statement which we believe was a typing error. Mrs Bull has also given consistent evidence on this point about the reasons for the change and we therefore accept the evidence of Dr Coulson and Mrs Bull.

343. On 10 September Mr Vince provided the investigation outcome with respect to both grievances. These are comprehensive reports produced after conducting interviews with a number of staff including Mr Flint, Mrs Flint, Mrs Bull, Mrs Wilson, Mrs Hughes, Mr Chambers, Ms Clements, Mr Brown, Mr Lloyd, Mrs Wilson-Downes, Dr Coulson, Mrs Cumberland, Ms Fairchild, Mrs Townsend, and also a member of site staff at the School and the Office Manager at Langer.

344. As regards the investigation into Mr Flint’s grievance, it was noted that when the School and Langer joined the Respondent the state of both school sites was poor with health and safety issues that needed addressing in both premises urgently. When the Respondent had taken on new schools in the past where there were issues with premises that needed addressing,

the Respondent would ask Ms Clements to attend these sites to help and support the existing site teams to manage the improvement of the premises.

345. We note that Mr Vince could find no evidence of any communication or meetings (informal or formal) having taken place to inform anyone of what Ms Clements' job role, remit, or purpose at either of the schools would be. Mr Vince said he could find no evidence of consideration being given to how bringing Ms Clements to the school would impact upon those who were responsible for premises issues. Mr Vince recorded "*...with the benefit of hindsight some consideration and clear communication with Graham and those responsible for premises management to understand roles and responsibilities, communicate the purpose of LC being asked to attend the schools and clearly establish remits may have prevented Graham from feeling excluded and that parts of his job role were being taken away from him.*"
346. Mr Vince addressed Mr Flint's allegations that there had been changes to his job description which he described as misleading as he said that the evidence suggested that prior to his meeting with Dr Coulson on 26 June 2020, there had been no changes to his job description as Premises Manager at the School. Mr Vince recorded that even following his meeting with Dr Coulson it appeared that there were no significant changes to his job description as the only amendments proposed were to make were a change to the line manager and to remove Langer from his scope of responsibilities which Mr Vince said was not part of his job official description anyway. Mr Vince recorded that Mr Flint had told him that he had unofficially assumed the role of Premises Manager at Langer and that Mrs Hughes said that he would only attend at about 2pm on a Wednesday to "*do anything that needed doing and go back again. Often it was only for half an hour*" and that they would occasionally call him to come and sort something out if the resident caretaker couldn't do it or couldn't be located.
347. Mr Vince said that "*In light of this evidence for Graham to claim that half his job role has been given to someone else as he did in his interview with me is inaccurate at least and potentially disingenuous.*"
348. We disagree with that conclusion of Mr Vince. It was not clear to us whether he had seen a copy of the letter dated 20 July 2017 from the then Director of HR at AET [**bundle page 30**] where it confirmed that:

"I can confirm your place of work will be within the Felixstowe cluster. You will be required to work across the cluster, although will be primarily based at Felixstowe Academy."
349. It is clear from the letter that Mr Flint's primary role was based at the School, but that he could be required to work across the other schools, including at Langer. This requirement to help at Langer was removed from Mr Flint by the Respondent. Accordingly, we do not agree that it was inaccurate or disingenuous for Mr Flint to have said that parts of his role had been given to someone else. We found this comment to have been unfair, although it is possible that Mr Vince did not have sight of the 20 July 2017 letter at the time.

350. Mr Vince also found that there was some evidence that Mr Flint had sought clarity as to what his job role was although it may not have occurred through the right channels and some of his concerns may have been *“lost in the ether”* when raised to Trust level – we understand that to be a reference to Mrs Wilson. Mr Vince said that there were some observations about Ms Clements which may have added to Mr Flint’s anxieties about confusion and lack of clarity about his role. Mr Vince said that when asked, most interviewees told him that they understood Ms Clements to be Premises Manager, however he recorded that Ms Clements told him that she had a one-year temporary post as Head of Operations and that she had introduced herself as such at Langer but denied saying that she was Mr Flint’s boss.
351. It is recorded that Dr Coulson told Mr Vince that Ms Clements *‘is a very can-do person, sometimes rubs people up the wrong way with her direct style, but is absolutely a can-do person’*. It was noted that Ms Clements said that her role was one of a supportive capacity, but she did start a process of informally managing the performance of the caretaker at Langer and she admitted to being single minded and that she unintentionally left Mr Flint out on occasion and that *“to be fair I didn’t involve GF that much to start off with. I said at the time I apologise for that because he should have been involved. When I am asked to do a job, I get on and do it and forget to involve people.”*
352. Mr Vince recorded that *“It is understandable given LC’s involvement and the way in which it has been observed by others and her own acknowledgement of the way she can work Graham felt excluded and he lacked clarity about his job role.”*
353. Mr Vince noted that following the meeting between Dr Coulson, Mrs Wilson-Downes, and Mr Flint, Dr Coulson thought that issues had been resolved as the job role had been clarified, Ms Clements would no longer work at the School, Mr Flint would remain at the School and Mrs Wilson-Downes would become his line manager. It was noted that Mr Flint disagreed with this and there had been a subsequent meeting, and the issue of his line manager remained unresolved.
354. Mr Vince also recorded that he found no evidence to suggest that anyone within the Respondent knew anything about whistleblowing in relation to alleged financial procedures not being followed until 29 May 2020. Those witnesses he interviewed denied knowing about alleged whistleblowing, and Mr Vince recorded that Mr Flint had not formally used the Respondent’s formal Whistleblowing policy. It was noted that once Mrs Bull became aware the Respondent immediately commissioned an independent investigation, and as such Mr Vince said that it was reasonable to believe due to no evidence of the Whistleblowing Policy being followed, the Respondent was unaware of any whistleblowing prior to 29 May 2020, therefore the alleged treatment to undermine and make Mr Flint look incompetent that he alleges in his grievance took place prior to this date, could not have been in relation to whistleblowing.
355. We noted that Mr Vince found that *“Evidence suggests TC the CEO of USP has made considerable and sincere attempts to listen to and assuage Graham’s concerns and provide him with clarity over his job role.”*

Evidence suggests Graham is resistant to a change of line manager and being asked to focus solely on the premises management at Felixstowe Academy. Evidence also suggests he is also attempting to direct and influence who can be involved in premises management at Langer Primary Academy.”

356. Mr Vince also recorded that *“the catalyst to this situation appears to have originated through a combination of ineffective communication and an over-zealous approach from senior leaders that has failed to acknowledge the responsibilities of those already occupying certain job roles, who consequently feel excluded, which has led to confusion and resentment in this particular situation. These issues need addressing by the Trust.”* It was further noted that recent significant effort had been made to listen to Mr Flint’s concerns and to provide him with clarity about his role to the extent where Dr Coulson had met with him twice to try and resolve the situation.

357. We also note that Mr Vince expressed some concern as to Mr Flint’s conduct as he recorded *“Assessing the evidence and content of Graham’s written grievance provokes some ambivalence as to the potential vexatious and possibly malicious nature of some of the content.”* Mr Vince provided examples such as Mr Flint resisting reasonable suggestions to change his line manager with no valid reason as it is not an employee’s right to choose who their line manager is. A further example was that Mr Flint had claimed that half of his job role (Premises Manager at Langer) had been given to Ms Clements, despite it not being officially on his job description and the evidence of Ms Hughes that he only spent an hour or two there each Wednesday afternoon. Mr Vince also said that Mr Flint had been complaining that Ms Clements had been working at Langer and that *“It is not at an employee’s delectation to dictate how and where the Trust deploy its staff.”*

358. We also note that Mr Vince suggested that Mr Flint’s grievance contained contradictions that he had been excluded from meetings and decisions but then complained that Mrs Wilson-Downes had put pressure on him by having meetings with him, whereas Mrs Wilson-Downes said that she was just managing him. Mr Vince also recorded that Mr Flint complained that Mrs Wilson-Downes regularly monitors the site ticket system and regularly makes comments and gives instructions, whereas she says that Mr Flint asked her to make comments. Mr Vince said that even if Mr Flint had not requested this it was a normal request in any healthy employer/employee relationship where the employer has a right to an element of control over an employee and to direct, instruct and monitor what its employees are doing.

359. Mr Vince said that in the fact-finding meeting he asked Mr Flint what he meant when he stated in his grievance that he was seeking to be compensated, Mr Flint replied *“What do you think I mean? One way or another I’m going whether it be here or a tribunal, it’s going to cost them”.* Mr Vince also said that Mr Flint’s use of language about being pressured to resigning or being punished after raising concerns might be construed as vexatious due to lack of evidence to support it.

360. Mr Vince made a number of recommendations including resolving the line manager issue. Mr Vince noted that Mr Flint was line managed by

his wife and that *“Good, sensible HR practice would be to change this arrangement with immediate effect. Many organisations have policies such as an Employment of Relatives Policy or Employing Family and Friends Policy, that are specifically worded to ensure potential conflicts of interests and allegations of nepotism are avoided. This recommendation is intended to protect both Graham and his wife from any such accusations in the future and is conducive to the recommendations below in relation to effective performance management procedures.”* Mr Vince also suggested that having a day to day line manager and annual appraiser who were different people appeared confused and would likely compromise effective performance management.

361. Further recommendations were made such as a meeting with the new line manager to clarify the role and responsibilities, setting clear performance objectives and providing feedback, identifying learning needs as the Respondent appeared to have a very different ethos to the upkeep and maintenance of its sites and premises to the previous Trust; weekly meetings with his line manager and walkaround premises; greater use of a ticket system; and mediation between Mr Flint and Mrs Wilson-Downes and potentially Mr Lloyd.
362. A confidential supplementary organisational recommendations report was also produced which we understand was not shared with Mr Flint at the material time. Mr Vince made a number of recommendations which we will summarise briefly. Mr Vince noted the importance of clear communication before anyone is asked to attend individual schools on behalf of the Trust in relation to premises or Trust level buildings maintenance or premises related projects. Mr Vince recommended that everyone has clarity over their roles, remit and responsibilities as *“The root cause of this grievance was poor communication and lack of consideration for people dynamics from the outset regarding LC’s role and purpose at Felixstowe and Langer Academies. The Trust need to learn from this situation to ensure it does not occur again.”*
363. Mr Vince also recommended educating employees on using the Whistleblowing Policy and Procedure if they wish to make a disclosure; he recommended emotional intelligence training for Ms Clements as Dr Coulson had acknowledged that she could *“rub people up the wrong way with her direct style”* and Ms Clements herself admitted *“when I am asked to do a job I just get on with it and forget about people”*.
364. Mr Vince also recommended Change Management training for senior leaders to help develop techniques and skills to manage people through change and to develop a greater awareness of peoples’ worries and concerns during such periods in order to deal with them from the outset and prevent issues and concerns escalating.
365. Whereas we have already findings that there were only small changes to Mr Flint’s job description, we do not share Mr Vince’s observations that his grievance or aspects of it may have been malicious. The word malicious has serious connotations and we saw no evidence which would have justified such a suggestion (even if not expressed as a conclusion) from Mr Vince. As regards the use of the word vexatious, we understood this to mean that the grievance was brought without sufficient

grounds or merit, however we do not agree that the grievance was vexatious.

366. We will now turn to the investigation report into Mrs Flint's grievance prepared by Mr Vince. Mr Vince recorded Mrs Flint's concern that she had been excluded from discussions and decisions relating to the oversight of premises management and that much of that responsibility was given to Ms Clements. Mr Vince also recorded that Mrs Flint felt excluded as her role had been removed from the SLT Structure Chart released in November 2019 and that she had not been included in an interview panel for the new caretaker at the School in March 2020. Mr Vince also recorded Mrs Flint's concern that in April 2020 the visits and trips coordinator aspects of her role had been advertised as part of the Assistant Headteacher recruitment and that oversight of support staff appraisals had been allocated to Mr Meitiner-Harvey.
367. Mr Vince repeated his background findings about the state of the School and that there was a lack of evidence of any communication with Mrs Flint about the arrival of Ms Clements nor any discussion about roles and responsibilities. Similarly, Mr Vince found no evidence of consideration being given to how bringing Ms Clements to the School to assist with premises related issues would impact upon people dynamics.
368. Mr Vince identified a difference in recollection between Mrs Flint and Mrs Wilson-Downes about the meeting of 5 November 2019 where it is agreed that Mrs Flint handed over a copy of her job description and her appraisals. Mr Vince records that Mrs Wilson-Downes said this was a normal meeting where general budgetary issues were discussed, she denied that Mrs Flint raised concerns or discussed her job role, although she says she did find it random that Mrs Flint handed over her job description. It was recorded that Mrs Flint said she was *"seeking clarity about Mrs Clements coming in and her role, and said I felt we taught it through, but nothing changed, and she got no clarity from the meeting."*
369. Mr Vince noted that two days later on 7 November the structure chart was then released, and that there was no evidence of a discussion, having taken place to inform Mrs Flint that a new structure chart of SLT was going to be released that we only include teachers in line with the Respondent's practice. Mr Vincent said that had such communication occurred to explain the rationale behind the new structure chart, it may have potentially assuaged Mrs Flint feeling of being aggrieved. However, Mr Vince said there was no evidence of any malice in the decision to exclude her from the chart as Mrs Wilson-Downes said that Mrs Flint continued to be a member of the SLT and attended the morning briefings each day.
370. We can see that Mr Vince very briefly considered the issue of support staff, appraisals and recorded that Mrs Wilson-Downes told him that this was a misunderstanding, which had been rectified, and that Mrs Flint would retain the responsibility, so the issue had been resolved. We note that Mr Vince appears to have accepted this explanation at face value as we note that he did not record why he had not spoken to Mr Meitiner-Harvey, and he simply accepted Mrs Wilson-Downes' explanation without probing how this had occurred in the first place, not least in the context of Mrs Flint complaining that other aspects of her role being removed.

371. Mr Vince found that it was unlikely that there was any communication with Mrs Flint about the oversight of coordinating visits and trips being listed as responsibilities under the assistant headteacher job advertisement. Mr Vince recorded that Mr Lloyd had explained that he believed that there were certain roles that needed to be overseen by a teacher, or an educationalist, and that it was more appropriate for an assistant headteacher to have oversight of visits and trips. Mr Lloyd is recorded as having stated that if Mrs Wilson-Downes did not speak to Mrs Flint about it, *“that could be something we did not get quite right.”*
372. We paid close attention to Mr Vince’s finding that there appeared to be some misunderstanding by Mr Lloyd and Mrs Wilson-Downes about Mrs Flint’s job role in relation to the TUPE transfer. Mr Vince said that Mr Lloyd and Mrs Wilson-Downes informed him that the role of business manager does not exist within the Respondent’s schools, and that they operate a different model to the previous trust, and it had been identified within the TUPE process that this role was not required. Mr Vince records that this is not technically correct as the TUPE measures letter does not reference the school business managers role, specifically, it simply references a post transfer review of admin support at the school will be required. We also understand that there is one other school in the Respondent which has a Business Manager, however it was clear that it was the Respondent’s practice not to have one and to rely on central services instead.
373. By reference to the suggestion of the finance hub manager role on 5 May 2020, Mr Vince appears to place great reliance upon the email from Mrs Bull to Mrs Flint in which she appears to try and assure her that the Respondent had not determined that her role was not required. It does not appear that Mr Vince had the benefit of seeing the emails from Mrs Bull to Dr Coulson and Mr Lloyd where she said that things were not going to plan, nor does he appear to have had sight of the earlier email from Mrs Garner where she said *“I thought we had other plans for SF.”*
374. Mr Vince recorded that Dr Coulson had met with Mrs Flint on 26 June 2020 to listen to her concerns and to try and provide her with reassurance and clarity, and he also recorded that Mrs Flint informed him that she felt that Dr Coulson’s intention was to put things right, but it had felt like a temporary fix.
375. We note that Mr Vince did not fully deal with the second allegation concerning the alleged failure of Mr Lloyd and Mrs Wilson Downes to follow appropriate HR procedures, which Mrs Flint said had also impacted on other members of staff. Mr Vince recorded that the purpose of the investigation was to consider allegations raised by Mrs Flint in relation to her own individual concerns. We note that Mr Vince suggested that Mrs Flint’s second allegation could potentially be considered as vexatious as *“there is no indication that a collective grievance and Sharon is highlighting subjective concerns of other members of staff or her own subjective perceptions of colleagues. Concerns therefore irrelevant to this investigation.”* Again, in this context we understood the reference to vexatious to mean that it was brought without merit.
376. We note that much of this second allegation concerned a failure to follow HR processes generally within the School and specifically the

restructuring of SLT in October 2019 and did not directly concern Mrs Flint's role. Much of Mrs Flint's comments concerned the treatment of other staff rather than herself, including an alleged failure to circulate an advert for an assistant headteacher vacancy.

377. Within his summary of findings as to allegation one, Mr Vince simply recorded the following:

“Part of Sharon’s feeling of exclusion has also been triggered by her job role being removed from the updated SLT Structure Chart that was released in November 2019 and her allegedly not being included in an interview panel in relation to the recruitment of a new caretaker at Felixstowe Academy in March 2020.”

378. Mr Vince went onto consider Mrs Flint's allegations that she had been punished for raising concerns and for formally whistleblowing and that she was pressured to accept the hub finance manager role in May 2020 and also given the option to enter into a settlement following on from her raising her concerns. We observe that Mr Vince looked closely at the background to Mrs Flint's alleged whistleblowing, and specifically her email of 20 February 2020 however he noted that Mrs Flint did not use or refer to the Respondent's Whistleblowing Policy, she did not use the word whistleblowing and he noted that there were at least two occasions (one in December 2019 and one in January 2020) where Mrs Flint had attended induction or training sessions where it was discussed how to raise a disclosure.

379. After speaking to Ms Fairchild and Mrs Townsend, Mr Vince concluded that neither regarded the email as whistleblowing. Mr Vince specifically found that Mrs Bull was unaware of any whistleblowing until 29 May 2020, and as a result the offer of the finance hub manager role could not have been influenced by it. Mr Vince also made reference to the TUPE letter of 6 June 2019 which made clear that post transfer there would be a review of admin support staff, and he also found that the offer of settlement negotiations was made by Mrs Bull to Mr Roberts following discussions about the finance hub manager role, and that these discussions were put on hold pending an investigation once it was understood that Mrs Flint was making whistleblowing allegations. Accordingly, Mr Vince found that the matters complained of could not have been due to Mrs Flint whistleblowing as there was no evidence that anyone knew anything about them before 29 May 2020.

380. The overall conclusions of Mr Vince were similar but not identical to those he had reached with respect to Mr Flint. Mr Vince again found that there was little regard as to how Ms Clements presence would impact incumbents whose job roles involved oversight of premises or premises management, and that the communication was inadequate as to the understanding of roles, remit and responsibilities.

381. Mr Vince concluded the approach of drafting in Ms Clements as a trusted ally, without due consideration of the impact it may have, led to a lack of clarity and Mrs Flint feeling that her responsibilities had been removed and that she had been excluded from decisions.

382. Mr Vince said irrespective of what Ms Clements role was expressed to be at the School and Langer, the catalyst appears to have originated through a combination of ineffective communication, and an over-zealous approach from senior leaders that failed to acknowledge the responsibilities of those already occupying certain job roles who consequently felt excluded, and which led to confusion and resentment. Mr Vince repeated that these issues needed addressing by the Respondent. Mr Vince noted that after Mrs Flint raised concerns about the involvement of Ms Clements recent significant effort had been made to listen to her concerns and to provide her with clarity about her role and that Dr Coulson had met with her to try and resolve the situation.
383. We note that Mr Vince suggested that Mrs Flint's written grievance provoked some ambivalence as to the potential vexatious, and possibly malicious nature of some of the claims she made. Mr Vince placed reliance on the language used by Mrs Flint that from the outset Mr Lloyd was intending to give parts of her role to Ms Clements, and that steps were taken by Mr Lloyd to get rid of her entirely after formal whistleblowing in February 2020. Mr Vince also referred to Mrs Flint's comments that at the meeting of 5 May 2020 she was being punished for raising concerns regarding Mr Lloyd, Mrs Wilson, Downes, and Mrs Clements, or that she was facing repercussions generally for having done so.
384. Finally, Mr Vince said that Mrs Flint had asked to know what actions had been taken against those who have breached financial regulations, and that Mrs Flint said that it was clear that Ms Clements had not been disciplined for failing to follow financial procedures, and for bringing the trust into disrepute. Mr Vince said that any disciplinary action against the employees confidential, and the semantics of Mrs Flint's statement appeared to suggest a desire to see Ms Clements disciplined, which may be interpreted as malicious.
385. We have found the suggestions from Mr Vince that aspects of Mrs Flint's grievance may have been vexatious or malicious to be entirely without foundation. We found it surprising that having noted the poor communication by the Respondent and the lack of clarity around roles and responsibilities, that Mr Vince would go on to suggest that Mrs Flint's concerns were vexatious.
386. We also do not agree that Mrs Flint's request to know what action had been taken in response to her concerns (including disciplinary action) should be interpreted as malicious. In cases where someone has stepped up and spoken out to raise whistleblowing concern, it is common for the individual to want to know that their concerns have been taken seriously and acted upon. We accept that Mrs Flint did not have a right to know whether any disciplinary action had been taken against Ms Clements, however we were concerned that this request led to a suggestion that Mrs Flint had potentially acted in a malicious way. We found that to be unjustified, and an unfair slur upon Mrs Flint. Mrs Flint has referred to these comments as "*character attacks*" in her witness statement and it was clear to the Tribunal that these suggestions had caused Mrs Flint some upset and distress. We accept that these were only suggestions from Mr Vince and not direct allegations but the impact upon Mrs Flint was the same and we found that the use of these words was unjustified.

387. We of course make it clear that the Respondent did not call Mr Vince as a witness in these proceedings therefore we do not have Mr Vince's response. Nevertheless, we also make it clear we do not find that Mrs Flint acted in a vexatious or a malicious way in bringing her grievance. We note that Mrs Flint asked to be made redundant as an outcome, and whilst that is a matter for an employer to decide, it does not automatically follow that the request renders a grievance as vexatious. In the circumstances of this case, we find that Mrs Flint genuinely believed that aspects of her role were being removed from her and as such it was not vexatious of her to ask to be made redundant.
388. We note that Mr Vince made several recommendations, including a meeting with the line manager to clarify roles and responsibilities, setting clear performance objectives, identifying any learning and development needs, and weekly meetings with the line manager. Mr Vince recognised that the Respondent is different to the previous Trust and therefore there will need to be a discussion around changes to tasks and as the Respondent operates a different model then components of Mrs Flint's job may be operationally and procedurally different.
389. We also note that Mr Vince also provided a confidential annex of supplementary organisational recommendations as he did with respect to Mr Flint's grievance. Some of these recommendations are the same and the detail is not duplicated here, for example the need for clear communication, education on whistleblowing procedure, emotional intelligence training for Ms Clements, and change management training for senior leaders.
390. We note that Mr Vince also recommended formal consultation in accordance with the Respondent's Organisational Change Management Policy. This was on the basis that there had been some misunderstanding around the role and remit of the role of the Business Manager since the TUPE transfer and how Mrs Flint's role would evolve within the centralised model of the Respondent, and Mr Vince suggested that non-HR staff may not have fully understood the implications of TUPE. We also note that Mr Vince suggested that it would have been advisable for the Respondent to follow the formal Organisational Change Management Procedure when they wish to review the Administration Team at the School, rather than the informal process it had pursued with respect to Mrs Flint.
391. Mr Vince also recommended that school leaders should utilise HR Business Partners. We note that Mr Vince said, "*With specific reference to this case, and the removal of cover and visits oversight from Sharon's job role, consultation and communication should have taken place before any decision was made.*"
392. We note that Mr Vince did not interview Mrs Garner, however given the specific complaints Mrs Flint had made it did not appear that she was directly relevant to those issues.
393. We have been referred to an email exchange from 11 September 2020 which is just after Mr Vince's report was published. Mrs Wilson-Downes was in a meeting and sent an urgent email to Mrs Flint. Mrs Wilson-Downes said that she was under the impression from the site team that a

fire drill had been planned for that day and that the fire procedures had not yet been fully discussed, fire marshals had not yet been spoken to either by Mrs Flint or Mr Flint to inform them what they need to do. Mrs Flint was also asked if she was supposed to be arranging for fire marshal training as this had not happened. Mrs Wilson-Downes said she was sure this it was a mistake, and that Mr Flint would never plan a fire drill without agreeing it with her first. Mrs Wilson-Downes said she was so concerned about the situation and the lack of training and information for staff that the SLT had agreed they would act as fire marshals for the building if there was a real fire alarm until the correct procedures had been put in place. Mrs Wilson-Downes also asked Mrs Flint to ensure that the new fire signage was put up as this had been requested before the return from summer holidays.

394. Mrs Flint replied to the email to say that the fire drill had not been planned and would not have been arranged unless agreed by Mrs Wilson-Downes. Mrs Flint also explained what was happening with the new fire signs, and she said this would be prioritised over other work that Mrs Wilson-Downes had issued. Mrs Flint also explained that she had already made the changes to the fire procedures, and these had been sent to Mrs Wilson-Downes' PA, but she had not had a chance to meet her. Mrs Flint also provided an update on the fire marshal training.

395. Mrs Flint has suggested that this email string was in some way produced to find fault with her work, however, it appeared to the Tribunal this was simply a case of Mrs Wilson-Downes receiving incorrect information and wanting an update on outstanding work. We did not see anything untoward in this email exchange.

Grievance hearing – Mrs Flint

396. Mrs Flint attended a grievance hearing on 16 October 2020 where she was accompanied by Mr Roberts as her trade union representative. The grievance was heard by a panel of school governors – Sue Kehr (Chair), Danielle Miller, and Paul Jay. Mr Vince attended to give evidence, and Claire Havers from HR attended to advise the panel.

397. We have reviewed the 23 pages of notes from the hearing prepared by a notetaker from HR and amended by Mrs Flint. The notes demonstrate a generally thorough examination of Mrs Flint's grievance by the panel. We do not intend to repeat the contents of the entire hearing, however as both Mrs Flint and Mr Flint have challenged the fairness of the process we do need to go into some detail as to how the process was conducted and what was considered. The process adopted appears to have been to allow Mrs Flint to make a long opening statement and to then enter into a discussion of Mr Vince's investigation report with questions being posed from the panel to Mrs Flint and to Mr Vince, with Mrs Flint being given the opportunity to ask her own questions of Mr Vince and to draw points to the panel's attention.

398. There was consideration of Mrs Flint's first complaint about her treatment since September 2019 regarding changes to her job description and responsibilities as Business Manager. We can see that the panel gave Mrs Flint the opportunity to speak openly and without interruption about how

things had changes since the Respondent had taken over the School. We noted in particular the comments of Mrs Flint that:

“...it was evident from the beginning that this was very different. I was also considered part of the core leadership team, we had SLT and previously always the Headteacher, two Deputy Headteachers and myself and we would discuss things like budget, HR, sensitive issues and strategic planning which wasn't necessary to involve whole team. I was not considered part of that team or discussions from day one.”

399. Mrs Flint went on to discuss her feelings of exclusion from discussions and decisions since Ms Clements arrived at the School, including not being involved in walkarounds, excluded from projects and work being undertaken, and aspects of what had previously been her role being taken over by Ms Clements who she understood was just there to provide extra support.
400. We have noted that the panel spent considerable time discussing with Mrs Flint those aspects of her role which she had said initially been removed and reinstated, such as support staff appraisals, and then those aspects she said she no longer performed either at all or in part, such as oversight of cover and trips and visits coordinator, no longer managing the ICT Network Manager or the Exams Officer, and whilst she remained the Data Protection Lead she was not asked to present to staff at the start of term and it was given to a deputy teacher instead.
401. Mrs Flint was also asked about her HR work which she said had reduced, as had other duties such as SCR. Mrs Flint was asked about attending SLT meetings and she confirmed that she still attended but that Mrs Wilson-Downes had told her that if they were mainly discussing education then she need not attend, however she confirmed that she had not been told that she could not go.
402. Mr Vince then summarised his investigation findings which are not repeated here. We note that Mrs Flint was able to ask Mr Vince why he had not interviewed Mr Meitiner-Harvey, however Mr Vince's response appeared to be that he had just spoken to Mrs Wilson-Downes who confirmed that there had been a misunderstanding. We note that Mrs Flint was also able to challenge Mr Vince on not interviewing Mrs Garner, and the explanation was that this was not directly relevant.
403. We note that there was some consideration to the allegation about Mrs Flint being excluded from the caretaker interview panel. Mr Vince accepted, when asked by the panel, that Mrs Flint was not included on that interview panel.
404. We note that when speaking generally about the involvement of Ms Clements in Trust funded projects (that is projects funded by the Respondent), Mr Vince stated *“On this occasion communication has failed and it has led to, for want of a better phrase, LC invading other people's roles.”* It was also noted that there had been different understandings about Ms Clements' role and Mr Vince said that she had told him that she had a one-year contract as Head of Operations, and as such there were

reasonable grounds to believe that she had introduced herself as Operations Manager at the School and at Langer.

405. The panel asked Mrs Flint about her discussions with Mrs Wilson-Downes about her job description and what was actually said. The response from Mrs Flint was that Mrs Wilson-Downes had only been in post for a month, and she wanted her to know a little bit about her and that she was partly demonstrating that she was responsible for site and buildings to which Mrs Wilson-Downes had nodded but said nothing and that Mrs Flint said that she thought that Mrs Wilson-Downes was going to speak to Mr Lloyd. We noted in particular Mrs Flint said *"It was a subtle way of saying these are my responsibilities."*
406. The panel asked Mrs Flint about her removal from the SLT organisation or structure chart, and she said that she thought that this was in retaliation by Mrs Wilson-Downes for raising concerns about Ms Clements. The panel asked Mrs Flint if her site and premises responsibilities were back with her to which she confirmed that they were.
407. The panel then went through several job functions asking whether they had been removed or retained. Mrs Flint confirmed that she was not doing visits and trips anymore and that ICT and exams line management had stopped, performance management of support staff continued, and that she had taken on some lower-level finance work after the departure of staff. The panel put to Mrs Flint that some of her concerns had already been resolved as she was now managing the site. Mrs Flint agreed but said that Dr Coulson could not give her assurances that her job wouldn't be restructure in the future. Mrs Flint confirmed that there had been no change to her grade or salary.
408. We note that there was some discussion of Mrs Flint's second allegation concerning a failure of Mr Lloyd and Mrs Wilson-Downes to follow appropriate HR procedures which had also impacted upon other staff. It was clear to us that the panel formed the view that much of this was an overlap with Mrs Flint's other allegations, and partly related to the alleged treatment of other staff following the transfer of the School to the Respondent. This also related to alleged treatment of Mrs Flint by Mr Lloyd which does not form any of the Issues to be decided in this case. The only finding which we make in connection with this second allegation is that the panel attempted to understand whether there were any specific complaints relating solely to Mrs Flint, however it was clear that there was nothing additional which related to her which was not already captured under her two other complaints in the grievance.
409. The panel then went on to consider the alleged treatment of Mrs Flint since having allegedly made a whistleblowing disclosure in February 2020.
410. We note that the panel looked in detail at the circumstances of the informal meeting with Mrs Flint and Mr Roberts concerning the finance hub manager role, and the circumstances which led to the settlement offer being made to her. Mr Vince explained to the panel that he found no evidence that anybody knew anything about whistleblowing before 29 May 2020, so there was no evidence to support that Mrs Flint was being treated negatively or less favourably before that date. Mr Vince repeated earlier observations

he made that Mrs Flint had not used the word whistleblowing, nor had she been explicit as the policy would require.

411. The panel then heard from Mrs Flint who explained that she had been raising issues with Ms Fairchild, who then raised it with Mrs Townsend, who then raised it with Mrs Garner. Mrs Flint pointed out that you do not have to use the word whistleblowing in order to make a protected disclosure. Mrs Flint added by reference to Mrs Garner:

“How can you as the director of HR and Finance, have to ask LC for documentation for quotes for a project because you should have agreed and signed it off yourself. How is that saying nobody knew anything about it? That was upheld in the formal investigation that followed.”

412. Mr Vince pointed out that Mrs Flint had not followed procedure in making the alleged disclosure, and said:

“I know SF raised concerns and I don’t doubt they were raised in good faith, but NF and TT are not Headteacher or Chair of Governors so it did not follow correct procedure. It says if not possible to raise it with Director of HR, neither TT or NF are. It also says to make it very clear which it was not. It was also disclosed to TT and NF and not the relevant people named in the policy. When I spoke to them both, and asked if the whistleblowing policy was followed, they said it wasn’t mentioned. They contacted someone to get three quotes and it was provided, they thought it was the end of the matter.”

413. There was considerable discussion about Mrs Flint’s email of 20 February 2020 where Mrs Flint says she made a whistleblowing disclosure. The panel asked a number of questions about this issue and Mrs Flint confirmed that she believed that she was making a whistleblowing disclosure when she wrote her email, and she added that she had not attended training where the whistleblowing policy was referred to, but that in December, there had been an all staff meeting where the policy had been discussed but there was not specific training and they did not go through the policy line by line. Mr Vince reiterated that Mrs Flint had not followed the Policy by going to the people she ought to have raised it with, she had not used the word whistleblowing, nor had she been explicit, however he said that no one was questioning Mrs Flint raising it in good faith, but that no one knew she was whistleblowing until 29 May 2020.

414. The panels explored with Mrs Flint what treatment she said she suffered as a result of having blown the whistle. Mrs Flint said that after Ms Clements was asked for the invoice her behaviour changed and that it was clear that she was annoyed that she had been pulled up about it.

415. The panel also discussed the timeline of the conversations with Mrs Flint about the finance hub manager role and the proposed settlement agreement, before moving on to consider how things now stood. It was put to Mrs Flint that Dr Coulson appeared to have put a lot of things right that Mrs Flint had complained about and she was asked why she felt the need to pursue her grievance to which she replied that she had lost trust and confidence in the School and the Respondent and that she had genuine and

moral concerns, and that whilst Dr Coulson had the best of intentions, there would be a formal restructuring later.

416. We note that Mrs Flint was given the opportunity to add anything further, and she was able to question Mr Vince on his comments that she had potentially made a vexatious claim. Mr Vince clarified that he meant to be vexed, with her anger coming across in a vexatious manner. Mrs Flint asked Mr Vince did he mean she was being malicious, to which he replied, that some points in her grievance there is no evidence that Mr Lloyd was taking steps to get rid of her, and that the focus was around alternative roles. Mr Vince said that the use of words like “punished” were strong words without evidence, and that it came across in the grievance as vexatious or anger.
417. Mrs Flint was able to challenge Mr Vince on this by pointing out he had asked her how this alleged treatment had made her feel, and she had explained to him about her well-being and family life, and she therefore said she could not see how the report was balanced or fair when he accused her of being vexatious. Mr Vince then said he was not accusing her, but that it was the way it comes across.
418. Mrs Flint was issued with the grievance outcome on 22 October 2020. With respect to her first allegation about her treatment since September 2019, regarding changes to her job description as business manager and responsibilities, the panel found that it had been clarified with her that she retained responsibility for sight and premises. The panel also found that responsibility for support staff performance management also rested with her role. The panel did find that her role was missing from the SLT structure chart, and there was no evidence of any communication with her regarding this and that it was unsatisfactory, however, the panel determined this was not undertaken with any malice and that non-education posts were not included in the chart as a matter of course.
419. The panel also noted that Mrs Flint was no longer line manager of the ICT network manager and that this had been discussed and agreed with her, as had the removal of the EVC role and oversight of Cover being removed from her responsibility. It was noted that Mrs Flint found out about this by way of an advertisement being placed and the panel acknowledged that there was a lack of evidence that communications were held with her, and further recommendations were made about improving practice and communication.
420. The panel said they acknowledged Mrs Flint’s concerns that aspects of her role may have changed, however it found that since June, when she met with Dr Coulson and Mrs Wilson-Downes, her job description was discussed and clarified, and there had been minimal changes. The panel reiterated that communication with Mrs Flint was not satisfactory, and recommendations had been made with a view to improvement. Nevertheless, the panel dismissed the first allegation on the basis that there was no evidence of mistreatment of Mrs Flint.
421. The panel also rejected the second allocation regarding the alleged failure of Mr Lloyd and Mrs Wilson-Downes to follow appropriate HR procedures. The panel noted that this was Mrs Flint’s individual grievance,

and that it could not consider alleged impact upon other members of staff and many of the points raised by Mrs Flint were addressed under her other allegations. The panel repeated the earlier finding about failures in communication and that it had made recommendations with this in mind.

422. As regards the third complaint about alleged treatment since whistleblowing in February 2020, the panel said it found no evidence to suggest a formal whistleblowing disclosure was made by Mrs Flint at that time, nor that anyone within the respondent knew anything about it until 29 May 2020. The panel found that as soon as the Respondent was aware that Mrs Flint was making a whistleblowing complaint, an external investigation was commissioned. The panel said that it was therefore unable to find that Mrs Flint had been treated any differently since February 2020 as a result of whistleblowing.

423. The panel also noted that there was no evidence to substantiate bullying nor that attempts were made to force Mrs Flint out of her role. The panel addressed the allegation that Mrs Flint felt excluded and that she was no longer a valued member of the senior team and that her position was vulnerable. The panel said that whilst they did not uphold the allegation, they did accept the investigation findings that there was a lack of communication and consideration to Mrs Flint and they adopted the recommendations made by Mr Vince to address these concerns as well as those supplementary recommendations he made direct to the Respondent. The panel said that there was an acknowledgement that mistakes were made as well as recognition that Dr Coulson had made significant efforts to listen to Mrs Flint's concerns and had attempted to resolve them.

424. The panel found that Mrs Flint's role had not been made redundant, therefore it said it could not grant her request to be made redundant.

Grievance hearing – Mr Flint

425. Mr Flint attended a grievance hearing on 21 October 2020 where he was accompanied by Mr Roberts as his trade union representative. The grievance was heard by the same panel of school governors – Sue Kehr (Chair), Danielle Miller, and Paul Jay. Mr Vince attended to give evidence, and Claire Havers from HR attended to advise the panel.

426. We have reviewed the 24 pages of notes from the hearing prepared by a notetaker from HR and amended by Mr Flint. Having read those notes it appears that this was also a thorough discussion about the contents of Mr Flint's grievance, specifically the allegation that Ms Clements had taken over parts of Mr Flint's role and the allegation that Mrs Wilson-Downes would speak to Mr Flint's staff rather than going through him.

427. We can see that Mr Flint was able to make his case that he felt that his role had been reduced from Premises Manager to that of a caretaker. We note that there was also discussion about Mr Flint's role at Langer, and whilst the panel focussed on the job descriptions provided to them, it does not appear that they had the letter from 2017 to which we have referred before. We also note that the panel spent some time trying to understand how Mr Flint's role at Langer had operated and it was noted that the caretaker there had left which had involved Mr Flint stepping in to undertake

various tasks, although it was Mr Flint's evidence to the grievance panel that no one had asked him to do so. We also note that Mr Flint said that he had given instructions to the staff there which he said had formed part of his work.

428. There was also discussion around Mr Flint's line manager, and we note Mr Flint's response that Dr Coulson had attempted to change it to Mrs Wilson-Downes but he had objected to that as he said that she had bullied him. It was clear from the notes that the panel sought to explain to Mr Flint why being managed by his own wife may not be appropriate and we note that he said at that time he would be open to someone else managing him but not Mrs Wilson-Downes. There was also consideration of Mr Flint's allegation that he had been badly treated as a result of whistleblowing. The panel, in reliance upon the Respondent's Whistleblowing Policy, explained that Mr Flint had not made it clear at the material times that he was whistleblowing, to which Mr Flint responded that those specific words do not need to be used.

429. We note that the contents of Mr Flint's first allegation about the arrival of Ms Clements was explored fully, and Mr Vince explained his investigation findings to the panel which Mr Flint was able to respond to. It was clear that the panel had acknowledged that communications at the time of Ms Clements' arrival had been poor.

430. There was also consideration about who was supporting Langer at the time of the grievance, and the panel heard evidence that Mr Flint was no longer doing so, that Ms Clements' had been there but may have been asked to attend by the headteacher Mrs Hughes, and that Langer now had its own caretaker.

431. We note the panel also heard evidence that Mr Flint felt excluded by Ms Clements and Mrs Wilson-Downes, and that when he raised this with Mrs Wilson nothing was done. Mr Flint also said that Ms Clements had admitted excluding him in her response to Mr Vince.

432. There was discussion about why Mrs Wilson-Downes had told Mr Flint not to contact anyone at the Trust and that he should go through her. The panel queried how this had come about and Mr Vince explained that Mrs Wilson-Downes wanted to be kept informed. Mr Vince was clear that this was not in response to whistleblowing as she had not known at the time of that instruction who had whistle-blown. Mr Vince said:

"EWD said she knew an allegation had been made but did not know who by. Because of the allegations in the two grievances, when I told her who on 20th August, her eyes dilated and she was surprised. Her body language showed surprise. She says she did not know who had made a whistleblowing allegation until I told her."

433. The panel explored Mr Flint's allegations of bullying by Mrs Wilson-Downes following the whistleblowing disclosures. Mr Flint explained that Mrs Wilson-Downes would ignore him and contact the caretakers direct, she gave them thank you cards for their work but not to him, and she gave them sweets but not to Mr Flint. Mr Flint said that one of the caretakers had asked him why Mrs Wilson-Downes had spoken to them and not Mr Flint. The

panel asked Mr Flint if he had raised this, and he confirmed that he had not done so as there was no point.

434. We note that the panel were keen to understand what treatment was alleged to be due to whistleblowing. Mr Vince explained that many of the matters complained of had occurred before 29 May 2020 and that:

“I did not find anything before 29th May that can be attributed to whistleblowing. WL did not find out about it until after lockdown, and EWD knew a whistleblowing allegation had been made but did not know who had made it until August. There may well have been speculation but as far as I know, nobody was aware that GF had made any whistleblowing claim prior to the 29th May. EWD did not know who had put that in after that.”

435. The panel also explored Mr Flint’s feelings that he was being chased on work by Mrs Wilson-Downes and that he said that emails were being sent late at night and at weekends. The panel asked Mr Flint if there was an expectation for him to reply to those emails to which he said that his phone was on 24/7 and wakes him up. Mr Flint said he had he told Mrs Wilson-Downes that a message had woken him up at night to which she asked him why he had replied, and she had stated that no one should be contacted after 6pm. Mr Vince confirmed that Mrs Wilson-Downes said she sometimes sends emails out of hours but doesn’t expect people to respond out of those hours.

436. There were numerous examples within the notes of the hearing of the panel asking relevant questions of both Mr Flint and Mr Vince and testing the evidence that they heard. We also note that Mr Flint was able to present his grievance without interruption and that he had the opportunity to question or challenge Mr Vince on some of his investigation report.

437. On 28 October 2020 Mr Flint was issued with the outcome of the grievance which explained that his three allegations had not been upheld. With respect to the first allegation about his treatment since September 2019 regarding changes to his job description, line management and responsibilities, the panel said that it did not uphold the complaint but it went on to find that communication with Mr Flint about Ms Clements’ role had not been satisfactory and the panel made recommendations for improvement, however it said that there was no evidence to support an allegation of mistreatment. Recommendations were made about rebuilding Mr Flint’s relationship with Mrs Wilson-Downes, as well clarifying his role and responsibilities.

438. As regards the second allegation about an alleged failure to provide clarity around Mr Flint’s role despite raising this with senior staff, the panel found that Mr Flint had asked for clarity particularly in February 2020, but it was not provided until June 2020, and that there remained two areas where further clarification was needed, therefore the panel had made further recommendations. The panel said that whereas the clarity provided was not immediate, they found that Dr Coulson and Mrs Wilson-Downes made considerable and sincere attempts to listen to his concerns and attempted to provide clarity over his job role, and therefore the panel decided not to uphold this allegation.

439. With respect to the third allegation concerning alleged treatment to undermine and to make Mr Flint look incompetent, in particular following whistleblowing, the panel said it was unclear from the evidence the exact date when Mr Flint made any disclosure, and further that no one was aware of any whistleblowing disclosure prior to 29 May 2020, following which significant efforts were made to resolve his concerns including by meeting with him on two occasions to try to provide clarity. The panel found no evidence of mistreatment or a breach of the Code of Conduct or disciplinary measures, there was no expectation for Mr Flint to respond to emails out of hours, and that it was reasonable for Mrs Wilson-Downes to have queried completion dates with him. The panel found that whilst there was evidence of poor communication, there was no evidence of bullying or victimisation.

440. Whereas Mr Flint's third allegation was not upheld, the panel accepted the investigation findings that there was a lack of consideration and communication, and it adopted Mr Vince's recommendations. We further note the panel recorded "*There is an acknowledgment that mistakes were made as well as recognition that Tim Coulson, Chief Executive of the Trust, has made significant efforts to listen to your concerns and attempt to resolve them.*"

441. The panel rejected Mr Flint's desired outcome that he be made redundant as there was no evidence that the role was redundant.

Grievance appeal – Mrs Flint

442. On 3 November 2020, Mrs Flint filed her appeal against the grievance outcome. The grounds of appeal were succinct. With respect to her first allegation, Mrs Flint said that the focus of the grievance outcome was on how things have been put back in place regarding her job description rather than her treatment over a significant period.

443. As regards her second allegation about HR policies not being followed, Mrs Flint said there was a conflict in the use of policies within the report where one policy was being questioned to the letter and other HR policies were being ignored. We understand that too mean that the panel had a strict interpretation of the Whistleblowing policy but a flexible approach to the Organisational Change Management Policy.

444. As regards her third complaint about treatment since whistleblowing, Mrs Flint said that the report was biased and that the hearing did not consider this sufficiently and that the investigation was not thorough as key witnesses, such as Mrs Garner, had not been interviewed. Mrs Flint referred to the timeline of communication with Mrs Bull since allegedly whistleblowing in February 2020, and she pointed to her role being changed significantly afterwards and the then offer of settlement.

445. The appeal hearing took place on 25 November 2020 and was heard by three school governors, Hazel Crane (Chair), Adrian Jordan and Martin Brown. Mrs Flint was accompanied by Mr Roberts, Mr Vince was in attendance, and the panel were advised by Jude Saward of the Respondent's HR. A further member of HR attended to make notes.

446. We do not intend to repeat all the evidence that was heard before the appeal panel. We have found that the notes of the appeal hearing

demonstrate a thorough discussion with Mrs Flint about her grounds of appeal and that the panel asked a number of relevant questions to gain an understanding of her appeal. In her evidence to the appeal panel Mrs Flint said that given that there had been a finding of no communication and of exclusion, then she believed that her grievance ought to have been upheld. Mrs Flint pointed out that that there was focus on how her job description looked now, there had not been consideration of her treatment leading up to that point.

447. With respect to Mrs Flint's complaint about the failure to follow HR policies, it was clarified that Mrs Flint was referring to the Organisational Change Policy and removal of aspects of Mrs Flint's role, and the discussions with Mrs Flint about the finance hub manager role and the settlement discussions with Mrs Bull. Mr Roberts said that it was never clarified how these discussions had arisen in the first place and that formal policies had not been followed, therefore the second allegation ought to have been upheld.
448. We note that the panel asked Mr Vince whether he had found evidence of bullying to which he replied there was no evidence of malicious behaviour. Mr Vince was asked about evidence to support HR policies not being followed to which he referred to the TUPE letter from 2019 which referred to some measures, and he acknowledged that whilst Mrs Flint's role was not set out specifically the letter suggested that it would be looked at.
449. Mr Vince explained that a restructure would have been expected, and that the discussions with Mrs Flint were a sounding out meeting, and that there was no obligation to take the finance hub manager role and Mrs Bull had not labelled it as a reasonable alternative. Mrs Flint pointed out that salary would have been 50% of her role, she had been told there was no salary protection, and following the first call on 30 April she said she had been contacted almost daily about it therefore she suggested it was more than simply sounding her out.
450. As regards the third allegation which concerned treatment since alleged whistleblowing in February 2020, Mrs Flint said that there was a failure to speak to Mrs Garner during the investigation. Mrs Flint then discussed the timeline between when she said she started to blow the whistle and the treatment she said she experienced. We note that Mrs Flint said that Mrs Bull was not aware of the whistleblowing, but that Mr Lloyd was certainly aware, and she referred to her email of 20 February 2020 to Mrs Townsend and Ms Fairchild, who she said forwarded it to Mrs Garner.
451. Mrs Flint said she had spoken to Ms Fairchild regarding that work, and the work at the Sports Hall, which had not been signed off in line with policy and that she was whistleblowing financial concerns. Mrs Flint said that the timeline showed that the budget had been agreed and included her role and then out of the blue it had been removed. Mrs Flint made other allocations that the investigation was unfair, including the use of Schools Choice who she said were not independent.
452. We note that there was a difference of opinion between Mrs Flint and Mr Vince about whether she was whistleblowing, or simply emailing with

concerns, and Mr Vince informed the panel that Mrs Townsend and Ms Fairchild believed that Mrs Flint was asking for paperwork, which was then found, and that it was the end of the matter. Mr Vince said that the first that Mrs Bull knew about whistleblowing was on 29 May 2020.

453. Mrs Flint disputed this and said that there had been other conversations with Ms Fairchild earlier however, she said that she did not doubt that Mrs Bull was not notified. In essence, Mrs Flint said that she believed that the treatment came from Mr Lloyd and that after she had whistle-blown he wanted her out of the door. There was again further debate between Mrs Flint and Mr Vince about whether she needed to have used the word “whistleblowing” which we do not repeat here.

454. The panel asked Mrs Flint to confirm if the grievance outcome recommendations had been implemented, and she confirmed that she had her job description back and was having line management meetings with Mrs Wilson-Downes, but there was no trust in confidence. Mrs Flint said that she expected changes to the line management of the Premises Manager which would negate her work on site, and she expected further aspects of her role to be removed or undertaken by other people going forward. Mrs Flint was asked what outcome she was seeking to which she replied that she wished to be made redundant and compensated. Mrs Flint confirmed that mediation had been offered but she had not accepted it until there was an outcome of the grievance process.

455. Mrs Flint was sent a detailed appeal outcome letter on 27 November 2020. The appeal panel partially upheld Mrs Flint’s first allegation about her treatment since 2019 regarding changes to her job description as business manager and responsibilities. Specifically, it was found that:

“...the panel felt that it was poor management and lack of communication, in the Autumn of 2019, which led to your perception of poor treatment. They therefore partially uphold point 1 of your grievance on the grounds that you were poorly treated but do not believe that this was pre-meditated and done with intent to cause upset.”

456. The appeal panel dismissed Mrs Flint’s second allegation about the use of HR policies on the basis that it did not accept that Mrs Flint had whistle-blown until 29 May 2020, and that the discussions with Mrs Flint about her role were informal and there was no obligation to accept the finance hub manager role. The appeal panel did not find the changes to the SLT structure chart to be malicious and it said that it found no evidence that Ms Clements was taking over premises and site management, however it acknowledged that communication around these issues was not what it should have been, and recommendations made been made around communication.

457. With respect to Mrs Flint’s third allegation about her treatment since formal whistleblowing in February 2020, the appeal panel had already determined that Mrs Flint had not whistle-blown until 29 May 2020, and that any poor treatment since 20 February 2020 until then could not have been due to whistleblowing. The appeal panel further found that as whistleblowing had not occurred until 29 May 2020, speaking to Mrs Garner would not have been relevant, and it found no evidence of poor treatment

since 29 May 2020. We note that whereas the appeal panel adopted the previous recommendations that had been made in the investigation report and grievance outcome, it could not recommend that Mrs Flint be made redundant as there was no evidence that the role was redundant. The appeal was therefore upheld in part with respect to Mrs Flint's first complaint about changes to her job description.

Grievance appeal – Mr Flint

458. On 5 November 2020, Mrs Flint filed his appeal against the grievance outcome. Some of the grounds of appeal were a repeat of the grievance. With respect to his first allegation about changes to his job description and line management and responsibilities, Mr Flint said that the focus in the grievance outcome was on his job description and not his alleged treatment. With respect to the second allegation, Mr Flint said that he had sought clarity in the School, and from the Respondent at a senior level regarding his role, but was not given answers over significant period of time as to what Ms Clements' role was, and how she was carrying out of his responsibility, therefore Mr Flint said the grievance point should have been upheld.
459. As regards the third allegation about treatment undermine him and to make him look incompetent, in particular following whistleblowing, Mr Flint said he did not feel that a thorough investigation had been carried out and that he disputed the outcome.
460. The appeal was heard on 2 December 2020 by the same panel members as for Mrs Flint. Mr Roberts accompanied Mr Flint, and Mr Vince was also in attendance, as was Jude Saward from HR as well as a note taker from HR.
461. We do not intend to repeat all the evidence which was heard during the appeal. We note that Mr Flint was given the opportunity to speak in detail and without interruption about each of the three allegations he made in his grievance and why he sought to challenge the grievance outcome.
462. Mr Flint said that the focus of the outcome of the grievance was about his job description rather than his treatment over a significant period, which he said should have been the focus. As regards the second allegation Mr Flint repeated that his grievance ought to have been upheld as there was a failure to act on concerns he had raised. With respect to his third allegation about treatment intended to undermine him or make him look incompetent, particularly since whistleblowing, Mr Flint said he been treated in a way that could be considered bullying, and that he had expressed concerns about the change of line manager to Mrs Wilson-Downes that was being proposed in June 2020, and that his role at Langer was subsequently given to Ms Clements, whom he said he had been told would only be working at TGS.
463. Mr Flint said that the financial concerns he raised in February 2020 were whistleblowing and that he did not have to use that specific word. Mr Flint went on to provide examples of where he said he had been bullied and ignored and he said that he could not raise concerns with the headteacher or the chair of governors as they were close friends, and he said his second whistle-blowing in July 2020 was not investigated fully due to the damage that it could bring up on the trust. Mr Flint said that staff who had been

involved in financial misconduct had been rewarded for their failure and that he disputed the outcome to the grievance, and the conclusion was unfair, and that no consideration has been given to the effect of the treatment on him.

464. Mr Vince was then given the opportunity to respond, and he reiterated his findings in his investigation report which we will not repeat here save to note that they were consistent with his earlier findings in his report.
465. We note that the panel asked many questions to try and understand the basis of Mr Flint appeal. One of the questions was whether he felt that having his wife as his line manager was a conflict of interest, to which Mr Flint replied that it had never been a conflict and that she would do his daily line management, but the headteacher would do his performance reviews. There was a discussion about Ms Clements' role and it was established that she had told Mr Vince that she had a one-year contract as Head of Operations and Mr Vince said that based upon the evidence there was a reasonable belief that when Miss Clements came to the School, she introduced herself as the Head of Operations, however she denied ever saying that she was Mr Flint's line manager.
466. There was also consideration of Mr Flint's complaint that he was being sent emails later in the evening from Mrs Wilson-Downes. Mr Flint clarified that it was not that she was emailing him at night that was the issue, rather it was her constantly chasing him with emails every day about the same job where she would continually ask the same questions and that he felt this was micromanagement. Mr Vince said that he had asked Mrs Wilson-Downes about this and she said that she was direct and manages, but that she did not micromanage. Mr Vince said he had not specifically asked Mrs Wilson-Downes about daily meetings on the same subject as he was not aware of that during the investigation.
467. Mr Flint was asked if the recommendations in the grievance outcome letter had been implemented to which he replied that mediation had not been offered.
468. Mr Flint was asked to describe the bullying he said experienced, and he referred to exclusion and taking away duties from him. Mr Flint was asked whether he considered that to be intentional, to which he replied he did, and that Ms Clements came to the school and took over his work. Mr Flint said that he was completely ignored and was given instructions through Ms Clements and that he had no performance issues.
469. Mr Flint was asked to explain his allegation that his treatment had got worse after whistleblowing, and he said that Mrs Wilson-Downes called him in and started asking him the same questions that he had been asked by the whistleblowing investigator, therefore he knew that the Respondent thought that he was the whistle-blower. Mr Flint also referred to the direction from Mrs Wilson-Downes to go through her and not the Respondent as micromanagement. Mr Flint went on to repeat earlier evidence about being ignored and senior leaders speaking to his staff and not him.

470. Mr Flint was asked specifically how much time he spent at Langer, and he confirmed that he had introduced the ticket system there, and that he was in contact with the caretaker there, and he would go every Wednesday afternoon from 2:30 pm until normally 5 pm or 5:30 pm, and he would also attend if Mrs Hughes raised any issues.
471. Prior to concluding the hearing, the panel asked Mr Flint if he would agree to the mediation recommended from the first grievance hearing. The response from Mr Flint was not entirely clear however he appeared to be open to the option, but repeatedly suggested that Mrs Wilson-Downes may not, so he could not see how it would help.
472. Mr Flint was issued with the grievance appeal outcome on 4 December 2020. With respect to the first allegation concerning his treatment since September 2019, regarding changes to his job description, line management, and responsibilities, the appeal panel was in agreement with the investigation report and the previous panel that there was a lack of communication and insufficient thought had been given to how to manage the process of bringing in external people and the impact this might have on those already working at the School.
473. The appeal panel said that whereas the Respondent's intentions were in good faith and designed to be supportive, the way in which this was carried out led to Mr Flint feeling he was poorly treated, and this was not best practice. The appeal panel found that whilst there had been poor communication about Ms Clements' role at the schools, the evidence did not support that there had been an intent to cause upset or to be malicious. Mr Flint was informed that due to poor management and lack of communication in the autumn of 2019, which led to his perception of poor treatment, the appeal panel had partially upheld the first allegation in his grievance although they said that they did not believe that this was premeditated or done within intent to cause upset.
474. With respect to the second allegation about the failure to provide clarity around Mr Flint's role, the appeal panel acknowledged that the time it had taken to provide the clarity could have been better, but it considered what the School and Respondent had done since to resolve the uncertainty, including the involvement of Dr Coulson, who met with Mr Flint twice. The appeal panel said that there were two outstanding issues, namely who Mr Flint reports to, and whether he is working at Langer as well as the school. Mr Flint was informed that given that attempts had been made to provide clarity and whilst acknowledging the time it took to get to that stage, the appeal panel considered that the School had listened to his concerns and had tried to resolve the issues raised.
475. As regards the third allegation about treatment to undermine Mr Flint to make him look incompetent, the appeal panel did not consider that there had been a whistleblowing disclosure in advance of 29 May 2020, and that once this was identified an investigation was commissioned. The appeal panel said that given that whistleblowing did not take until 29 May 2020 they had looked at the treatment after that date but found no evidence to support that he been undermined or made to appear incompetent. The appeal in connection with the third allegation was also rejected.

476. In conclusion the appeal panel found that whilst there was a failure in communication and the manner in which issues which were dealt with which was not best practice, the evidence did not support a finding of bullying. The appeal panel went on to endorse and adopt the recommendations made by Mr Vince to address what it had found. The appeal panel said that it was unable to agree Mr Flint's desired outcome to be made redundant as the role was not redundant. The appeal panel strongly recommended that mediation took place between Mrs Wilson-Downes and Mr Flint as soon as possible.
477. We note that the grievance process took in the region of five months to conclude at the appeal stage. We also note from the documents that Dr Coulson had considered whether to issue an apology to Mrs Flint and Mr Flint, however following advice from Mrs Bull that this might be seen as an admission, this was not offered.
478. Mr Flint says in his witness statement that *"Following the conclusion of the grievance appeal process, I could not afford to resign at the time, despite my treatment, due to the economic climate during a pandemic and the fact that Sharon Flint and I's sole employment was with the Respondent. I exhausted the internal procedures to address my treatment since whistleblowing, but I did not feel that these had been carried out fairly or in good faith."*
479. On 5 January 2021 Mr Flint and Mr Roberts attended a meeting with Ms Havers from HR and Mrs Wilson-Downes to discuss his change of line manager. Mr Flint was informed that he would be temporarily line managed by Rachel Baty the deputy head teacher. Mr Flint was clearly still resistant to a change of line manager and we find support from this from Mr Flint's witness statement where he records he said *"I said it was my understanding that Rachel Baty would be doing my performance management and Sharon Flint would be doing the day-to-day line management as had been discussed with Tim Coulson in July 2020. Claire Havers stated Sharon Flint would only be doing the financial side of site and premises. I stated Sharon Flint was responsible for the strategic management of the premises as on her job description. Claire Havers said no, you will only talk to Sharon Flint regarding financial issues and Rachel Baty would be doing the rest. I said this would be taking the responsibility for site away from Sharon Flint."*
480. We also note that Mr Flint alleges that he was told that Ms Baty was there to discipline him, for example if he had not done a site ticket or not done it in the right way. We have considered the evidence of Ms Havers where she denied saying this and she instead explained that Mr Flint could raise his queries with Ms Baty and that he would also report to her on leave requests, absence, return to work meetings and performance management and appraisals but he could still of course speak to Mrs Flint about his work and that inevitably there would be some crossover between them. Ms Havers also discussed the workarounds of the site which would continue but would include Ms Baty.
481. We note that on 13 January 2021 Mr Flint emailed Ms Havers in which he said that he wanted to clarify a few points with Mrs Flint and him about his line management. We note that Mr Flint sought to set out Mrs Flint's perception about her day-to-day responsibility for site and premises.

Mr Flint asked Ms Havers to confirm that Mrs Flint's responsibility was not changing in that regard and that she would continue to manage his work day-to-day. Mr Flint discussed management of his performance and he suggested that the only example Ms Havers had given was of Ms Baty disciplining him regarding site tickets that had not been completed rather than focussing on positive praise which he said was further victimisation. We note that Ms Havers responded to Mr Flint to say that there appeared to be a misunderstanding and she asked to meet with him, however Mr Flint declined to do so.

482. We have been referred to emails between Ms Havers and Mr Roberts where she attempted to engage with Mr Flint however he did not wish to engage and we note that Mr Roberts indicated in those emails that he was taken aback. Having considered the contemporaneous emails we prefer the evidence of Ms Havers that she did not say that Ms Baty was going to discipline Mr Flint as he alleged. We accept Mr Flint's evidence that he "was not in a good place mentally" which is why he did not wish to meet, however we find that the Respondent had attempted to resolve the line manager issue however it was Mr Flint who had delayed things.

483. On 15 January 2021 Ms Baty did a walkaround or a site walk with Mr Flint to examine the site and to collate a list of jobs. A meeting did take place between Mr Flint, Mrs Flint, and Ms Baty on 25 January 2021 where the change of line management was discussed. Following the meeting Ms Baty produced notes which she shared with Mrs Wilson-Downes on email, but these were not shared with Mr Flint nor Mrs Flint at the time.

484. We find that during the meeting Mr Flint asked Ms Baty what her role was and when she confirmed that she would be his temporary line manager with Mrs Flint responsible for day-to-day matters. We find, having considered all the evidence and on the balance of probabilities, that Mr Flint told Ms Baty that she should not be line managing him as it was Mrs Flint's job and that she should only be doing performance reviews. We also find that Mr Flint would have appeared frustrated and said that Ms Baty was taking Mrs Flint's job. Our reason for finding this is because it was consistent with some of the emailed correspondence and the contents of the grievance and appeal documents which we have seen. We do not however find that Mr Flint was angry as Ms Baty has suggested as we have insufficient evidence to make that finding.

485. We also find that Mr Flint told Ms Baty that she should not be getting involved and that it would be better for her sake if she stayed out of it. Ms Baty said that she was shocked and that it felt like a threat. We should make it clear that we do not find that Mr Flint had made a threat nor that he was angry. Rather, we find that Mr Flint's comments were made because in his view parts of Mrs Flint's job continued to be taken away which he would have found upsetting as her husband and having seen the impact upon her of previous aspects of her role being removed. This is consistent with Mr Flint's email to Ms Havers of 13 January 2021 referenced above.

Resignation of Mr Flint

486. Mr Flint was signed off work by his GP on 26 January 2021 due to work related stress. Ms Havers attempted to keep in contact with Mr Flint

however we note that it was difficult to get Mr Flint to engage and it was agreed that Mr Roberts would be the point of contact. We have noted the communication between the Respondent and Mr Flint during his sickness absence, and we also noted that Mr Flint was signposted to the Respondent's Staff Well Being Service. Numerous attempts were made to by the Respondent in February and April 2021 to get Mr Flint to agree to consent to an Occupational Health referral and to carry out a stress risk assessment. Mr Flint did not return the Occupational Health referral consent until on or around 6 May 2021 by which time he had already been absent for over three months.

487. Mr Flint attended a telephone appointment with Occupational Health and the report dated 14 May 2021 recorded that Mr Flint's absence appeared to be due to work related stress and that he had previously suffered with depression when he was younger and became unwell again following a redundancy from a previous employer. It was also recorded:

"As you know, there has been a grievance raised, there is an employment tribunal in the background, and Graham himself feels, once again, that there are situational and organisational factors that are making him ill, and indeed he has become unwell again."

488. The report also recorded that Mr Flint was not leaving the house and that he seemed to have developed a generalised anxiety disorder. Further it was recorded that:

"The trigger to all of this appears to have been a change to line manager, and I believe he has already informed you that he was told at the time that there was a new manager in place 'to discipline him' and this has acted as the trigger. Whether this is true or not is not for me to conclude, but nevertheless, that is what he told me, and that is driving this anxiety disorder."

489. Occupational Health also advised that Mr Flint was entirely capable of completing a remote stress risk assessment and the advisor said they could see no reason why he doesn't complete paperwork. It was also recorded that Mr Flint was not in a place where he could leave the house or engage in any form of business or discipline meeting or attendance meeting and that would also include a face-to-face risk assessment meeting. It was also recorded that Mr Flint felt he would like to return to work and that he enjoyed the role, he found that he cannot leave the house, he forgets telephone numbers, and was suffering from a generalised anxiety disorder, and was therefore not capable of returning to work, and certainly not within the next three months.

490. The Respondent kept in contact with Mr Roberts to check on Mr Flint's welfare during June, July, and August 2021. We have seen evidence from Ms Havers that Mr Flint's failure to return a completed stress risk assessment made it difficult to see how they could provide support to Mr Flint or the School. We note that Ms Havers was engaging with union representatives who were acting on behalf of Mr Flint, both Mr Roberts and subsequently Mr Rowe, and both had assured her that Mr Flint would complete the stress risk assessment however it was not forthcoming. We note that Ms Havers formed the view that there was a complete

unwillingness to cooperate on the part of Mr Flint and that eventually Ms Baty wrote to him in person to ask about his wellbeing, to request that he complete and return the stress risk assessment and to seek consent for a further Occupational Health referral.

491. We note that the letter also informed Mr Flint that the details of the wellbeing scheme had changed, and Ms Baty noted that Mr Flint had accrued 20 days' annual leave which Ms Baty offered to pay him for and said that he could carry it over in the alternative. We have found this letter, like the other correspondence from Ms Havers during Mr Flint's absence, to be supportive. We also find that it was entirely reasonable to have asked Mr Flint to attend a fresh Occupational Health referral given the passage of time he had been absent and to see if there was other support that could be offered. Similarly, the repeated requests for the completion of a stress risk assessment were also reasonable requests to have made.

492. On 8 November 2021 Mr Rowe confirmed that Mr Flint was unwilling to agree to the second referral but that he would complete the stress risk assessment. As no response was received Ms Havers wrote to Mr Flint personally and Mr Rowe on 17 January 2022 to again as for this information. Mr Flint was then invited to a meeting to discuss his absence scheduled for 27 January 2022, however Mr Flint then sent his resignation on notice to the Respondent.

493. As regards his failure to engage with the Respondent during his sickness absence the evidence of Mr Flint was that:

"The Respondent was well aware of that my sickness absence was due to my ongoing treatment since February 2020, so I conclude from that they were simply going through a tick box exercise in relation to staff absence."

494. Mr Flint also says in his witness statement that the final straw was the invite to attend an absence meeting with the Respondent. Mr Flint records in his witness statement *"The thought of attending a meeting where they were going to discuss the premises restructure really triggered my anxiety as it was evident that my treatment was not going to change. I left my employment with the Respondent on 24 March 2022."*

495. Mr Flint did not attend the meeting that had been scheduled for 27 January 2022.

496. We have looked carefully at Mr Flint's resignation letter. We note that Mr Flint referred to several reasons why he believed that he had been constructively dismissed. These reasons included alleged bullying and harassment in response to his raising concerns about breaches of procurement rules, work being taken away from him, the conduct of the grievance and the appeal processes, a lack of contrition from the Respondent, the failure to provide unredacted documents under his DSAR as well as pursuant to what he said was a tribunal order for them to have been disclosed. Mr Flint said that his position was untenable and that he had been left with no option but to resign.

497. In closing Mr Flint said that he had been working under protest until her grievance had been resolved, and he indicated that he had not resigned before as this treatment was during the Pandemic and the fact that Mrs Flint

had also been subject to similar treatment, and if they had both resigned in response to their treatment it would have impacted their whole house income. Mr Flint said he had now become ill due to the treatment, and he did not believe that he had affirmed or waived the Respondent's repeated and unlawful actions against him.

498. We have not seen any evidence that Mr Flint had communicated to the Respondent beforehand that he was working under protest.

499. Whereas Mr Flint stated in his witness statement that the final straw was the invitation to the absence meeting, we note that this is not something which appeared in his resignation letter at the time. The final straw, according to Mr Flint's letter was as set out below:

"More recently, the Trust has not followed in good faith a tribunal order, by not disclosing the aforementioned documents for the tribunal bundle. This failure to show a willingness to comply with civil procedure rules is the final straw for me, demonstrating that there has been an irreparable breach of the trust and confidence that the Trust should maintain in its dealings with its employees. Your conduct has impacted my mental health, which has impacted on my whole life, and I can no longer accept your continual mistreatment of me."

500. Mr Flint's employment ended on 24 March 2022.

Data subject access requests ("DSARs")

501. On 14 December 2020 Mr Flint made his subject access request. This was sent to Steve Watts, Data Protection Officer for the Respondent.

502. Mr Watts replied on 15 December 2020 to confirm he would endeavour to respond within the statutory timescale of one month, but he indicated that in accordance with guidance from the ICO at the time, there could be delays due to COVID-19. Mr Watts reminds us that the maximum amount of time permitted to respond to a DSAR is three months from the date of the request where the request is complex.

503. The response was handled by Mr Watts and his assistant, and that the email searches were conducted by the Respondent's ICT staff.

504. We have heard from Mr Watts about the challenges faced by the Respondent during the COVID-19 Pandemic with respect to administrative resources being diverted to new activities related to the pandemic, such as testing pupils. We also note that the Respondent's ICT team who conducted the email searches were under stress with the added pressure of providing learning online. Mr Watts says that this was exacerbated by increased staff absence due to COVID. We acknowledge that the Pandemic would have placed the Respondent under considerable pressure during this time and that things may have taken longer than usual to complete, especially where the requests for data produced large volumes of information.

505. A number of initial documents were disclosed to Mr Flint on 14 January 2021. The searches had identified 44,164 emails just in connection with one school and on 4 February 2021 Mr Watts wrote to Mr Flint to ask him to refine his search which he did on 8 February. Mr Watts sent Mr Flint

his final documents on 12 March 2021 by post which was within 3 months of his request. Within the letter Mr Watts recorded that redactions had been made in accordance with section 45 (4) (e) of the Data Protection Act 2018 which relates to protecting the rights and freedoms of others.

506. On 17 March Mr Flint asked Mr Watts why some of the emails had been fully redacted, and Mr Watts responded to advise that this would be to protect the personal data of other people or relevance or because they may cover more than one theme.
507. Mrs Flint submitted her DSAR on 8 January 2021. Mr Watts acknowledged receipt of the DSAR on 12 January and as set out above confirmed that there may be a delay in responding.
508. Mr Watts provided Mrs Flint with initial documents on 5 February 2021. It was noted that Mrs Flint's request had produced tens of thousands of emails which would have taken up considerable time to review, and Mr Watts asked Mrs Flint if she could refine her search which she did on 12 March 2021. We note that there remained a large number of emails which Mr Watts reviewed with his assistant, and these were then provided to Mrs Flint by post on 7 April 2021. Mr Watts' letter again indicated why redactions had been made.
509. Mr Flint and Mrs Flint say that some of the documents were inappropriately redacted in breach of the Data Protection Act 2018, or some were deleted in their entirety which they says is a criminal offence under s. 173 of the Data Protection Act 2018.
510. Mr Flint and Mrs Flint say that additional documents were disclosed under the DSARs on 22 December 2021, but some were heavily redacted, and some trails were missing or had been deleted. Mr Watts' evidence is that he had not disclosed anything further under the Subject Access Request after 12 March 2021 to Mr Flint and 7 April 2021 to Mrs Flint. We have noted that 22 December 2021 was the date for the Respondent to comply with disclosure in these proceedings. It therefore appears to the Tribunal that Mr Flint and Mrs Flint are mistaken and that they are referring to disclosure in these proceedings rather than a response to their DSARs.
511. Mr Flint and Mrs Flint made requests for the unredacted versions of the disclosed documents in these proceedings on several occasions in January 2022 following which they received further documents on or around 4 March 2022 by way of disclosure in these proceedings.
512. We have heard evidence from Mr Watts on the redactions applied to the documents in response to the DSARs. Mr Watts says that these were applied by him and his assistant and that they redacted Mrs Flint's data from the documents provided to Mr Flint and vice versa on the basis that Mr Watts did not know how much information they had shared with one another about their individual grievances and complaints, but he and his assistant saw as they were reviewing documents that they were both aware of each other's grievances and complaints. Mr Watts says that nonetheless, some redaction may have included redacting Mrs Flint's data as Mr Flint was not entitled to this data. Mr Watts says that there were some emails that were provided to both Mr Flint and Mrs Flint although the same emails may have

been redacted differently depending on whether who they were released to as the starting position was that neither were entitled to the other's personal data.

513. Whereas Mr Flint has suggested that there was a direction from the Employment Tribunal to provide unredacted documents, we have been referred to a copy of the correspondence from the Tribunal dated 7 March 2022 where Employment Judge Hanning recorded that:

"I did not order that unredacted documents be supplied. The respondent is correct that I indicated documents provided in compliance with paragraph 9 of the order ought not to be redacted. If documents are still redacted and all the claimants believe additional documents should be provided then the claimants should make an application."

514. The reference to paragraph 9 appears to relate to the Case Management Orders of 24 November 2021 which directed the Respondent to send the Respondent copies of all documents relevant to the issues listed in the Case Management Summary. Accordingly there was no specific Case Management Order to release unredacted documents.

Resignation of Mrs Flint

515. Following Mr Flint's sickness absence Mrs Flint took over some of his duties as Premises Manager before a caretaker at the School was given a temporary promotion to cover his absence. At this time Mrs Flint's mother was unfortunately in hospital receiving end of life care. Mrs Flint says that she was given time off to attend the hospital.

516. We have been referred to an email in the hearing bundle dated 9 December 2020, which was an email from Mrs Wilson-Downes to Mrs Flint, where she said that she was very concerned about the site ticket system. In the draft email Mrs Wilson-Downes said that a member of staff had raised a site issue with her which they thought she would have known about from site ticket emails, however Mrs Wilson-Downes had discovered she was not receiving them and had been locked out. Mrs Wilson-Downes had sent her draft email to Mrs Flint for Mrs Bull to check first. Mrs Flint took issue with her having done so as the substantive issue was an IT problem and not something that she or Mr Flint had done wrong.

517. Mrs Wilson-Downes' evidence was that she had found the grievance process very difficult and that she worried about it throughout the summer and that she did not know what she had been accused of, therefore she was very worried about doing something that would trigger more grievances from Mr Flint and Mrs Flint, accordingly she sent some emails to Mrs Bull to have them checked first as she was terrified of sending something that Mr Flint or Mrs Flint may have found fault with.

518. Mrs Cumberland then resigned as the headteacher's PA or Office Manager and Mrs Flint also covered some of her duties as well for a time.

519. Following the grievance outcome, we note that mediation was commenced between Mrs Flint and Mrs Wilson-Downes, and it was confirmed that they had a working relationship. We have been referred to emails within the hearing bundle which demonstrate that this was the case

and that Mrs Flint and Mrs Wilson-Downes, continued to work together as normal in undertaking their respective duties.

520. We have also been referred to WhatsApp messages between Mrs Flint and Mrs Wilson-Downes from 16 March 2020 to 3 March 2022. These messages were sent at various times of day, including out of normal working hours. The content and tone of these messages suggest a positive and friendly line management relationship. There are various messages where Mrs Flint discusses her mother's health with Mrs Wilson-Downes whose responses are supportive and sympathetic. On one occasion on 23 November 2021 Mrs Flint thanks Mrs Wilson-Downes for kindness. On another occasion Mrs Flint had to go to visit her mother during working time and Mrs Wilson-Downes told her that she would not need to make up the time as she told Mrs Flint *"you more than make the time up."* There is no indication in these messages of Mrs Wilson-Downes treating Mrs Flint any differently after the dates when she says that she made whistleblowing disclosures – the messages from Mrs Wilson-Downes remained positive and supportive throughout.

521. Mrs Flint received further unredacted disclosure from the Respondent on 15 February 2022 which she says amounted to 124 pages of emails. Mrs Flint gave evidence that she found the contents so upsetting that she contacted her GP and was signed off on long term sickness absence due to work related stress from February 2022. This was subsequently extended to 24 May 2022. Mrs Flint's evidence was that having gone through the contents of the unredacted emails, she was so shocked and stressed by the content of some emails that this was the final straw and she felt she had no option but to resign her post on 31 March 2022.

522. We have looked carefully at Mrs Flint's resignation email. We note that Mrs Flint referred to a number of reasons why she believed that she had been constructively dismissed. These reasons included alleged bullying and harassment in response to Mrs Flint raising concerns about breaches of procurement rules, work being taken away from her, the conduct of the grievance and the appeal processes, a lack of contrition from the Respondent, the time taken to provide unredacted documents following the DSAR as well as their contents.

523. We have paid particular attention to the emails Mrs Flint received at that time which she said caused her resignation. As indicated at the start of this judgment, we have had to examine closely what Mrs Flint received, when she received it, and what state it was in when she received it. This is key to our consideration of this matter as we need to be clear what was seen by Mrs Flint at the time of her resignation. The Respondent, as we have already mentioned, has provided us with copies of those documents in the format that they were sent to Mrs Flint together with the dates that they were sent to her. We are therefore able to make findings as to what Mrs Flint received.

524. The first email referenced was dated 4 June 2020 from Darren Woodward, Director of Education (Primary) at the Respondent. In this string Mr Woodward had emailed Mrs Flint and Mrs Hughes about the budget for Langer. It appeared that Mr Woodward was asking for more detail to be

included in the budget as some data was missing and some data was rounded up and he said that this would make it difficult to make comments about the budget. It appeared that there was due to be a meeting the following day to discuss the budget. Mrs Flint was already aware of this email as it had been sent to her.

525. However, Mr Woodward then forwarded that email to Dr Coulson in which he stated:

"I sent this a little bit ago, below, after reading the Langer budget. Jane asked if we should postpone, just now. I suggested we go ahead as we need to hold this person to account - Sharon cannot continue, neither can Graham - I don't know how we do it, but it is a real millstone!"

526. We did not hear from Mr Woodward as a witness although it would appear that within nine months of the Respondent taking over the School and Langer he had determined that Mr Flint and Mrs Flint should be removed.

527. We can find that this email was released to Mr Flint in a heavily redacted form but not released to Mrs Flint at all under the DSARs. The version which was disclosed to Mr Flint was different and was redacted and shows that Dr Coulson forwarded the above exchange to Mrs Garner with the following:

"Sarah

See below? Tim."

528. Mr Flint would have received the subject line of the email which was "Langer budget" and the following text:

"[Redacted] we need to hold this person to account [Redacted] cannot continue, neither can Graham [Redacted]".

529. Mr Woodward's email signature was included unredacted.

530. We find that as this string contained data about Mrs Flint, but it was not released to her under her DSAR.

531. Mrs Flint also referenced another email dated 24 April 2020 from Mrs Hughes to Mrs Wilson-Downes. The content of the email is as follows:

"Hi Emma,

Did you hear what happened with the DBS check that wasn't done on our new caretaker? I am telling you in case it helps with any HR process at any stage.

Graham did the induction and Sharon runs our SCR and led the recruitment process for the caretaker (Paul). Neither checked if he had a DBS for Langer or anything like that. He started on 31/3/20 (we were not on site and usual processes were not followed because of that.) When we returned to site on Monday, usual process kicked in and I asked to see it and realised it hadn't happened yet. It is being sorted now, risk assessments in place and barred

list check has come back clean, but I know that you've had a new caretaker start too so I just wanted to say in case they'd achieved the same with that person. I'm thinking that your systems are more robust so the same doesn't apply but just in case. I know that ultimately it's my responsibility - it was delegated and then errors occurred which luckily have not led to any harm to anyone but it's not a great situation nevertheless.

Hope you're ok,"

532. This email was not released to either Mr Flint or Mrs Flint under their DSARs however the contents related to both.

533. Mrs Flint referred also to an email dated 13 May 2020 from Ms Clements to Mrs Wilson-Downes. The email string concerned fencing replacement at the School and Mr Flint had emailed Mrs Wilson-Downes to say *"Good news – they have agreed the fencing replacement!"* This email has been referred to earlier in this judgment where it was noted that Mrs Wilson-Downes said *"He's actually emailed me this time"* to which Ms Clements replied *"Wow!! That's progress!! and he didn't copy in his wife!!!"*. This had been released to Mr Flint under his DSAR however we were unable to find when this was as the parties were unable to assist us.

534. However, when it was disclosed, it had been redacted by the Respondent so that Mrs Wilson-Downes comment *"He's still in a mood with me, which is hilarious"* followed by a smiling or laughing emoji was not released under the DSAR nor was Ms Clements' response that *"its so childish"* combined with another laughing or smiling emoji. Mr Flint did not receive the unredacted version until disclosed in these proceedings. We were not provided with an explanation why that text was redacted. We should make it clear that we find that the data relates to Mr Flint and not Mrs Flint but nevertheless it was indicative that some material may have been inappropriately redacted during the DSARs.

535. Mrs Flint also referred to a separate email of 18 May 2020 again already referred to in this judgment, where Mrs Wilson-Downes had discussed hand dryers with Ms Clements. Mrs Wilson-Downes had said:

"Sharon is organising the cleaning rotas to get the cleaners in to clean the tables.

I have a list for them both and I keep asking them about various aspects of the things on my list. They are going to get pretty fed up quite soon I think!"

536. Ms Clements had responded to this and whilst she discussed the hand dryers and other matters she also said:

"I'm sure they are getting well and truly pissed off at the moment, but that's the point isn't it?!"

537. We find that this had already been released to Mrs Flint under her DSAR on or before 7 April 2021, nevertheless it was clear that the contents continued to cause her upset especially when viewed with other emails which had not been released under the DSARs.

538. Mrs Flint also referred to the email exchange of 28 February 2020 already referred to in this judgment concerning the caretaker interviews.

Mrs Wilson-Downes had excluded Mrs Flint from attending the interview and there then followed a discussion between Mrs Wilson-Downes and Ms Clements about putting Rosemary Prince (a governor) on the panel. Ms Clements had said *“Prince? That would really piss Sharon off! Yes lets ask her.”* We find that this email had already been released to Mrs Flint under her DSAR on or before 7 April 2021, and again it was clear that the contents continued to cause her upset especially when viewed with other emails which had not been released under the DSAR.

539. Whilst it was not referred to in Mrs Flint’s resignation letter, Mr Watts was questioned about the redactions applied to an email string on 20 May 2020 between Mrs Bull and Dr Coulson which Mrs Garner had been copied into. Mrs Bull had updated Dr Coulson on the informal discussions with Mrs Flint about the finance hub manager role and settlement negotiations. The Respondent had redacted two parts of the exchange.
540. The first redaction was of Dr Coulson’s comment about Mrs Flint that *“She’s gearing up for a fight”* however the remainder of the email was unredacted, in particular Dr Coulson’s comment that *“But we’ll need to draw back to stop her resigning to claim unfair dismissal?”*.
541. The second redaction was the figure Mrs Bull provided for the statutory cap on compensation on unfair dismissal. In his evidence Mr Watts explained to us some of the reasons why data might be redacted under a DSAR however he was unable to assist us with why these two redactions had been made. This was unfortunate as he was the person responsible for leading on DSARs within the Respondent and it was Mr Watts who had conducted this exercise together with his assistant. We again found it surprising that he was unable to explain why these redactions had been made.
542. We find that the redacted version of the email was released to Mrs Flint in response to her DSAR on or before 7 April 2021, however the unredacted version was not disclosed until the Respondent carried its disclosure exercise. We were not provided with a date when the unredacted version of this email was disclosed.
543. We were also referred to a further email dated 25 January 2021 prepared by Ms Baty where she recorded her discussions with Mr Flint and Mrs Flint that day about taking over Mr Flint’s line management and other related matters. This email related to both Mr Flint and Mrs Flint however it had not been released under the DSAR.
544. We have noted the date of the email was after both Mr Flint and Mrs Flint had issued their DSARs on 14 December 2020 and 8 January 2021, accordingly it is possible that it might not have been picked up in the original search. However, we also noted that Ms Baty had chosen to refer to Mr Flint as G and Mrs Flint as S, however she referred to either people by their first names or full names, such as Emma, Nick, Andrew Salter, and Anthony Williams. We note that Ms Baty used other abbreviations, for example LM for line management, PM for performance management, H&S for health and safety, and she also referred to herself as RBA. It did not appear that the use of S and G was specifically intended to prevent the email being picked

up in a DSAR although we have kept open the possibility that it could have been intended.

545. In her resignation letter Mrs Flint also referred to Mrs Wilson-Downes sending draft emails to Mrs Bull to check, such as an email dated 9 December 2020 concerning the site ticketing system referred to above.

546. In closing Mrs Flint said in her resignation letter that she had been working under protest until her grievance had been resolved, and she indicated that she had not resigned before as this treatment was during the Pandemic and the fact that Mr Flint had also been subject to similar treatment, and if they had both resigned in response to their treatment it would have impacted their whole house income. Mrs Flint said she had now become ill due to the treatment, and she did not believe that she had affirmed or waived the Respondent's repeated and unlawful actions against her.

547. We have not seen any evidence that Mrs Flint had communicated to the Respondent beforehand that she was working under protest.

548. Mrs Flint's employment ended on 30 June 2022.

Reference for Mrs Flint

549. At some point towards the end of September 2022 Mrs Flint applied for the role of Interim Business Manager at another school, the Albany, which is based in Bury St Edmunds.

550. Mrs Flint was interviewed for this role and offered the position subject to satisfactory references and a DBS check. Mrs Flint supplied the details of two referees – one was Mr Anthony Williams who was the former Principal of the School, and the other was from Mrs Wilson-Downes.

551. We have been referred to a letter in the hearing bundle addressed "To whom this may concern" from Mrs Tracy Rose, Business Manager at the Albany School. We should point out that this is not a witness statement and Mrs Rose did not attend the Tribunal to give evidence, however the Respondent has not objected to our consideration of this document therefore we are content to rely on it. Moreover, the document is consistent with evidence that Mrs Flint has given us.

552. Mrs Rose stated that upon reviewing the completed references, she was concerned regarding the disparity between the information supplied within them. Mrs Rose said that based upon the information provided in the reference from Mrs Wilson-Downes alone, she would have been reluctant to continue with the offer of employment made to Mrs Flint, Mrs Rose said that the decision on whether to appoint is not within her remit, and therefore the references were reviewed by the interim headteacher, Darryl James.

553. Mrs Flint challenges the contents of the reference provided by Mrs Wilson-Downes, and she alleges that it amounts to a detriment for whistleblowing. It is therefore appropriate for us to conduct a comparative exercise between the references provided by Mrs Wilson-Downes and Mr Williams, together with any evidence put before us, either in the hearing

bundle or in oral evidence, relevant to the contents of the reference provided by Mrs Wilson-Downes.

554. We should point out that it is not for the Tribunal to say what reference Mrs Wilson-Downes should have provided, nor is it appropriate for us to say what grades Mrs Wilson-Downes should have applied. Our focus is on the accuracy of the reference, and to that end we must afford Mrs Wilson-Downes some amount of leeway as she is a qualified teacher and the headteacher of the School and has line managed Mrs Flint day-to-day for a number of years. That does not however mean that we must take everything in the reference at face value either. Our approach will be to review the contents of the reference and to determine whether it is accurate by reference to the evidence before us, and if we find that it is inaccurate, we must consider whether it was due to having made a protected disclosure.
555. Both Mr Williams and Mrs Wilson-Downes confirmed that Mrs Flint's overall performance suggested that she was equipped to fulfil the responsibilities of the post she had applied for. Both also confirmed that she was not subject to any informal or formal disciplinary or capability procedures or sanctions, and nor were there concerns about the safety or welfare of children or young people. Both referees also said that Mrs Flint's general attendance and punctuality were good.
556. When asked whether they would re-employ Mrs Flint, Mr Williams said yes. However, Mrs Wilson-Downes said "*N/A as Sharon has been offered your role.*" This was an unusual response to have provided as the question was about whether the employer would re-employ the applicant generally, not whether they would re-employ them right now.
557. The reference then asks the referees to grade the applicant in connection with 13 competencies which will be set out below. The possible grades are excellent, good, fair and poor. Two of those competencies related to teaching therefore we will only focus on the remaining 11 competencies.
558. We will now address each of the competencies in turn.
559. With respect to building and maintaining effective working relationships, Mrs Wilson-Downes scored Mrs Flint as good, and we note that no comments were included in the narrative. Mr Williams had scored Mrs Flint as excellent and commented that Mrs Flint formed strong relationships with staff and students alike. We did not think there was anything of particular significance with the score provided by Mrs Wilson-Downes here. This is because it is entirely possible for two different headteachers to form a different assessment, and moreover Mr Williams had not worked with Mrs Flint for in the region of three years when the reference was provided.
560. With regards to willingness to learn and develop and continuous professional development, Mrs Wilson-Downes scored Mrs Flint as fair and stated that Mrs Flint had already completed her business management training prior to working with Mrs Wilson-Downes, she worked with colleagues in the wider Trust to learn new systems and processes that were required within the new trust after we brokerage. There was no evidence

included that would justify the score of fair. We note that Mr Williams has scored Mrs Flint as excellent and said that she was always keen to engage in CPD opportunities offered by the former trust and that she completed her NPQ for business managers. There was a clear disparity here between the scoring by the two referees.

561. The evidence of Mrs Flint was that Mrs Wilson-Downes was aware that she had completed the School Business Manager's training to the highest level with the National College for School Leaders Advanced Diploma which was funded by the Department for Education, and which involved studying for six years up to Masters' degree level.
562. Mrs Flint also referenced the considerable amount of training she had undertaken since the School joined the Respondent including Educational Visits Coordinator, Safer Recruitment training, Single Central Record training, Finance training, Premises Responsible Person training, and Online Safety / Safeguarding / Prevent training. Mrs Flint said that no other courses were offered or were required that she did not undertake during her employment with the Respondent.
563. The third competency related to flexibility and included willingness to undertake varied tasks and/or new methods, commensurate with grade or professional standing. Mrs Wilson-Downes marked Mrs Flint as fair and said that Mrs Flint worked flexibly and worked the hours required for her to complete her role in line with the expectations of a school senior leader.
564. Mrs Wilson-Downes, added that there were some staffing challenges that affected Mrs Flint opportunity to engage with some new areas, for example, income generation and post Covid financial planning.
565. Mr Williams for his part at graded Mrs Flint as excellent had recorded that Mrs Flint was it an extremely diligent and hard-working member of the senior leadership team.
566. There was therefore quite a disparity between the two grades for this competency. Mrs Flint's evidence was that Mrs Wilson-Downes was aware that she worked 50-60 hours per week during term time, and she also worked during the school holidays for 37 hours per week, even though her contracted hours were for 37 hours per week and that this additional time was not paid, nor did she take time back for hours worked during holidays or additional hours worked.
567. Mrs Flint said that she staffing challenges were covering for Mr Flint's sickness absence from his role as Premises Manager, supporting the caretaker who was temporarily promoted to Mr Flint's role, taking on some of the work of the Finance Manager who left, covering the work of the Finance Assistant during her frequent long term sickness absences, and the covering the work of the headteacher's Office Manager / PA who resigned.
568. Mrs Flint said that she could not engage with income generation as there were measures in place following the COVID Pandemic which prevented external lettings and events in school after hours and at weekends which would normally have generated a significant income.

569. The fourth competency related to team working for which Mrs Wilson-Downes scored Mrs Flint as good and Mr Williams scored her as excellent. We consider that these scores were closely aligned and do not propose to consider them further.
570. The fifth competency was ability to prioritise work and meet deadlines. Mrs Wilson-Downes scored Mrs Flint as fair and recorded that there had been some staffing challenges that had affected Mrs Flint's ability to meet some deadlines within some areas. Mr Williams scored Mrs Flint as excellent and stated that she was extremely proficient in prioritising tasks and meeting deadlines. There was a clear disparity between the two grades.
571. Mrs Flint's evidence was that Mrs Wilson-Downes was aware that Mrs Flint was covering the work of several people on top of her own areas of responsibility and that there was only one official deadline she recalled being delayed which she said was due to technical issues regarding a finance report for Mrs Garner. Mrs Flint also said that she had weekly meetings with Mrs Wilson-Downes where she constantly met deadlines and that she had not been spoken to about this, and that she always worked extremely hard.
572. The sixth competency related to ability to use own initiative appropriately for which Mrs Wilson-Downes scored Mrs Flint as good and Mr Williams scored her as excellent. We consider that these scores were closely aligned and do not propose to consider them further.
573. The seventh competency related to written and verbal communication for which both Mrs Wilson-Downes and Mr Williams scored Mrs Flint as excellent. Accordingly, we do not propose to consider this competency further.
574. The eighth competency related to contribution to the organisation and general life of the school for which Mrs Wilson-Downes scored Mrs Flint as good and Mr Williams scored her as excellent. We consider that these scores were closely aligned and do not propose to consider them further. We would add that the narrative from Mrs Wilson-Downes was particularly positive as she stated:
- "As mentioned, the school had some staffing challenges which affected some key areas within Sharon's remit. Sharon, despite this, was always happy to contribute to senior team meetings and briefings, and wanted to continue to undertake supervisory duties, such as lunch duties where she engage positively with students. Sharon also supported colleagues with their well-being and this was valued by those colleagues in terms of the support that Sharon gave them as individuals at challenging times in their lives."*
575. Competencies nine and ten related to teaching so were not relevant.
576. The eleventh competency related to people management and leadership skills for which Mrs Wilson-Downes scored Mrs Flint as fair and Mr Williams scored her as excellent. The narrative from Mrs Wilson-Downes was:

“Sharon oversaw the appraisal cycle of support staff within the school, and also line managed a number of colleagues within the school. She oversaw a change in reporting cycles to bring support staff in line with teaching staff time frames. Staff were well supported, at times that could have been more rapid challenge of performance. As a school senior leader, Sharon contributed to the wider management of the school. Sharon led training for staff on financial procedures. Sharon also oversaw the induction process of new staff, which was well received by new colleagues.”

577. Mr Williams graded Mrs Flint excellent and stated that she demonstrated strong leadership and management of those she line-managed and was an integral part of the senior leadership team. There was a disparity in the grades from both referees, however the narrative provided by Mrs Wilson-Downes was clearly far more detailed than that of Mr Williams.

578. The evidence of Mrs Flint was that she disputed the grade and that the reference to more rapid change in some staff performance may have referred to the Finance Manager who she said needed support from the Respondent’s central team on their finance system.

579. The twelfth competency related to budget management skills. Mrs Wilson-Downes graded Mrs Flint as fair and stated:

“Under Sharon’s leadership, the school budget since I have been here has not been overspent, however we did end two years with very large, surplus budgets, which we were unable to spend on meaningful projects due to the short timescales from the time that the underspend was confirmed and the end of the financial year.”

580. Mr Williams graded Mrs Flint as excellent and stated that she was a wealth of knowledge and experience in financial management, she was instrumental in moving the school’s budget from deficit to surplus. There was a clear difference between the two grades however we note from the evidence that there were differences in the way in which both Trusts ran their budgets.

581. Mrs Flint’s evidence was that the budget surplus was due to external factors beyond her control arising out of the COVID-19 Pandemic including reduced expenditure and additional income from central Government. Mrs Flint said that the surplus was used to pay for ICT resources and other matters which was approved by the Respondent and that all the schools within the Respondent had made savings and could carry over budgets due to the Pandemic. Mrs Flint said that she had monthly meetings where she went through the budgets with Mrs Wilson-Downes, and that she had been commended by the School’s governors for good financial planning and procedures, and that no concerns were ever raised to her about this by the governors or by Mrs Wilson-Downes.

582. The thirteenth competency related to relationships with senior management teams and other related agencies and organisations. Mrs Wilson-Downes marked Mrs Flint as good and stated that she had a positive working relationship with the senior leadership team. Mr Williams did not include a grade although his comments were that Mrs Flint was an effective

and integral part of the senior leadership team. We can assume, given Mr Williams' previous scores and his comments, that he most likely intended to grade Mrs Flint as excellent and that it was an inadvertent error not to have done so.

583. Given the difference between the grades which Mrs Wilson-Downes awarded, we asked what Mrs Flint would need to have done to have scored the higher grades. Mrs Wilson-Downes' evidence to the Tribunal was that to have scored Mrs Flint higher she would have expected Mrs Flint to have demonstrated something at a national level. When asked if Mrs Wilson-Downes was perhaps marking Mrs Flint as she would a teacher, Mrs Wilson-Downes was clear that she had been marking Mrs Flint as Business Manager.
584. Both referees said that they did not think that there were elements of the post that Mrs Flint may have difficulty with. Finally, the referees were asked how they would overall grade their recommendation for Mrs Flint. The options were to strongly recommend, recommend with reservations stated above, and do not recommend. Mr Williams said that he strongly recommended Mrs Flint, whereas Mrs Wilson-Downes said that she recommended with reservations stated above.
585. Mrs Flint said that this was unfair and unfounded and would raise concerns with a new employer. Mrs Rose said in her letter said that the disparity did raise concerns and she discussed the contents of the references with the interim headteacher Mr James, and that in view of the significant differences between those references, a risk assessment was carried out prior to the offer of employment being confirmed to Mrs Flint.
586. Mrs Rose says in her letter that feedback from Mr James, who had worked with Mrs Flint at the School for over 15 years, was overwhelmingly positive, and was more aligned to those views expressed within the reference supplied by Mr Williams, and accordingly the offer of employment was made to Mrs Flint, and we understand that she was appointed to that position.
587. The hearing bundle contains some of Mrs Flint's appraisals from her time with the Respondent. Neither party referred us to these, and we heard no evidence on them. Nevertheless, we can take one of them into consideration to a very limited extent whilst bearing in mind that we heard no evidence on it.
588. The appraisal for 2020-2021 completed in April 2021 contains three objectives which are (i) Finance and Staffing; (ii) Health and Safety; and (iii) Development of mentoring skills. Mrs Wilson-Downes was the reviewer and recorded whether the objectives had been met. Finance and Staffing was marked as partially met. The narrative was *"there has been an impact of COVID in being able to deliver training to finance team members which has affected this. Some staffing issues affecting student services which are being monitored, particularly affecting First Aid."*
589. Health and Safety was recorded as met. The narrative was *"no actions from H&S audit, however Union H&S report did have some actions*

relating to wellbeing, and there is a plan in place which is being implemented and chased to ensure these are acted on.”

590. Development of mentoring skills was recorded as partially met. The narrative was *“impact of COVID means that some training which was external has not taken place, and so this has had an impact on efficiency. New system in place for printing cost reports, should be better in future months with automated report.”*
591. The overall comments noted that Mrs Flint had met most Trust deadlines for monthly reports and payroll, there had been some payment delays earlier in the year but seemed to be improving, Mrs Flint was regularly meeting HR and the headteacher and a plan was in place to realign support staff PM process which we understand to be a reference to a performance management process. It was also recorded that Mrs Flint had been attending resources committees and discussing finance and health and safety with governors and Mrs Flint had stepped in to monitor compliance in the absence of the Premises Manager.
592. It was also noted that Mrs Flint had updated the risk assessment for COVID controls and liaised with unions and staff regarding, new staff always had an induction, and the Health and Safety Audit was completed successfully with no actions resulting from this. It was further recorded that Mrs Flint had attended Resources Committee and provided a report on health and safety within the school.
593. There was reference to a member of staff whom Mrs Flint felt had not had comprehensive training. It is understood that this is the Finance Assistant. It was recorded that Mrs Flint would arrange for the Trust Central Team to spend a day with the member of staff to ensure they were fully trained.
594. The hearing bundle contained a second appraisal which was recorded as being for the 2021 year with a review date of May 2021 and an end of year review date of October 2021. We place no weight on its contents given that we heard nothing about this document in evidence and it appears that this was a draft document, it was unclear whether it was ever shared with Mrs Flint or if she ever contributed to it, and we do not know when it was produced.
595. Whereas Mrs Flint says that Mrs Wilson-Downes included the wrong start date as 2 September 2011 rather than 2 May 2000, that did not appear to have been an issue for the Albany School, therefore we will not consider that further.
596. We did not have the benefit of Mr Williams as a witness to give evidence as to his reference in which he had marked Mrs Flint as excellent in all respects, save for one competency where no grade was given and which we assume to have been an oversight. We have taken into consideration that Mr Williams likely got on well with Mrs Flint as it was put to her in cross examination.
597. We have no reason to dispute the grades issued by Mr Williams although we would add that it is for the Claimant to prove her case not for the Respondent to disprove it, but nevertheless we record that Mr Williams

clearly thought very highly of Mrs Flint. It is not inconceivable that it was Mr Williams' honestly held view that Mrs Flint was excellent in respect of all of those competencies and we of course note she had a large job description, she worked far in excess of her contractual hours, and she appeared to have a can-do attitude as we heard evidence that she picked up some of the work of at least three people (Mr Flint, Mrs Cumberland and the Finance Manager or Finance Assistant) on top of her own heavy workload.

598. Our focus is on those areas where Mrs Wilson-Downes graded Mrs Flint as fair as she does not take issue with those areas where she is marked as good. Having looked at the evidence before us in the hearing bundle, and having heard Mrs Wilson-Downes' answers to Mrs Flint's questions about her willingness to learn and develop and her continuing professional development, and having considered the narrative Mrs Wilson-Downes included, we do find that the grade of fair she gave Mrs Flint did not accurately reflect all of the work she had done to develop herself at the School. We found the grade of fair was unjustified based upon the evidence we heard, and therefore it was inaccurate.

599. Similarly, we also found that the grade of fair with respect to the competency of flexibility was also not supported by the evidence before us. The competency related to willingness to undertake varied tasks and new methods. We noted that Mrs Flint worked incredibly long hours including at weekends and during holidays, therefore a grade of fair with respect to flexibility was very surprising. We noted that within the narrative Mrs Wilson-Downes made references to Mrs Flint working flexibly and the hours required of her, but that staffing challenges had affected Mrs Flint's opportunity to engage in some new areas and some examples were provided, but nevertheless we did not see any evidence of Mrs Flint being unwilling to take on new or varied tasks, it appeared to us that Mrs Flint's work spread across the School therefore we found that the grade of fair was also inaccurate in that context.

600. We also felt that the grade of fair with respect to ability to prioritise work and meet deadlines was also inaccurate. We saw no evidence of missed deadlines by Mrs Flint nor anything which would support a grade of that level. All of the evidence we saw was of Mrs Flint working incredibly hard in a wide range of areas across the School and picking up the work of a number of staff who had either left or were absent. Mrs Flint was particularly candid and mentioned one issue in her written commentary on the reference where she said that there had been one missed deadline for a finance report for Mrs Garner, however that was due to technical issues.

601. We have considered the grade of fair with respect to people management. We have seen in the hearing bundle some references to concerns about the performance of some staff managed by Mrs Flint including a finance member of staff making mistakes. We have seen evidence of Mrs Wilson-Downes having to make lists of work for Mr Flint which she had to follow him up on. We also note the email from Mr Woodward about Mr Flint (and Mrs Flint) and the email from Mrs Garner (about a finance member of staff) and whilst the emails were incomplete and had no context, they were seeking to raise some concerns about performance of some of the staff managed by Mrs Flint.

602. In that context we found that there was some limited evidence which would support the grade given by Mrs Wilson-Downes. We did not therefore find sufficient evidence which would have caused us to infer that the grade was inaccurate. That does not mean that we find that the staff managed by Mrs Flint were underperforming as that is not a matter we have examined. Our focus has been on whether the reference is accurate and supported by evidence. In this case we find that as performance concerns had been raised by senior members of the Respondent's staff, we cannot find that grade was inaccurate.
603. We have also considered the grade of fair given in respect of budget management skills. We note the narrative from Mrs Wilson-Downes in the reference that there had not been an overspend but the School had two years with a very large surplus, which it had been unable to spend due to short timescales from the time it was confirmed and the end of the financial year.
604. We have found Mrs Flint's written evidence in this regard to be compelling. Mrs Flint listed all the reasons which were external and beyond her control which had caused those surpluses including staff leaving and not being replaced and numerous savings brought about by the Covid Pandemic.
605. Mrs Flint gave evidence that the surplus was still used and moreover all schools within the Respondent had made significant savings and had large carry forward budgets. We noted that Mrs Flint had monthly meetings with Mrs Wilson-Downes where they went through the finance reports, and that Mrs Wilson-Downes would have been aware of what finances were available. We were not provided with any evidence of Mrs Wilson-Downes raising these concerns with Mrs Flint at the material times.
606. We therefore find that the grade of fair in respect to budget management skills was inaccurate. We find that certain elements of the reference we have identified were inaccurate rather than the whole evidence being inaccurate. We heard evidence from Mr Wilson-Downes that she felt that this was an accurate reference, however we disagree. We also heard evidence from Mrs Wilson-Downes that had Mrs Flint's employment continued then consideration would have been given to performance management, however there was no evidence of that in the documents before us. We will address in our conclusions and analysis the reasons why Mrs Flint was provided with an accurate reference.

Law

Protected disclosures / whistleblowing

607. The Employment Rights Act 1996 provides:

43B(1) Disclosures qualifying for protection.

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

- (a) *that a criminal offence has been committed, is being committed or is likely to be committed,*
- (b) *that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
- (c) *that a miscarriage of justice has occurred, is occurring or is likely to occur,*
- (d) *that the health or safety of any individual has been, is being or is likely to be endangered,*
- (e) *that the environment has been, is being or is likely to be damaged, or*
- (f) *that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

...

43C Disclosure to employer or other responsible person.

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure —

(a) to his employer, ...

47B Protected disclosures.

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

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

(a) by another worker of W’s employer in the course of that other worker’s employment, or

(b) by an agent of W’s employer with the employer’s authority,

on the ground that W has made a protected disclosure.

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

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

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a) from doing that thing, or

(b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).

48 Complaints to employment tribunals.

(1A) A worker may present a complaint to an employment tribunal that he has been subjected to a detriment in contravention of section 47B.

...

(2) On a complaint under subsection (1), 1XA), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

...

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and...

608. A qualifying disclosure becomes a protected disclosure when it is made to the worker's employer or in accordance with the requirements made to external bodies or the press under s.43C-H.

The test

609. In **Williams v Michelle Brown AM UKEAT0044/19/00**, HHJ Auerbach set out the test for identifying whether a qualifying disclosure has been made:

"It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in subparagraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.

Unless all five conditions are satisfied there will be not be a qualifying disclosure. In a given case any one or more of them may be in dispute, but in every case, it is a good idea for the Tribunal to work through all five. That is for two reasons. First, it will identify to the reader unambiguously which, if any, of the five conditions are accepted as having been fulfilled in the given case, and which of them are in dispute. Secondly, it may assist the Tribunal to ensure, and to demonstrate, that it has not confused or elided any of the elements, by addressing each in turn, setting out in turn out its reasoning and conclusions in relation to those which are in dispute." [9 and 10]

Disclosure of Information

610. There must be a disclosure of information. In **Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38**, the EAT held that to be protected, a disclosure must involve giving information and must contain facts, and not simply voice a concern or raise an allegation:

"The ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around". Contrasted with that would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information." [24]

611. However, in **Kilraine v London Borough of Wandsworth [2018] ICR 1850** the Court of Appeal held that:

"...the concept of "information" as used in section 43B(1) is capable of covering statements which might also be characterised as allegations. Langstaff J made the same point in the judgment below [2016] IRLR 422, para 30, set out above, and I would respectfully endorse what he says there. Section 43B(1) should not be glossed to introduce into it a rigid dichotomy between "information" on the one hand and "allegations" on the other. ...

On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute “information” and amount to a qualifying disclosure within section 43B(1) , not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision.” [30 and 31].

...

“The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a “disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in paragraphs (a) to (f)]”. Grammatically, the word “information” has to be read with the qualifying phrase, “which tends to show [etc]” (as, for example, in the present case, information which tends to show “that a person has failed or is likely to fail to comply with any legal obligation to which he is subject”). In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). The statements in the solicitors’ letter in the Cavendish Munro case did not meet that standard.

*Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in *Chesterton Global Ltd v Nurmohamed* [2018] ICR 731 , para 8, this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief.” [35 and 36].*

...

“It is true that whether a particular disclosure satisfies the test in section 43B(1) should be assessed in the light of the particular context in which it is made. If, to adapt the example given in the Cavendish Munro case [2010] ICR 325, para 24, the worker brings his manager down to a particular ward in a hospital, gestures to sharps left lying around and says “You are not complying with health and safety requirements”, the statement would derive force from the context in which it was made and taken in combination with that context would constitute a qualifying disclosure. The oral statement then would plainly be made with reference to the factual matters being indicated by the worker at the time that it was made. If such a disclosure was to be relied upon for the purposes of a whistleblowing claim under the protected disclosures regime in Part IVA of the 1996 Act, the meaning of the statement to be derived from its context should be explained in the claim

form and in the evidence of the claimant so that it is clear on what basis the worker alleges that he has a claim under that regime. The employer would then have a fair opportunity to dispute the context relied upon, or whether the oral statement could really be said to incorporate by reference any part of the factual background in this manner” [41].

612. A communication asking for information or making an inquiry is unlikely of itself to be constitute conveying information.

Cumulative communications

613. It is possible for several communications together to cumulatively amount to a qualifying disclosure even where each communication is not a qualifying disclosure on its own - ***Simpson v Cantor Fitzgerald Europe [2020] EWCA Civ 1601***. Here the Court of Appeal agreed with the approach of the EAT in ***Norbrook Laboratories (GB) Ltd v Shaw UKEAT/0150/13*** where it was held that three emails taken together amounted to a qualifying disclosure even where the last email did not have the same recipients as the first two, as the former emails had been embedded in the final email. It will be a question of fact for the tribunal to decide whether two or more communications read together may be aggregated to constitute a qualifying disclosure on a cumulative basis.

Reasonable belief

614. As regards the Claimant’s belief about the information disclosed, the question is whether the Claimant believed **at the time** of the alleged disclosure that the disclosed information tended to show one or more of the matters specified in section 43B(1). Beliefs the Claimant has come to hold **after** the alleged disclosure are irrelevant. Whether at the time of the alleged disclosure the Claimant held the belief that the information tended to show one or more of the matters specified in s.43B(1) and, if so, which of those matters, is a subjective question to be decided on the evidence as to the Claimant’s beliefs. It is important for a tribunal to identify which of the specified matters are relevant, as this will affect the reasonableness question.
615. Account should be taken of the worker’s individual circumstances and the focus is on the worker making the disclosure and not on a hypothetical reasonable worker. Workers with a professional or inside knowledge may be held to a higher standard than lay persons in terms of what it is reasonable for them to believe.
616. Whereas the test for reasonable belief is a low threshold, it must still be based upon some evidence. Unfounded suspicions, rumours and uncorroborated allegations are insufficient to establish reasonable belief.
617. The belief must be as to what the information **tends** to show, which is a lower hurdle than having to believe that it **does** show one or more of the specified matters. There is no rule that there must be a reference in the disclosure to a specific legal obligation or a statement of the relevant obligations nor is there a requirement that an implied reference to legal obligations must be obvious. However, the fact that the disclosure itself

does not need to contain an express or even an obvious implied reference to a legal obligation does not dilute the requirement that the Claimant must prove that he had in mind a legal obligation of sufficient specificity at the time he made the disclosure - ***Twist DX and others v Armes and others*** **UKEAT/0030/30/JOJ**.

618. In ***Darnton v University of Surrey*** [2003] IRLR 133 it was held by HHJ Serota that:

“In our opinion, it is essential to keep the words of the statute firmly in mind; a qualifying disclosure is defined, as we have noted on a number of occasions, as meaning any disclosure of information which in the reasonable belief of the worker making the disclosure tends to show a relevant failure. It is not helpful if these simple words become encrusted with a great deal of authority...” [28] and

“We agree with the learned authors that, for there to be a qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken.” [32].

619. The issue of reasonable belief was considered by the EAT in ***Korashi v Abertawe Bro Morgannwg University Local Health Board*** [2012] IRLR 4 where the following example was provided by way of illustration:

“To take a simple example: a healthy young man who is taken into hospital for an orthopaedic athletic injury should not die on the operating table. A whistleblower who says that that tends to show a breach of duty is required to demonstrate that such belief is reasonable. On the other hand, a surgeon who knows the risk of such procedure and possibly the results of meta-analysis of such procedure is in a good position to evaluate whether there has been such a breach. While it might be reasonable for our lay observer to believe that such death from a simple procedure was the product of a breach of duty, an experienced surgeon might take an entirely different view of what was reasonable given what further information he or she knows about what happened at the table. So in our judgment what is reasonable in s.43B involves of course an objective standard – that is the whole point of the use of the adjective reasonable – and its application to the personal circumstances of the discloser. It works both ways. Our lay observer must expect to be tested on the reasonableness of his belief that some surgical procedure has gone wrong is a breach of duty. Our consultant surgeon is entitled to respect for his view, knowing what he does from his experience and training, but is expected to look at all the material including the records before making such a disclosure. To bring this back to our own case, many whistleblowers are insiders. That means that they are so much more informed about the goings-on of the organisation of which they make complaint than outsiders, and that that insight entitles their views to respect. Since the test is their 'reasonable' belief, that belief must be subject to what a person in their position would reasonably believe to be wrong-doing.” [62]

620. When considering the question of the Claimant's reasonable belief, it must be remembered that motive is not the same as belief - ***Ibrahim v HCA International Limited* [2020] IRLR 224**. However, whilst a worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it.

Public interest

621. As regards the public interest, the Court of Appeal in ***Chesterton Global Ltd v Nurmohamed* [2017] EWCA Civ 979**, identified the following principles:

- i. There is a subjective element - the Tribunal must ask, did the worker believe, at the time he was making it, that the making of the disclosure was in the public interest?
- ii. There is then an objective element - was that belief reasonable? That exercise requires that the Tribunal recognise that there may be more than one reasonable view as to whether a particular disclosure was in the public interest.
- iii. The necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. As per Underhill LJ:

"That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his head at the time he made it. Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable."
[29]

- iv. The reference to public interest involves a distinction between disclosures which serve only the private or personal interest of the worker making the disclosure, and those that serve a wider interest.
- v. It is still possible that the disclosure of a breach of the Claimant's own contract may satisfy the public interest test, if a sufficiently large number of other employees share the same interest. In such a case it will be necessary to consider the nature of the wrongdoing and the interests affected, and also the identity of the alleged wrongdoer.

622. It is not for the Tribunal to determine if the disclosure was in the public interest. Rather the question is:

- i. whether the worker considered the disclosure to be in the public interest;
- ii. whether the worker believed the disclosure served that interest; and
- iii. whether that belief was reasonably held.

Legal obligation

623. As regards legal obligation, in ***Boulding v Land Securities Trillium (Media Services) Ltd (2006) UKEAT/0023/06*** HHJ McMullen QC held the following:

*“The legal principles appear to us to be as follow. The approach in *ALM v Bladon* is one to be followed in whistle-blowing cases. That is, there is a certain generosity in the construction of the statute and in the treatment of the facts. Whistle-blowing is a form of discrimination claim (see *Lucas v Chichester UKEAT/0713/04*). As to any of the alleged failures, the burden of the proof is upon the Claimant to establish upon the balance of probabilities any of the following:*

(a) there was in fact and as a matter of law, a legal obligation (or other relevant obligation) on the employer (or other relevant person) in each of the circumstances relied on.

(b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

*“Likely” is concisely summarised in the headnote to *Kraus v Penna plc [2004] IRLR 260, EAT Cox J* and members:*

“In this respect ‘likely/ requires more than a possibility or risk that the employer (or other person) might fail to comply with a relevant obligation. The information disclosed should, in the reasonable belief of the worker at the time it is disclosed, tend to show that it is probable, or more probable than not that the employer (or other person) will fail to comply with the relevant legal obligation. If the Claimant’s belief is limited to the possibility or risk of a breach of relevant legislation, this would not meet the statutory test of likely to fail to comply.’” [24 and 25].

624. In ***Eiger Securities LLP v Korshunova [2017] ICR 561***, Slade J held:

“In order to fall within ERA s.43B(1)(b)... the ET should have identified the source of the legal obligations to which the claimant believed Mr Ashton or the respondent were subject and how they had failed to comply with it. The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation...

The decision of the ET as to the nature of the legal obligation the claimant believed to have been breached is a necessary precursor to the decision as to the reasonableness of the claimant’s belief that a legal obligation has not been complied with” [46 and 47].

625. Accordingly, whilst the identification of the legal obligation does not need to be precise or detailed, it has to be more than a belief that what was being done was wrong.

Detriment

626. Detriment has the same meaning as in discrimination law, meaning that someone is put to a disadvantage – ***Ministry of Defence v Jeremiah [1980] ICR 13 CA***.

627. Further assistance as to the meaning of detriment can be found in the discrimination context from the case of ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285***, whilst noting that an unjustified sense of grievance cannot amount to a detriment (following the decision in *Barclays Bank plc v Kapur and others (No.2) [1995] IRLR 87*) the court held:

“As May LJ put it in De Souza v Automobile Association [1986] IRLR 103, 107, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.” [34].

628. More recently in ***Jesudason v Alder Hey Children's NHS Foundation Trust [2020] EWCA Civ 73*** further clarification of the term “detriment” was provided by Elias LJ who held:

“In order to bring a claim under section 47B, the worker must have suffered a detriment. It is now well established that the concept of detriment is very broad and must be judged from the view point of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and it has the same meaning in whistle-blowing cases...” [27] and further:

“Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective.” [28].

Causation

629. As to the issue of causation the court in ***Jesudason*** summarised the relevant authorities including ***Manchester NHS Trust v Fecitt [2011] EWCA 1190; [2012] ICR 372*** where it was held that:

“In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower.” [45].

630. In **Jesudason** the court endorsed a reason why test as opposed to a causation test for detriment claims and held:

“Liability is not, therefore, established by the claimant showing that but for the protected disclosure, the employer would not have committed the relevant act which gives rise to a detriment. If the employer can show that the reason he took the action which caused the detriment had nothing to do with the making of the protected disclosures, or that this was only a trivial factor in his reasoning, he will not be liable under section 47B.” [31].

631. As per Linden J in **Twist DX and others v Armes and others** **UKEAT/0030/30/JOJ**:

“..the five requirements of section 43B(1) are evidentially exacting for the claimant, who has the burden of proof in relation to this issue. ETs, in my view, can be relied upon to use their common sense and awareness of the aims of the legislation to separate the genuine public interest disclosure cases from claims which are constructed. Moreover, even where the worker has made a qualifying disclosure which is protected, they will not succeed unless the ET concludes that the disclosure of the qualifying information was a, or the, reason for the treatment complained of...” [105].

632. In **Kong v Gulf International Bank (UK) Ltd (Protect (the Whistleblowing Charity) intervening)** [2022] IRLR 854, the court examined the process for determining the reason for impugned treatment. Simler LJ made reference to the “separability principle” whereby it is possible to distinguish between the protected disclosure of information on the one hand, and conduct associated with or consequent on the making of the disclosure on the other. It is possible to distinguish between engaging in protected conduct and a reason connected to that conduct, but was not because the worker had engaged in the protected conduct. It is necessary to separate out a feature (or features) of the conduct relied on by the decision-maker that is genuinely separate from the making of the protected disclosure itself. It is possible that the protected disclosure is the context for the impugned treatment, but it is not the reason itself. It was held:

“The statutory question to be determined in these cases is what motivated a particular decision-maker; in other words, what reason did he or she have for dismissing or treating the complainant in an adverse way. This factual question is easy to state; but it can be and frequently is difficult to decide because human motivation can be complex, difficult to discern and subtle distinctions might have to be considered. In a proper case, even where the conduct of the whistle-blower is found not to be unreasonable, a tribunal may be entitled to conclude that there is a separate feature of the claimant’s conduct that is distinct from the protected disclosure and is the real reason for impugned treatment.

All that said, if a whistle-blower’s conduct is blameless, or does not go beyond ordinary unreasonableness, it is less likely that it will be found to be the real reason for an employer’s detrimental treatment of the whistle-blower. The detrimental treatment of an innocent whistle-blower will be a powerful basis for particularly close scrutiny of an argument that the real reason for adverse treatment was not the protected disclosure. It will ‘cry

out' for an explanation from the employer, as Elias LJ observed in Fecitt, and tribunals will need to examine such explanations with particular care." [59-60].

633. The motivation of the employer does not have to be malicious in order to amount to a detriment – **Croydon Health Services NHS Trust v Beatt [2017] ICR 1240, CA**. In this case a factually accurate press release was found to have amounted to a detriment in those specific circumstances.

Causation – constructive unfair dismissal claims

634. The causation test under s. 103A is different, and the Tribunal must be satisfied that the protected disclosure(s) must be the **sole or principal reason** for dismissal (as opposed to being on the grounds of). This is clear from the judgment in **Fecitt** (paragraph 44) and also **Eiger** where it was held that:

"Different tests are to be applied to claims under ERA ss.103A and 47B(1). Thus for a claim under ERA s.103A to succeed the ET must be satisfied that the reason or the principal reason for the dismissal is the protected disclosure whereas for a claim under ERA s.47B(1) to be made out the ET must be satisfied that the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's detrimental treatment of the claimant." [61].

635. If there was a dismissal, the Tribunal must identify the reason for dismissal and consider whether the dismissal was for one of the potentially fair reasons set out in sections 98(1)(b) or 98(2) of the Employment Rights Act and whether the dismissal was fair or unfair under section 98(4).

636. Where there are multiple disclosures it is permissible to ask whether the disclosures, taken as a whole, were the principal reason for dismissal. As held in **Beatt** in identifying the reason for dismissal *"..the essential point is that the "reason" for a dismissal connotes the factor or factors operating on the mind of the decision-maker which cause them to take the decision—or, as it is sometimes put, what "motivates" them to do so."* [30].

637. In **Royal Mail Group Ltd v Jhuti [2020] ICR 731 SC**, the court held that where the reason for dismissal is hidden from the decision maker behind an invented reason, it is the Tribunal's duty to look behind the invention rather than to allow it to infect their own decision. It is permissible to attribute that person's state of mind to the employer (rather than the decision maker) where that person who invented the reason is in a position of hierarchy in the employer organisation above the employee.

Burden of proof

638. It is for the employee to prove that they made a protected disclosure and that they suffered a detriment on the balance of probabilities. If the employee does so, the burden then shifts to the employer to show the reason for the treatment – s. 48(2) Employment Rights Act 1996 (above). Where an employer does not prove an admissible reason for the treatment, the tribunal is entitled (but not obliged unlike discrimination law) to infer that

the detriment was on the ground that the employee made a protected disclosure - ***Ibekwe v Sussex Partnership NHS Foundation Trust*** **UKEAT/0072/14**. A similar burden of proof applies to claims brought under s. 103A (below). In ***Kuzel v Roche Products Ltd [2008] ICR 799, CA***, the court held that once a tribunal rejects the reason for dismissal advanced by the employer, the tribunal is not then bound to accept the reason advanced by the employee:

“As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side.” [60].

Constructive unfair dismissal – sections 95, 98 and 103A Employment Rights Act 1996

639. Section 95 of the Employment Rights Act 1996 provides:

Circumstances in which an employee is dismissed.

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

...

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

640. Section 98 of the Employment Rights Act 1996 provides:

General

(1) In determining for the purposes of this part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

...

(4) Where the employer has fulfilled the requirements of subsection 98(1), the determination of the question of whether the dismissal is fair or unfair (having regard to the reason shown by the employer)-

(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

641. Section 103A of the Employment Rights Act 1996 provides:

Protected disclosure.

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 the employee made a protected disclosure.

642. Section 111 of the Employment Rights Act 1996 provides:

Complaints to employment tribunal.

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

643. In an unfair dismissal case, it is for the Respondent to show the reason for the dismissal and that that reason is a potentially fair reason. The reason for dismissal is the facts and beliefs known to and held by the Respondent at the time of its dismissal of the Claimant - ***Abernethy v Mott Hay and Anderson [1974] IRLR 213***. The reason relied on this case is Some Other Substantial Reason (“SOSR”). This is potentially fair reasons for dismissal.

644. It will be for the Tribunal to decide the reason why a person dismissed an employee, and this is a question of fact and not a legal conclusion which is a question of law. A search for the reason involves an examination of the mental processes of the relevant employer – ***Pinnington v City and County of Swansea and other UKEAT/0561/03/MAA [68]***. Once the reason for dismissal has been identified, the Tribunal can then proceed to consider whether the employer acted reasonably in treating that as a sufficient reason for dismissal.

Some Other Substantial Reason (“SOSR”)

645. A dismissal may be fair where an employer can show that it falls within the reasons set out within section 98(2) or for some other some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. There is no statutory guidance as to the meaning of the word substantial however it is clear that it will depend upon the facts of each case. The test is a subjective one but generally the reason should not be frivolous or insignificant, and the reason must justify dismissal rather than a lesser sanction of an employee holding the role the employee actually held.

646. A two stage test must be applied. Firstly, it is for the employer to show that SOSR is the sole or principal reason for dismissal. At this stage the employer need only to establish an SOSR reason for the dismissal which could justify the dismissal of an employee holding the job in question, however at this stage it is not necessary to show that it did justify the dismissal - ***Willow Oak Developments Ltd (trading as Windsor Recruitment) v Silverwood and others* [2006] ICR 1552** [15-16]; ***Mercia Rubber Mouldings v Lingwood* [1974] ICR 256**.

647. It is then at the second stage of the test where the employer must then show that the decision to dismiss for SOSR was reasonable in all the circumstances (including the size and administrative resources of the employer's undertaking). As set out under section 98(4) this will be determined in accordance with equity and the substantial merits of the case.

Constructive dismissal

648. The leading case on constructive dismissal is ***Western Excavating (ECC) Ltd v Sharp* 1978 ICR 221, CA**. The employer's conduct must give rise to a repudiatory breach of contract. In that case Lord Denning said *“If the employer is guilty of conduct which is a significant breach going to the root of the contract, then the employee is entitled to treat himself as discharged from further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.”*

649. In ***Land Securities Trillium Ltd v Thornley* [2005] IRLR 765** it was held that:

“It is clear from the authorities therefore that cases in this area of the law are fact sensitive, depending upon the duties of the employee, the terms and conditions of the particular contract and the context in which the contract of employment was agreed.” [43].

650. An explanation of the implied term of mutual trust and confidence can be found in the judgment in ***Woods v WM Car Services (Peterborough) Ltd* [1981] IRLR 347** where it was held that:

“In our view it is clearly established that there is implied in a contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to

destroy or seriously damage the relationship of confidence and trust between employer and employee: Courtaulds Northern Textiles Ltd v Andrew [1979] IRLR 84. To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract: the Tribunals' function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it: see BAC Ltd v Austin [1978] IRLR 332 and Post Office v Roberts [1980] IRLR 347. The conduct of the parties has to be looked at as a whole and its cumulative impact assessed: Post Office v Roberts [1980] IRLR 347 (supra) paragraph 50." [17].

651. In **Malik v Bank of Credit and Commerce International SA [1997] IRLR 462** the House of Lords affirmed the implied term of trust and confidence as follows:

"The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee".

652. As regards how the implied term of mutual trust and confidence may be breached, it was held in **Croft v Consignia plc [2002] IRLR 851** that *"It is an unusual term in that it is only breached by acts or omissions which seriously damage or destroy the necessary trust and confidence. Both sides are expected to absorb lesser blows."* [69].

653. A helpful summary of the case law concerning the implied term can be found in **Omilaju v Waltham Forest London Borough Council [2005] ICR 481**. In this case the court also provided guidance on the concept of a "last straw." Dyson LJ held:

"The following basic propositions of law can be derived from the authorities.

1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: Western Excavating (ECC) Ltd v Sharp [1978] ICR 221.

2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606, 610 e– 611a (Lord Nicholls of Birkenhead), 620 h– 622c (Lord Steyn). I shall refer to this as "the implied term of trust and confidence".

3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract: see, for example, per Browne-Wilkinson J in Woods v W M Car Services (Peterborough) Ltd [1981] ICR 666, 672 a. The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.

4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in *Mahmud*, at p 610 h, the conduct relied on as constituting the breach must:

“impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer” (emphasis added).

5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put in *Harvey on Industrial Relations and Employment Law*, para D1 [480]:

“Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the ‘last straw’ which causes the employee to terminate a deteriorating relationship.” [14]

654. As to what might constitute a last straw specifically, it was held:

“Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things (more elegantly expressed in the maxim “de minimis non curat lex”) is of general application.” [16].

655. The test to be applied when ascertaining whether the implied term has been breached is an objective one - ***Baldwin v Brighton and Hove City Council* [2007] IRLR 232**. Here the EAT had to consider whether for there to be a breach, the actions of the employer had to be calculated and likely to destroy the relationship of confidence and trust, or whether only one or other of these requirements needed to be satisfied. The view of the EAT was that the use of the word “and” by Lord Steyn in *Malik*, was an error of transcription and that the relevant test is satisfied if either of the requirements is met, so that it should be “*calculated or likely*”.

656. In ***Kaur v Leeds Teaching Hospitals NHS Trust* [2018] IRLR 833** the Court of Appeal listed five questions that should be sufficient for the Tribunal to ask itself to determine whether an employee was constructively dismissed:

1. What was the most recent act (or omission) on the part of the employer the employee says caused, or triggered, their resignation?
2. Has the employee 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 (applying the approach explained in *Waltham Forest v Omilaju* [2004] EWCA Civ 1493) of 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? (If it was, there is no need for any separate consideration of a possible previous affirmation, because the effect of the final act is to revive the right to resign).
5. Did the employee resign in response (or partly in response) to that breach?

657. In ***Abbey National Plc v Robinson* [2000] All ER (D) 1884** there had been a delay of almost a year before the worker resigned after the employer failed to move her line manager (or find the worker suitable alternative employment) even though it had upheld her grievance that her manager had bullied and harassed her. Whereas the employer argued that the delay in resigning had been unreasonable, the Tribunal found that the employer in continuing to fail to deal with her concerns had continued to treat her in an insensitive, unsatisfactory and unreasonable way over the period of the following nine or ten months, and as such the reason for her departure was cumulative and a last straw situation. This was upheld upon appeal to the EAT which confirmed that in such a case “...it is clearly the end, and not the beginning, of that series of events that must be looked at in order to determine whether the right to treat the contract as terminated has been properly and timeously exercised, or lost by affirmation.” [17].

658. In ***Fairbrother v Abbey National plc* [2007] IRLR 320** which concerns a resignation in the context of a grievance procedure the Court held that:

“It is evident that questions of reasonableness arise in a constructive dismissal claim at the outset, when deciding whether or not the employee has been dismissed at all, since the s.94 right does not fall to be considered unless dismissal is established under s.95...”

and further:

“...conduct calculated to destroy or seriously damage the trust and confidence inherent in the employer/employee relationship may not amount to a breach of the implied term; it will not do so if the employer had reasonable and proper cause for the conduct in question. Accordingly, the questions that require to be asked in a constructive dismissal case appear to us to be:

1. what was the conduct of the employer that is complained of?

2. did the employer have reasonable and proper cause for that conduct? If he did have such cause, then that is an end of it. The employee cannot claim that he has been constructively dismissed. If the employer did not have such cause, then a third question arises:

3. was the conduct complained of calculated to destroy or seriously damage the employer/employee relationship of trust and confidence?” [30].

659. Whereas the court in **Fairbrother** suggests that the question of reasonableness arises at the outset before determining whether or not a dismissal has occurred, however this approach was not followed by the EAT in **Triggs v GAB Robins (UK) Ltd [2007] IRLR 1424** where it was held that *“It therefore seems to us that in a true final straw case the range of reasonable responses test has no application to the employer's conduct of a grievance procedure where that conduct is the final straw relied on”* (paragraph 33) as the final straw relied upon does not need to be unreasonable or blameworthy, but it has to be more than trivial and must contribute something to the breach.

Burden of proof

660. Whereas the burden of proof in an unfair dismissal claim is upon the employer, in cases of constructive dismissal the burden rests with the Claimant to demonstrate a fundamental breach of contract on the part of the employer entitling the employee to resign without notice.

Submissions

661. We were helpfully provided with submission from Mr Flint and Mrs Flint of 11 pages and from the Respondent of 31 pages. The parties then delivered oral submissions on the final day of the hearing. We have found these written and oral to be very clear and of a high quality which were very helpful in our deliberations. We do not intend to recite their contents here, however we have made reference to the main arguments in our conclusions and analysis below.

Conclusions and analysis

662. We will address each of the Issues to be decided in turn.

Protected Disclosures

2.1.1.1 On 4 November 2019 the second claimant made an oral disclosure to Debbie Wilson that Liz Clements was giving work to one builder without following due process and therefore was not complying with a legal obligation (C2 ET1 para 3.3);

663. We have spent a considerable amount of time in this judgment looking at what was said to Mrs Wilson by Mrs Flint on 4 November 2019. We found that Mrs Flint's version of what she said was at odds with her subsequent email of 6 November 2019 to Mrs Wilson about her discussions with Mrs Wilson-Downes the day before. The email appeared to support Mrs Wilson's recollection that Mrs Flint did not discuss concerns about finance, but rather she was concerned that she was being excluded.

664. We cannot find that Mrs Flint made the disclosure she now relies upon. The most we were able to find on the balance of probabilities, was that Mrs Flint was communicating that she was feeling excluded from work. This does not meet the test of conveying information which would tend to show that a person has failed, is failing or is likely to fail to comply with any

legal obligation to which he is subject, or that information tending to show that has been, is being or is likely to be deliberately concealed.

665. Accordingly we do not find that there was a disclosure of information which tended to show any of the matters within s. 43B(1) Employment Rights Act 1996.

2.1.1.2 On 22 January 2020 the second claimant made an oral disclosure to Nicola Fairchild that tendering processes were not being followed in line with ESFA policies and procedures by Liz Clements (not in ET1 but no objection by respondent);

666. We were not satisfied to the level that we need to be that Mrs Flint made all the comments she now relies upon. We have no evidence that Mrs Flint referred to tendering processes not being followed in line with financial regulations or EFSA policies and procedures. That would be very specific information and we accept that had it been said then Ms Fairchild would have remembered it.

667. We also note that the interaction on 22 January 2020 was not a pre-arranged meeting and that both happened to be working near each other at the same time. We also find that Mrs Flint was again expressing concern about not knowing what was going on and being excluded from work as it was clear to the Tribunal that is in fact what was happening since Ms Clements arrived on site – both Mrs Flint and Mr Flint were excluded from work. This caused Mrs Flint a great deal of concern, and we find that Mrs Flint had expressed that concern to Ms Fairchild on 22 January 2020 as she did to Mrs Wilson two months earlier on 4 November 2019.

668. We do find that Mrs Flint said to Ms Fairchild that she used to be involved in obtaining quotes under the previous Trust, and that she had not seen the quotes for the current work. Ms Fairchild has admitted that Mrs Flint told her this information. However, there is no evidence that Mrs Flint said any more than this.

669. We do not find that by stating she had not seen the quotes for work being undertaken, that this meets the threshold of disclosing information which would tend to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, or that information tending to show that has been, is being or is likely to be deliberately concealed. The information which Mrs Flint conveyed falls far short of tending to show either of those things, it was very general, and it lacked sufficient factual content. The most which can be gleaned from the exchange was that Mrs Flint continued to be feel excluded and out of the loop.

670. Accordingly we do not find that there was a disclosure of information which tended to show any of the matters within s. 43B(1) Employment Rights Act 1996.

2.1.1.3 On 3 February 2020 the first claimant made an oral disclosure to the second claimant that Liz Clements had passed on quotation details to her preferred contractor (C2 ET1 para 3.4,3.5);

671. We have already considered what information was passed from Mr Flint to Mrs Flint on 3 February 2020. We have already noted that there is no independent evidence to support what information Mr Flint says that he gave to Mrs Flint, although we note that Mrs Flint agrees that a disclosure was made to her.

672. Given that Mr Flint said that he relayed the same information to Mr Brown on 13 February 2020 as he did to Mrs Flint, we looked carefully at what was disclosed to Mr Brown. We have already made findings, based upon Mr Brown contemporaneous handwritten notes and also his email to Mrs Wilson, that Mr Flint did not relay the information to him about Ms Clements allegedly passing on quotation details to her preferred contractor.

673. Mrs Flint said that she then passed this information to Ms Fairchild on 7 February 2020. We have therefore looked closely to see what was disclosed, but this was of no assistance. Mrs Flint's evidence in this regard was unclear and ambiguous as to what she had said to Ms Fairchild. We have already made a finding that Mrs Flint did not disclose anything to Ms Fairchild on 7 February 2020 about Ms Clements' sharing quotes with her preferred contractor.

674. Whereas Mrs Flint said that she had put this information into an email to Mrs Wilson, unfortunately a copy of that alleged email has not been found and Mrs Wilson did not appear to recall receiving it.

675. In the absence of independent proof as what was said, we do not find that Mr Flint disclosed information which would tend to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, or that information tending to show that has been, is being or is likely to be deliberately concealed.

676. Accordingly we do not find that there was a disclosure of information which tended to show any of the matters within s. 43B(1) Employment Rights Act 1996.

2.1.1.4 On 7 February 2020 the second claimant made an oral disclosure to Nicola Fairchild in respect of tendering processes not being followed in line with ESFA policies and procedures (C2 ET1 para 3.1);

677. We have already made a finding that Mrs Flint's evidence in cross examination on this Issue was ambiguous as she conceded that she had not explicitly mentioned the tendering process but said that she had done so in a different way. It was unclear during the hearing what Mrs Flint now says that she had told Ms Fairchild.

678. Conversely, Ms Fairchild for her part was clear and consistent in her evidence that all Mrs Flint was saying was that she felt out of the loop and

that there was no mention of the tendering process or financial regulation or EFSA policies and procedures.

679. We have noted that there is very little detail in Mrs Flint's witness statement on this issue, the most that she says is that she raised her concerns with Ms Fairchild on 22 January and 7 February 2020. There is an absence of any detail as to what was specifically said on 7 February. The same is true of Mrs Flint's ET1 where there is no detail as to what was specifically said.

680. It is the Claimants who bear the burden of proof in this regard and we are not satisfied anywhere near the level that we need to be, that Mrs Flint disclosed information to Ms Fairchild on 7 February 2020 which would tend to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, or that information tending to show that has been, is being or is likely to be deliberately concealed.

2.1.1.5 On 13 February 2020 the first claimant made an oral disclosure to Chris Brown that Liz Clements was not following procedures (C1 ET1 para 3.6);

681. We have already made a finding that Mr Brown had made a contemporaneous note of his discussions with Mr Flint that day, and we have been provided with a copy of those notes. The alleged disclosure is not recorded anywhere within Mr Brown's notes.

682. Mr Brown went on to email Mrs Wilson later that day in which he made her aware of concerns or criticisms that had been raised about what was Ms Clements' role at schools. This was described by Mr Brown as "*a recurring theme I hear from sites that have had Liz come in.*" It appeared to the Tribunal that if Mr Brown was prepared to raise concerns of this nature with Mrs Wilson, then he would likely also have raised any concerns about her alleged failure to follow financial or procurement rules and procedures had they been raised with him.

683. The Respondent has argued that it would seem incomprehensible that Mr Brown would record and report on the relatively mundane yet ignore an obvious allegation of financial irregularities which had been made to him. We agree with that submission. Whilst it is possible that Mr Flint disclosed the information that he now says he did, it seems wholly implausible to us that Mr Brown would not have recorded it in his notes nor raised it with Mrs Wilson when he emailed her later that day. We have found Mr Brown's evidence to be consistent and reliable.

684. We cannot therefore find that Mr Flint disclosed information to Mr Brown on 13 February 2020 which tended to show a breach of a legal obligation, nor that information tending to show that has been, is being or is likely to be deliberately concealed.

2.1.1.6 On 20 February 2020 the second claimant made a written disclosure to Nicola Fairchild in respect of tendering processes not

being followed in line with ESFA policies and procedures (C2 ET1 para 3.2);

685. We have reviewed closely the information which Mrs Flint included in her email of 20 February 2020 to Ms Fairchild.
686. The Respondent says that the focus of Mrs Flint is on the mundane, in terms of day-to-day work and whether an invoice should be processed. The Respondent says that on any account it is difficult to see how Ms Fairchild might have interpreted the request made in the context of a disclosure of information satisfying the statutory criteria under s. 43B(1) Employment Rights Act 1996.
687. We disagree with that submission. How Ms Fairchild interpreted the email is not part of the legal test which we need to apply, although it may be relevant to the issue of causation of a detriment, however that is a separate matter which we will come to below.
688. Our focus is on what information Mrs Flint's email of 20 February 2020 disclosed to the Respondent.
689. We first consider whether there is a disclosure of information. We note that the concept of information is wide enough to encapsulate statements which also amount to allegations. Our task is to assess whether the information had sufficient factual content and specificity so that it was capable of tending to show one of the matters within s. 43B(1) Employment Rights Act 1996. Context is of course key, and we note that simply asking for information or making an inquiry would not of itself amount to conveying information.
690. We do not find that Mrs Flint's email was simply asking for information as to whether the invoice should be paid. It is clear that question formed part of the email, but there is more to the exchange than simply asking whether the invoice should be paid.
691. We also do not find that Mrs Flint was simply making a general allegation either. Two scenarios are referred to in the case of ***Cavendish Munro*** about the state of a hospital. It was held that communicating information would be that *"The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around"* whereas a statement that *"You are not complying with Health and Safety requirements"* would be an allegation not information, although we note that the Court in ***Kilraine*** advised against introducing a rigid dichotomy between information and allegations and that the focus should be on what is actually disclosed.
692. The sentence *"I am also concerned with auditors coming in next month that I will be unable to produce the required quotes to satisfy that we are following ESFA financial procedures"* is at the crux of this issue but it must be read in the context of the whole email.
693. Had Mrs Flint simply told Ms Fairchild that the Respondent was not complying with financial procedures, then that might be similar to the second example in ***Cavendish Munro*** as it would lack specificity. That is not what happened here.

694. In her email Mrs Flint is saying that she had asked for a quote to be provided but it had not been, she asks whether to pay the invoice and discusses where the money will come from to pay for the invoice, and she then goes on to state that she is concerned that when the auditors come in the following month she will be unable to produce the required quotes to satisfy that the Respondent is following EFSA financial procedures. This goes far beyond asking for mundane information as the Respondent has suggested, and we find it goes beyond simply making a general allegation as well. We find that the language used has far more specificity than that when the email is read as a whole.
695. We have focussed on the meaning of the word likely used within s. 43B(1), and we have found assistance in the case of **Kraus** to which we have been referred. Here the Court emphasised that “likely” requires more than a possibility or a risk of a failure to comply. We have looked closely at the language used by Mrs Flint. We have found it to be clear – what she is saying is that she **will** be unable to satisfy the auditors that the Respondent is complying with EFSA procedures. Mrs Flint’s choice of language goes beyond the **possibility** that the Respondent is failing to comply. When the email is looked at as a whole she is putting the Respondent on notice that as it stands she **will not** be able to show the auditors that the Respondent is complying with EFSA procedures as she has not been provided with the quotes despite asking for them. The language used by Mrs Flint has to be examined very closely and it is clear to us that there was specificity in what was being said.
696. We also note that Mrs Flint copied in Mrs Townsend, the Respondent’s Head of Finance, and we find that the act of doing so lends some support to Mrs Flint’s argument that she was disclosing information. Had Mrs Flint simply been asking the mundane about paying an invoice, as the Respondent has suggested, then we find that copying in Mrs Townsend would have been an unusual thing to do.
697. We then go on to consider the issue of reasonable belief. We find that at the time the email was sent by Mrs Flint that she had a reasonable belief that the information tended to show that the Respondent had failed, was failing or was likely to fail to comply with a legal obligation to which it was subject. It is unnecessary for the disclosure to include the specific legal obligation being referred to, however Mrs Flint did so. Mrs Flint was clear that the failure to produce quotes would mean she is unable to show the auditors that the Respondent was complying with EFSA financial procedures. We find that Mrs Flint demonstrated within her email of 20 February 2020 that she had a reasonable belief in what the information tended to show as she has set out the factual basis for it – namely the lack of quotes needed to show compliance with financial procedures.
698. As to the issue of the public interest element of the test, we of course remind ourselves in that **Chesterton** the Court of Appeal noted that Parliament has not chosen to define “public interest” in the legislation and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression. We find that Mrs Flint reasonably believed at the time of her email that the disclosure was in the public interest. In her email Mrs Flint was making direct reference to the source of the legal obligations to which she referred (the EFSA

Regulations), and she was clear in her email that the Respondent would not be able to satisfy auditors that it was complying with that legal obligation which we have noted was imposed by a public body.

699. In her evidence Mrs Flint has expanded that this disclosure concerned the use of public money. The words “public money” did not appear in Mrs Flint’s email, but we do not consider that they needed to have been included. Moreover, **Chesterton** is also authority for the proposition that a disclosure does not cease to qualify simply because the worker seeks to justify it after the event by reference to specific matters which may not have been in their head at the time. We find that given the language used by Mrs Flint at the time, she did in fact have the use of public money in mind even if she did not use those specific words. We make this finding because Mrs Flint was referring to the legal obligations which relate to the use of public money. We therefore find that at the time of making the disclosure Mrs Flint believed that what she was saying was in the public interest (the subjective test).

700. We also find that Mrs Flint’s belief was reasonable (the objective test) again because this was public money and the financial requirements of a public body which she was referring to. We add that the disclosure did not relate to Mrs Flint’s own personal or private interests, it was not a matter which related to her own treatment or her employment contract, rather it concerned compliance with legal obligations in the use of public funds by a public body, in this case a school. It was clear that Mrs Flint’s belief that this was in the public interest was objectively reasonable.

701. We therefore find that there was a disclosure of information by Mrs Flint to the Respondent. That information disclosed tended to show one of the matters under s. 43B(1), specifically that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject. We find that Mrs Flint’s belief that the information tended to show that matter was reasonably held. We also find that Mrs Flint believed that the disclosure was in the public interest, and that her belief was also reasonably held. Mrs Flint’s disclosure qualifies for protection as it was made to her employer.

702. We do not find that the failure of Mrs Flint to express this as a whistleblowing disclosure or her failure to use the Respondent’s Whistleblowing policy in themselves mean that this was not a protected disclosure. We have taken these factors into consideration, in particularly with respect to Mrs Flint’s reasonable belief about what the information tended to show and whether the disclosure was in the public interest. We have noted that Mrs Flint was aware of the Policy and how to raise a disclosure, but she did not comply with that Policy. However, we do not find that these factors in themselves preclude the email of 20 February 2020 from amounting to a protected disclosure.

703. We note that the Respondent has argued that the email of 20 February 2020 was not a protected disclosure as in the Respondent’s view its contents were mundane, however following our detailed consideration of that email, together with the evidence we have heard, we find that this was a protected disclosure, and we accept Mrs Flint’s arguments in this regard.

704. The Respondent concedes that the following disclosures were protected disclosures and we therefore do not need to consider them further:

2.1.1.7 On 29 May 2020 the second claimant made a disclosure in an email to Angela Bull repeating previous concerns (C2 ET1 para 3.3);

2.1.1.8 On 22 July 2020 the first claimant made a disclosure in an email to the second claimant regarding Sarah Gardner passing quotation information to a third party (C1 ET1 para 3.12 p19);

2.1.1.9 On 29 July 2020 the second claimant made a disclosure by forwarding the first claimant's email of 22 July 2020 to Tim Coulson and Angela Bull (C2 ET1 para 3.4).

Detriments

3.1.1 From November 2019 exclude the first claimant from involvement in the organisation of work being carried out at the School by Liz Clements;

705. We have already found that Mr Flint was excluded from some of the work at the School, specifically with regards to the work on the Maidstone Sports Hall and the Student Services area. This is work which would have fallen with Mr Flint's remit according to his job description. Whereas the Respondent has argued that Ms Clements was brought in to assist and to lend support, it is clear that Ms Clements was permitted to take over the work on those projects. Mr Flint had only a negligible role in that work. The Respondent in these proceedings has sought to argue that this was Trust led or Trust financed work, however the fact remains that this was work being carried out at the School which would normally form part of Mr Flint's role and his job description.

706. We find support for the above conclusion from the grievance investigation, the grievance outcome and the grievance appeal where it was noted that there was no discussion with Mr Flint about the work that Ms Clements would be doing. We also note that Ms Clements has been candid and admitted that she had not involved Mr Flint much and that it was her practice to get her head down and to focus on the job in hand.

707. The evidence provided to us that Mr Flint had any role in this work was very limited. Mr Flint was physically excluded from where the building work was being carried out which is understandable given health and safety requirements, but the Respondent struggled to explain to us what role he had. We were told that Mr Flint was taken on site walks by Ms Clements on occasion and he was pointed in the direction of the site plans, and he occasionally spoke to contractors, but this really appeared to be a very minor involvement and only perfunctory.

708. The documents refer to Mr Flint as feeling that he had been relegated to the role of Caretaker, and whilst we do not find all of Mr Flint's Premises Manager work was removed from him, we do find that he was excluded from work on these two projects as the work had been given Ms Clements. In some respect Mr Flint's involvement was reduced from Premises Manager to Caretaker, although he still retained the job title and salary.

709. Not only was Mr Flint excluded from this work, but the Respondent had failed to communicate with him about what role Ms Clements would have. The grievance outcome is clear that there was a lack of communication and poor management during Autumn 2019, and we agree with that conclusion.
710. In excluding Mr Flint from this work in his role as Premises Manager, we find that the Respondent did cause Mr Flint to suffer a detriment. We have gone on to consider the matter of causation, and specifically whether the fact that Mr Flint had made a protected disclosure was a material influence on the way in which he was treated.
711. We have heard evidence that it was the Respondent's practice to bring in Ms Clements to assist at Schools joining the Respondent where there were site or premises issues which needed resolving. This was not challenged to any degree by the Claimants that this was the Respondent's general practice.
712. We also find that the Respondent had such a practice as Mr Brown's email to Mrs Wilson of 13 February 2020 referred to a recurring theme from other sites where Ms Clements had come in.
713. We have also gone on to look at the timings. The first time Mr Flint says that he made a protected disclosure was not until 3 February 2020 and that was to Mrs Flint. We have already found that Mr Flint had not made a protected disclosure on that date, but in any event, Ms Clements had already been at the School by then for at least five months, and that this process of excluding Mr Flint from work had already started by then.
714. Accordingly, even by Mr Flint's own case, Ms Clements had started to take work from him and to exclude him from work **before** his alleged protected disclosure not after. We also note that we have not found that Mr Flint made a protected disclosure until 22 July 2020 in any event, and that concerned Mrs Garner allegedly passing quotes on to a supplier.
715. Given that the treatment complained of commenced before the protected disclosure we cannot therefore find that the reason for the treatment was due to having made a protected disclosure. This element of the claim is therefore dismissed.

3.1.2 On 27 February 2020, through Emma Wilson-Downes, brush off the second claimant's strategic responsibility for site and buildings and state there was a lot of finance work that needed attention;

716. We have already made a finding that Mrs Flint's job description provided that she would have strategic oversight of the site and premises, and that she was excluded from that work by the Respondent who had brought in Ms Clements to lead on the two projects which have already referred – the Maidstone Sports Hall and also the Student Services area.
717. We were told by Ms Clements that she involved Mrs Flint by taking her on site walks with Mrs Wilson-Downes although the latter could not remember it happening. We have found that only one site walk took place,

and whereas Mrs Flint was told where she might view the site plans, she had no meaningful involvement in the project work other than paying or processing invoices arising in connection with that work.

718. There was no prior discussion between the Respondent and Mrs Flint about her role and the division of responsibility between Ms Clements and Mrs Flint. In reality Mrs Flint was excluded. We find support for this from the contents of the grievance investigation, the grievance outcome and the grievance appeal to which we have already referred, as well as from Ms Clements' candid comments about how she keeps her head down and gets on with the job and doesn't tend to think of others.

719. We have also heard evidence that there were some issues with finance work being completed and that mistakes had been made, although not by Mrs Flint but by someone she managed. We find that Mrs Wilson-Downes did tell Mrs Flint to concentrate on the finance work that needed to be done, and as such Mrs Flint remained excluded from the strategic oversight of site and premises work which formed part of her job description. We find that by excluding Mrs Flint from this work and by not communicating with her about this work and the role of Ms Clements, the Respondent had caused Mrs Flint to suffer a detriment.

720. We have gone on to look at causation. We have already found that Mrs Flint made a protected disclosure on 20 February 2020 in her email to Ms Fairchild and Mrs Townsend. We have also already found that the email made its way to Mrs Wilson-Downes via Ms Clements on 26 February 2020 which is the day before the discussion between Mrs Flint and Mrs Wilson-Downes.

721. However, there was no evidence that Mrs Wilson-Downes recognised Mrs Flint's email as anything other than mundane as the Respondent has described, and no evidence that Mrs Wilson-Downes interpreted Mrs Flint's email as a protected disclosure.

722. Moreover, even if Mrs Wilson-Downes had interpreted Mrs Flint's email as a protected disclosure where she was raising financial concerns, it would be a peculiar form of retaliation to ask Mrs Flint to undertake more financial work. It appeared to us as implausible that Mrs Wilson-Downes was seeking to retaliate against Mrs Flint in this way.

723. We find that the reason for the treatment was because the Respondent already had plans for Mrs Flint's role in that they planned that she was to be moved into a finance role. These plans had nothing to do with Mrs Flint's protected disclosures but were due to the Respondent operating a central services model which would necessitate a restructure in due course in any event.

724. The fact that Ms Clements had been brought in to take over the building work on the two projects, together with Mrs Garner's email of 6 February 2020 and Mrs Bull's email of 19 May 2020 are indicative that this was the Respondent's plan. We cannot therefore find that Mrs Flint's work on site and premises was removed from her due to having made a protected disclosure as this had been planned many months before she started to raise her concerns.

725. We also noted that during the grievance process Mrs Flint had told the grievance panel that she was being excluded by the Respondent from day one. This was not definitive to the issue of causation, but it did lend support to our finding that her subsequent protected disclosures had not been a material influence on the Respondent's process of excluding Mrs Flint from her work. This element of the claim is therefore dismissed.

3.1.3 On 27 April 2020, through Emma Wilson-Downes, send out a job advert for an Assistant Head Teacher which included oversight of the Cover and Educational Visits and Trips, which had been a responsibility which the second claimant undertook;

726. Mrs Flint's job description provided that she would act as Educational Visits Coordinator and ensure health and safety compliance. The purpose of the new Assistant Headteacher role as set out in the advertisement was also to act as Educational Visits Coordinator and to oversee a calendar of trips and visits that offer a broad and balanced experience of both curriculum based and enrichments trips to students, however the third page referenced the Assistant Headteacher would act as EVC alongside the school business manager, to evaluate the curriculum purpose trips and ensure a board and accessible offer.

727. We have already found that the advertisement was poorly drafted as the purpose of the EVC part of the job is at odds with the detail in the specific responsibilities.

728. When read as a whole it would appear that the intention, as the Respondent has argued, was to share the role with an educationalist who would be able to share this role with the Business Manager.

729. Unfortunately, Mrs Wilson-Downes failed to communicate this with Mrs Flint despite line managing her and despite having been provided with a copy of Mrs Flint's job description where these duties were clearly defined.

730. The Respondent was entitled to look at the educational aspects of these visits and trips, and Mrs Flint was not a teacher therefore she was not able to perform that particular function.

731. The subsequent amendments to her job description by Dr Coulson attempted to explain what her involvement would be, namely assisting the EVC with financial oversight of visits and trips rather than acting as EVC herself.

732. The way this was handled was clumsy and no prior consideration was given to the fact that Mrs Flint was the EVC. This was further evidence of poor communication with Mrs Flint by Mrs Wilson-Downes and we also note that the issue appeared to have been discussed at the meeting with Dr Coulson on 29 June 2020. Nevertheless, we find that this was a detriment to Mrs Flint – specifically the removal of her as the EVC and also the failure to discuss this with her first as she was entitled to expect that in a professional environment changes would be discussed with her first.

733. As regards the issue of causation, we accept the Respondent's arguments that it wanted an educationalist to have input into the educational value of visits and trips and this had nothing whatsoever to do with Mrs Flint having made a protected disclosure. In any event we saw no evidence that anyone in the Respondent recognised that Mrs Flint was making a protected disclosure until 29 May 2020 which was after the advertisement had been issued.
734. As regards the issue of Cover, this was referenced in the advertisement as "to oversee deployment of cover staff and the cover budget via the cover manager" and we have found that this was not part of Mrs Flint's job description, but it was a role she had undertaken for a number of years. The organogram from October 2019 shows that this function fell under the then Assistant Headteacher Mr Wanner. We heard that Mrs Wilson-Downes wanted two people to cover this role. Mrs Wilson-Downes appeared not to have realised that someone she line managed was undertaking this function.
735. Whereas there was some detriment to Mrs Flint in the way in which this was communicated, we did not find that the act of giving cover to an educationalist to perform was of itself a detriment to Mrs Flint.
736. Even if we are wrong on the issue of the detriment with respect to Cover work, we did not find that was done due to Mrs Flint having made a protected disclosure. We found that this was simply a misunderstanding on the part of Mrs Wilson-Downes who had not realised that this was something which Mrs Flint had been undertaking as it did not appear in her job description. We found that it was further evidence of a lack of proper communication to establish what roles people were undertaking in the School. In addition, as indicated above, there was no evidence that anyone recognised that Mrs Flint was making a protected disclosure until 29 May 2020. We therefore find that the advertisement was not caused by Mrs Flint having made a protected disclosure. This element of the claim is therefore dismissed.

3.1.4 On 5 May 2020, at a meeting with Wayne Lloyd and Angela Bull, ask the second claimant to consider an alternative role which she knew would be at a lower level and thereafter plan a restructure which would involve the second claimant taking a role at a lower salary or agreeing to leave;

737. The discussions with Mrs Flint on 5 May 2020 were an informal discussion and they formed part of the Respondent's plan to move Mrs Flint into a finance role. This was done outside of the Respondent's Organisational Change Management Policy.
738. We do not find that there was any detriment to Mrs Flint at this meeting as this was simply a meeting to either sound her out or to persuade her to accept this alternative role. Having viewed the transcript of the hearing it is clear that Mr Lloyd was keen for Mrs Flint to take the finance hub manager role, but no pressure was applied to her to force her to take it.

739. It was entirely open to the Respondent to have had an informal discussion with Mrs Flint and we note that she continued to engage in discussions with them for some days afterwards, including directly by herself and through her union representative.
740. It was clear from the TUPE letter of 6 June 2019 that there would be a post transfer review of administrative support at the School. We find that this reference was wide enough to include the role of Business Manager. This predated any protected disclosure by Mrs Flint by many months. It was also the Respondent's established practice to rely on central services and economies of scale.
741. Accordingly, we find that there was no detriment to Mrs Flint by having an informal discussion with her, but even if we are wrong on that we find that it was not due to her having made a protected disclosure.
742. At this time, we had found that Mrs Flint had only made one protected disclosure which was that of 20 February 2020. There was no evidence that the recipients of that email ever recognised it to be a protected disclosure and there was no evidence that Mr Lloyd was aware of it. We also note that Mrs Flint and Mr Roberts were both of the view that Mrs Bull was later shocked towards the end of May 2020 when Mr Roberts mentioned that Mrs Flint had been whistleblowing or raising financial concerns, and they did not believe that Mrs Bull had been aware of it.
743. Accordingly, even if this informal discussion had been a detriment the fact that she had made a protected disclosure on 20 February 2020 had no influence on the decision to have that discussion as the plans had been in train for some time earlier which can be traced back to the TUPE measures letter from June 2019 which alluded to a potential restructure of admin support.
744. This element of the claim is therefore dismissed.

3.1.5 In June 2020, through Emma Wilson-Downes, tell the first claimant not to contact anyone at the Trust and to have everything go through her in the future;

745. We find that the discussion in question occurred on 12 June 2020 and it was in response to Mrs Wilson-Downes feeling frustrated or out of the loop as Mr Flint had contacted the Respondent directly about a matter which she considered to be strategic. The day before Mr Lloyd had sent Mrs Wilson-Downes an email where he had urged her to speak to Mr Flint and to be clear that everything should go through Mrs Wilson-Downes.
746. On the following Monday Mr Flint emailed Mrs Wilson-Downes about ordering PPE to which she responded that she could be copied in on such operational matters, but she had asked to be told first about anything strategic.
747. This appeared to be an entirely reasonable request from Mrs Wilson-Downes, it was a request she was entitled to make and there was no

detriment to Mr Flint. At the very most Mrs Wilson-Downes' request to Mr Flint may not have been sufficiently clear which is why he subsequently asked her about whether he could contact the Trust to order PPE, however this was quickly clarified by Mrs Wilson-Downes about when Mr Flint should copy her in. There was no detriment to Mr Flint by Mrs Wilson-Downes making that request. This element of the claim is therefore dismissed.

748. ***3.1.6 On 23 June 2020, through Darren Meitiner-Harvey and in a subsequent meeting, through the Assistant Headteacher (in each case at the direction of Emma Wilson-Downes), tell the second claimant that Darren Meitiner-Harvey was taking over performance management of support staff as well as teacher performance management, meaning that she would have had the support staff management role taken away from her;***

749. We have found that the factual premise of the allegation is not made out in the way expressed by Mrs Flint although we have still found that she suffered a brief detriment in the way this matter arose.

750. The responsibility for support staff appraisals was part of Mrs Flint's job description. The act of Mr Meitiner-Harvey telling Mrs Flint that he was taking support staff appraisals from her was a detriment, albeit a brief one as the matter was resolved swiftly by Dr Coulson on 26 June 2020 when he confirmed that the responsibility rested with Mrs Flint. In the short period between 23 June and 26 June 2020 none of the appraisals were taken off of Mrs Flint, nevertheless the manner in which Mr Meitiner-Harvey told her was thoughtless and she was left with uncertainty over three days before Dr Coulson confirmed that she retained this role.

751. We have examined the matter of causation and we have already made a finding that Mr Meitiner-Harvey made this decision of his own volition as he was over-zealous with respect to appraisals which was a particular passion of his and he would likely have been under the impression that Mrs Flint may not have been in post for long from anything he may have heard in his role as Assistant Headteacher. We did not find that this had been directed by Mrs Wilson-Downes.

752. By this time Mrs Flint had made her disclosures on 20 February 2020 and 29 May 2020, the latter disclosure is conceded by the Respondent. We were not provided with any evidence that Mr Meitiner-Harvey was aware of either disclosure, and in any event Mrs Flint's case rested upon Mrs Wilson-Downes having told Mr Meitiner-Harvey to take on this role, however we have already made a finding that is not what happened.

753. Whereas we have found that Mrs Flint suffered a brief or a limited detriment, we do not find that it was due to having made protected disclosures. This element of the claim is therefore dismissed.

3.1.7 On 26 June 2020, at a meeting with Tony [Tim] Coulson and Emma Wilson-Downes to discuss her areas of responsibility, reinstate some responsibilities but confirm the loss of others and confirm that

no assurances could be given that further changes would not happen in the future nor could a restructure be ruled out;

754. By the time of this meeting Dr Coulson had already emailed Mrs Bull on 19 May 2020 where he noted the potential for Mrs Flint to resign and to claim constructive dismissal and he had suggested that they (the Respondent) should draw back. It was therefore clear that the purpose of the meeting was to prevent or to limit the risk of Mrs Flint resigning by discussing Mrs Flint's job description with her. The discussion about Mrs Flint's responsibilities was long overdue and ought to have begun before Ms Clements' started work on the projects to which we have referred.

755. The discussions and the subsequent amended job description demonstrate a reduction in Mrs Flint's role and responsibilities and her seniority within the organisation. Whilst she remained part of SLT she was not able to join governing body meetings as she had done so but would need to be invited. The core purpose of the role was watered down, Mrs Flint's role in safeguarding was in effect removed, her tasks with EVC remained the same but her role as the EVC was removed and given to an Assistant Headteacher, she would now monitor rather than formulate health and safety policy and some of the finance work was also removed.

756. The overall changes to the job description were a detriment to Mrs Flint given the reduction in her responsibilities, although it did not appear that all the changes were implemented as the matter appeared to stall due to Mrs Flint's grievance a few days later. Nevertheless, it was clear that some changes arose from this meeting as Mrs Flint ceased to line manage the ICT Network Manager, and elements of her health and safety work reduced, and her HR work.

757. We again to look at the issue of causation. Dr Coulson was aware that Mrs Flint had made a protected disclosure on 29 May 2020 although we do not find that he would have recognised Mrs Flint's email of 20 February 2020 as one. The issue is whether any of those disclosures were a material influence on the changes to Mrs Flint's job description discussed at the meeting of 26 June 2020. We do not find that they were.

758. We find that the purpose of the meeting was to try and limit the risk of Mrs Flint resigning and that Dr Coulson's intention had been to put right the things which had gone wrong such as the removal of aspects of Mrs Flint's role had already been taken away from her without consultation and excluding her from the work which Ms Clements had been brought in to undertake.

759. Whereas changes were made to Mrs Flint's job description, some of which were a detriment to her, we find that these changes were due to the Respondent operating a different model to the previous Trust and that it did not regularly make use of Business Managers in that model. Those changes had already been made outside of the Respondent's Change Management Policy without consultation with Mrs Flint, and as such Dr Coulson was trying to clarify where Mrs Flint's role sat in that model.

760. As regards Dr Coulson's inability to agree that further changes would not happen in the future, and his failure to rule out a restructure, we find that

was an entirely reasonable response as it would be impossible to agree that changes would never be made. We do not find that was a detriment to Mrs Flint as she had no reasonable expectation that things would always remain as they were.

761. This element of the claim is therefore dismissed.

3.1.8 On 2 July 2020, at a meeting with Tony [Tim] Coulson, remove some of the first claimant's responsibilities undertaken at Langer Primary Academy and give these to Liz Clements;

762. We have already found that there were only relatively minor changes to the job description of Mr Flint and that he was not the Premises Manager at Langer, although he could be required to work there.

763. We find that Dr Coulson was attempting to provide Mr Flint with some belated clarity as to his role after many months of confusion. The changes which were made were not to the detriment of Mr Flint.

764. In the absence of any detriment, we do not need to go on to consider the matter of causation, however we would simply note that the Respondent was entitled to ask Mr Flint to focus his efforts on the School which was the largest in the Trust and which was where he was primarily based.

765. There was no evidence that Ms Clements took over a role at Langer, however the Respondent was entitled to place its staff where it saw fit.

766. This element of the claim is therefore dismissed.

3.1.9 From July 2020, cause or permit Emma Wilson-Downes to ignore the first claimant and instead speak directly to caretakers under the first claimant in order to instruct them to carry out work;

767. We were provided with no independent evidence that Mrs Wilson-Downes was ignoring Mr Flint. By her own admission, Mrs Wilson-Downes confirmed that she did speak to caretakers directly as she would do with teaching staff as well. We have been provided with copies of emails between Mrs Wilson-Downes and Ms Clements, which Mr Flint would not have been aware of at the time, but in those emails, they had made some inappropriate comments about Mr Flint and his work.

768. We have been provided with several documents where Mrs Wilson-Downes was engaging with Mr Flint, as she asked for updates on Work. It did not appear to us that Mrs Wilson-Downes was actively engaging in ignoring Mr Flint.

769. Whereas the emails between Mrs Wilson-Downes and Ms Clements suggest a degree of belittling and demeaning comments, this is insufficient for us to infer, in the absence of any independent evidence, that Mrs Wilson-Downes went on to ignore Mr Flint as alleged.

770. The factual premise of this complaint has therefore not been made out and we do not find any detriment to Mr Flint.

771. This element of the claim is therefore dismissed.

3.1.10 On 1 September 2020, in an email sent by Tony [Tim] Coulson to everyone in the Trust, notify everyone of a change in the Code of Conduct stating in particular that those in relationships may no longer line manage each other;

772. We do not find that the change of Policy was a detriment to either Mr Flint or to Mrs Flint. Following the change in policy Mr Flint would still have interacted with Mrs Flint on operational matters but his performance management would have been undertaken by Mrs Wilson-Downes. The evidence of Mr Flint and Mrs Flint was that Mr Flint's performance had always been managed by the headteacher in any event. All that was in issue was Mr Flint's day-to-day management as Mrs Flint had never managed Mr Flint's performance.

773. In the absence of any detriment to either Mr Flint or Mrs Flint we do not need to go on to consider the matter of causation, but we would simply note that the change had been in train since at least 5 March 2020. The only protected disclosure we have found that was made before this time was on 20 February 2020 by Mrs Flint to Ms Fairchild copied to Mrs Townsend.

774. Mrs Bull was unaware that Mrs Flint had made a protected disclosure until she was informed by Mr Roberts towards the end of May 2020. Both Mrs Flint and Mr Roberts confirmed this to be the case. There is no evidence that Dr Coulson was aware of Mrs Flint's email of 20 February 2020, he was not a party to that email, and we find that those who received the email viewed it as mundane.

775. We also found that it would be implausible for the Respondent to have made a change to its Code of Conduct which applies to all staff in order to retaliate against Mr Flint and Mrs Flint for having made protected disclosures.

776. This element of the claim is therefore dismissed.

3.1.11 Between October and December 2020, fail to deal fairly with the first claimant's grievance in dismissing both it and his subsequent appeal;

777. The Tribunal panel noted that the process followed was compliant with the Respondent's policy and the ACAS Code and a fair procedure was adopted. There was a detailed examination of Mr Flint's complaint, and the panel made several criticisms of the Respondent's communication and management in the Autumn term in 2019. The Tribunal panel found that the overall a fair process had been followed.

778. Having considered the conduct of the grievance hearing and the outcome letter, we note that the panel did not appear to have agreed with Mr Vince's suggestion that the grievance was vexatious or malicious. The suggestions that Mr Flint's grievance may have been malicious is a matter which had concerned the Tribunal panel, however it was not adopted in the grievance outcome.

779. Whereas Mr Flint was provided with detailed reasons why his grievance had been rejected, the Tribunal panel found it surprising that having found that there had been a lack of communication with Mr Flint about Ms Clements' role, and a lack of clarity with Mr Flint about his own role, and the fact that by the time of the grievance outcome there were still areas where clarity was needed, the grievance panel did not uphold any of Mr Flint's complaints. We found that to have been an unusual and a contradictory outcome to have reached in these circumstances given the grievance panels' own findings.

780. Whereas the grievance panel would have been aware of Mr Flint's protected disclosure, there was no evidence that grievance was rejected due to Mr Flint having made that protected disclosure as the panel were robust in their criticisms of the Respondent's communications and the delays in providing Mr Flint with clarity over his role.

781. We noted that the appeal panel partially upheld Mr Flint's grievance with respect to the matters we have just identified, and it appeared to us that they corrected what appeared to be a contradiction in the outcome from the grievance panel referred to above.

782. As regards the remainder of the grievance decision and the appeal decision, we consider that both panels dealt with the remainder of those issues fairly after a very thorough assessment of the issues raised and the conclusions appeared consistent with their findings.

783. We found that overall, the grievance panel and the grievance appeal panel dealt with Mr Flint's grievance fairly and thoroughly, and as such there was no detriment to him. This element of the claim is therefore dismissed.

3.1.12 Between October and November 2020, fail to deal fairly with the second claimant's grievance in dismissing both it and her subsequent appeal;

784. Earlier in this judgment we expressed concern about the suggestion from Mr Vince that Mrs Flint's grievance may have been vexatious or malicious. We again note that the grievance panel did not appear to have agreed with Mr Vince's suggestions as they were not adopted in the grievance outcome.

785. We again found that the process followed was compliant with the Respondent's Grievance policy and the ACAS Code and that a fair procedure was followed. There was a detailed examination of Mrs Flint's complaints.

786. We found the suggestion that only minimal changes had been made to Mrs Flint's job description to be untenable. It appeared to the Tribunal that the issue over the job description had not yet been resolved but as it stood there had been quite substantial changes or proposed changes made to that job description by Dr Coulson as we have already referred to earlier in this judgment where we have struck through the parts which were either removed or proposed to be removed. To describe those changes as minimal was an error.
787. We also found it surprising that having found that errors were made and a lack of communication and consideration, the panel went on to dismiss all of the grievance, notwithstanding criticisms it had made of the Respondent. Again, this appeared to the Tribunal to be contradictory.
788. As regards the grievance appeal hearing and outcome, we again find that this followed a fair process. We also note that the appeal panel partially upheld Mrs Flint's appeal having found poor management and a lack of communication leading to poor treatment of Mrs Flint, and we find that this corrected the apparent contradiction in the decision of the original grievance panel to dismiss all the complaints to which we have already referred. We find that the grievance appeal panel made findings which were entirely consistent with the evidence before it.
789. Having considered the grievance process as a whole, we found that Mrs Flint's grievance had been dealt with fairly and thoroughly. We did not find that it would have been necessary to have spoken to Mrs Garner as part of the grievance investigation as the complaints did not directly relate to her. We did not find that there was any detriment to Mrs Flint.
790. We therefore dismiss this element of the claim.

3.1.13 On 5 January 2021 at a meeting with Claire Havers and Emma Wilson-Downes, appoint Rachel Baty as the first claimant's line manager in all respects including to authority to discipline him and removed the second claimant's responsibilities in that respect.

791. We do not find that there was any detriment to either Mr Flint or Mrs Flint arising out of the decision to appoint Ms Baty as Mr Flint's line manager.
792. Whereas it has been suggested by Mr Flint that Ms Havers said that Ms Baty was there to discipline him, we do not find that the factual premise of that assertion has been made out.
793. By this time Dr Coulson had already reinstated on 29 June 2020 the responsibility for oversight of site and premises which had been taken over and performed by Ms Clements. There was no detriment to Mrs Flint in having Mr Flint line managed by Ms Baty.
794. This may have meant changes in lines of communications, but the decision to appoint Ms Baty as Mr Flint's line manager was entirely within the gift of the Respondent and this was compliant with the Respondent's Code of Conduct which had been amended the year before.

795. We did not find that there was any detriment to Mr Flint or to Mrs Flint. Even if we are wrong on the issue of detriment, we have considered the matter of causation and note that the Respondent was entitled to decide who would line manage Mr Flint. Dr Coulson had reasonable and proper cause for attempting to change Mr Flint's line manager as this was necessitated by the change in the Code of Conduct to mitigate against the risk of controlling and coercive behaviour, and it was also a recommendation from the recent grievance process. This had nothing to do with the protected disclosures from Mr Flint and Mrs Flint.

796. We therefore dismiss this element of the claim.

Additional Detriments

1.1 From February 2020 Claimant 2 was excluded from her role on an interview panel for a caretaker's position.

797. We have made a finding of fact that interviewing for a new caretaker would have fallen within Mrs Flint's job description. The interview was due to take place on 5 March 2020. We have also made a finding of fact that Mrs Flint was prevented from taking part in this interview by Mrs Wilson-Downes. We have also referred to the email exchange between Ms Clements and Mrs Wilson-Downes where they joked about this and agreed to put a specific governor on the panel in order, in the words of Ms Clements, to "*really piss Sharon off!*"

798. We find that excluding Mrs Flint from that interview panel was a detriment to her. We will now examine the matter of causation.

799. This incident occurred after we have found that Mrs Flint made a protected disclosure on 20 February 2020 to Ms Fairchild and Mrs Townsend. We have also made a finding that both Mrs Wilson-Downes and Ms Clements had sight of that exchange on 25 and 26 February 2020 which is before the decision was made to exclude Mrs Flint from the panel. The email from Ms Clements to Mrs Wilson-Downes about Mrs Flint's email of 20 February 2020 was that "*she clearly issues with me.*"

800. We cannot find, based on the documents we that we have been referred to and the evidence we have heard, that Ms Clements or Mrs Wilson-Downes, viewed Mrs Flint's email as anything other than mundane as the Respondent has described. It would appear from Ms Clements' brief email of 26 February that she was not under the impression that Mrs Flint was whistleblowing, Ms Clements' view was that Mrs Flint had issues with her.

801. Ms Clements indicated in her evidence that the governors did not want a husband and wife on an interview panel together, however there was no evidence of this, and it was not documented nor communicated at the time.

802. It appears to the Tribunal that it is far more likely that Mrs Wilson-Downes was content to give aspects of Mrs Flint's role to Ms Clements to perform as this process had already started many months beforehand when

Respondent brought in Ms Clements to take the lead on the work at the Maidstone Sports Hall and the Student Services area. We have already made repeated references to the Respondent's plan which was to remove the Business Manager role and to move Mrs Flint into a finance role.

803. Whereas we do find that this exclusion of Mrs Flint from the panel was a detriment, we do not find that it was due to having made a protected disclosure as neither Mrs Wilson-Downes nor Ms Clements recognised that Mrs Flint had made a protected disclosure on 20 February 2020 which was the only one which had occurred before the decision was made to exclude Mrs Flint from the interview panel. We therefore dismiss this element of the claim.

1.2 On 30 April 2020, Emma Wilson-Downes confirmed by email to Angela Bull that she had already taken away elements on Claimant 2's job description and had removed her from the SLT structure.

804. The email from Mrs Wilson-Downes was clear that various functions had already been removed from Mrs Flint's role, and these included the Single Central Record which she had given to Mrs Cumberland, and HR matters which she had allocated to herself. No discussion or consultation was had with Mrs Flint even though an employer acting reasonably would have been expected to have at least discussed these matters with the employee concerned first. Removing aspects of Mrs Flint's job without discussing these with her in advance was a detriment to Mrs Flint.

805. We find that the issue around the line management of the Premises Manager, Mr Flint, was slightly different as the headteacher had always been responsible for managing the performance of Mr Flint given that the Business Manager was his wife Mrs Flint. However again up to this point there had been no discussion or consultation with Mrs Flint as a reasonable employer would have done, although we have found that the Respondent was entitled to decide who would manage Mr Flint. The failure to discuss changes in line management may amount to a detriment, however we did not find that Mr Flint had been removed from Mrs Flint's line management at this time as he continued to be line managed by Mrs Flint until January 2021 when Ms Baty became his temporary line manager. Accordingly, there was no detriment to Mrs Flint with respect to this one element of Mrs Wilson-Downes' email to Mrs Bull.

806. We have gone on to look at the matter of causation. We do not find that this was due to Mrs Flint having made a protected disclosure. The only disclosure Mrs Flint had made before 30 April 2020 was on 20 February 2020 which Mrs Wilson-Downes did not recognise to be a protected disclosure, and in any event this email was not a factor in her decision to remove these functions from Mrs Flint. We find that the motivation was due to the Respondent's plans to remove the Business Manager role and its wish to move Mrs Flint into the finance hub manager role.

807. As regards the alleged removal from the SLT staffing structure, we find that this was a misunderstanding as it was prepared by Ms Baty and was based upon how things were done previously at TGS as they did not

routinely include non-teaching staff on the structure. We do not find that this was a detriment to Mrs Flint as she remained part of SLT, the most it amounted to was a miscommunication. Even if this was a detriment we find that it had nothing to do with Mrs Flint having made a protected disclosure, we accept the plausible explanation from the Respondent that it was how things had been done at the previous school.

808. We therefore dismiss this element of the claim.

1.3 From May 2020, both claimants were receiving excessive emails containing lists of work which were constantly being followed up, particularly outside normal working hours.

809. The reference to May 2020 appears to relate to an email exchange between Mrs Wilson-Downes and Ms Clements on 18 May 2020 about giving Mr Flint and Mrs Flint lists of work which Mrs Wilson-Downes said *“They’re going to get pretty fed up quite soon I think!”* to which Ms Clements replied *“I’m sure they are getting well and truly pissed off at the moment but that’s the point isn’t it.?!”*

810. It is clear that Mrs Wilson-Downes sent Mr Flint some lists of work to do and that she followed him up on tasks and asked for an update as we have seen evidence of this in the hearing bundle. We heard evidence from Mrs Wilson-Downes that she found it helpful to work in this way as she was absent from the School and wanted to keep track of the work and we saw one email of 12 June which contained a list of 17 items.

811. However, we did not see an excessive amount of correspondence to Mr Flint from Mrs Wilson-Downes, notwithstanding her comments to Ms Clements, however the volume of emails to Mr Flint together with their contents did not appear to be excessive or inappropriate.

812. As regards out of hours emails, Mr Flint indicated during the grievance process that he knew he was not expected to respond to emails out of hours but that he kept his phone on anyway for premises work. There was no evidence that Mrs Wilson-Downes was emailing Mr Flint at those times with the expectation that he would deal with them then.

813. We did not find that this amounted to a detriment to Mr Flint.

814. With respect to Mrs Flint, we did not identify any specific lists of work she was sent which may be described as excessive. Whilst Mrs Wilson-Downes’ email to Ms Clements suggests that she kept asking both Mr Flint and Mrs Flint about things on her list, and that they would soon get fed up. we were not provided with evidence of this with respect to Mrs Flint. We also note that Mrs Flint would send WhatsApp messages Mrs Wilson-Downes out of hours on occasion and that she also indicated that she did not mind working long hours as it was part of the job – it appeared that Mrs Flint was happy to work in this way. Even if Mrs Wilson-Downes did send Mrs Flint emails out of hours, we do not find that there was any expectation that Mrs Flint would deal with them at that time. We did not find any detriment to Mrs Flint.

815. Even if we are wrong on the matter of detriment, we would note that there is no evidence that this had anything to do with Mr Flint or Mrs Flint having made protected disclosures. The lists of work to Mr Flint started before we find that he had made a protected disclosure, therefore they could not have been caused or influenced by a protected disclosure which had yet to happen. With respect to Mrs Flint, she had made a protected disclosure prior to this time on 20 February 2020, however we have accepted Mrs Wilson-Downes' evidence that she was working remotely and that there was a lot of work to be done which she was trying to keep track of. We found that explanation to be entirely plausible and we accept it.

816. We therefore dismiss this element of the claim.

1.4 On 19 June 2020, Claimant 1 disclosed to Tim Coulson in a phone call that he was being victimised by Emma Wilson-Downes following the external financial investigation. Tim Coulson then instigated the change of line manager of Claimant 1 to Emma Wilson-Downes.

817. We have not found that the factual premise of this allegation has been made out. Whilst we note that during the call on 19 June 2020, Mr Flint told Dr Coulson that he did not think that he should be managed by Mrs Wilson-Downes, we did not find that he told Dr Coulson that he was being victimised.

818. In any event we do not find that there was a detriment to Mr Flint as Dr Coulson did not follow through with this change as Mr Flint subsequently brought a grievance.

819. Even if we are wrong on the issue of detriment, we do not find that this change was due to Mr Flint having made a protected disclosure as we have found that the first occasion when Mr Flint made a protected disclosure was on 22 July 2020. Accordingly, the decision to instigate a change of line manager to Mrs Wilson-Downes could not have been due to a protected disclosure as it had yet to be made. We therefore dismiss this element of the claim.

1.5 During the whistleblowing investigation, details were provided to Emma Wilson-Downes by the Investigator that Claimant 2 had blown the whistle.

820. The factual premise of this complaint has not been made out. We were not provided with any evidence that Helen Anderson released the details of Mrs Flint to Mrs Wilson-Downes. The hearing bundle contains an email from Dr Coulson to Mrs Wilson-Downes dated 16 June 2020 which states that the whistleblowing report should be ready the following day and that Mrs Flint has raised concerns that she is being victimised for having whistle blown and that they (Dr Coulson and Mrs Wilson-Downes) should discuss how to handle it.

821. Whereas Mrs Wilson-Downes' evidence was that this was the first time she had heard about it, save for providing contact details for witnesses,

that appears to be at odds with the contents of Dr Coulson's email which presupposes Mrs Wilson-Downes had been aware of the whistleblowing already.

822. We note that Mrs Flint did not expand upon what specific detriment she says that this caused to her. In any event we do not find that there was any detriment to Mrs Flint.

823. Even if we are wrong on the issue of whether Mrs Flint suffered a detriment, we would note that the Respondent's policy is clear that anonymity cannot be guaranteed. Moreover, given that Mrs Flint had told Dr Coulson that she was being victimised for having raised her concerns, it was inevitable that he would need to speak to Mrs Wilson-Downes as her line manager about it.

824. We therefore dismiss this element of the claim.

1.6 From July 2020, fail to deal fairly with the claimants' grievance investigations in accordance with the timeline of the process.

825. We have found that Mr Flint's grievance and appeal were dealt with in a timely fashion. Whereas the appraisal policies suggests that a grievance hearing should take place in two weeks, this is subject to an investigation being undertaken.

826. Mr Flint lodged his grievance on 10 July 2020 which was immediately before the School broke up for the summer holiday. Interviews were conducted and a comprehensive report was issued on 10 September 2020.

827. A hearing took place on 21 October and the outcome was issued on 28 October. An appeal was filed on 5 November, the appeal hearing took place on 2 December and the outcome was issued on 4 December 2020.

828. Whereas the whole process took five months to complete, in these specific circumstances with the number of witnesses, the summer term, and the size and complexity of the grievance, we did not find that the time taken was excessive although we note that it took a number of weeks to set up the grievance hearing panels after the investigation was issued. The time taken to issue the decisions following the grievance hearing and the appeal hearing were in line with the Respondent's policy.

829. We have also found that Mrs Flint's grievance and appeal were dealt with in a timely fashion.

830. Mrs Flint lodged her grievance on 6 July 2020 which was immediately before the School broke up for the summer holiday. Interviews were conducted and a comprehensive report was issued on 10 September 2020. There was a gap of a few weeks before the hearing took place on 16 October and the outcome was issued on 22 October. An appeal was filed on 3 November, the appeal hearing took place on 25 November and the outcome was issued on 27 November 2020.

831. We reiterate that whereas the whole process took five months to complete, in these specific circumstances with the number of witnesses, the

summer term, and the size and complexity of the grievance, we did not find that the time taken was excessive. The time taken to issue the decisions following the grievance hearing and the appeal hearing were well within the deadlines of the Respondent's policy.

832. Accordingly, we find that there was no detriment to Mr Flint or Mrs Flint and we dismiss this element of the claim.

1.7 From September 2020, as a result of the subject access request, through Emma Wilson-Downes, send draft emails to HR to find fault with the Claimants.

833. This appears to relate to an email dated 9 December 2020 from Mrs Wilson-Downes where she had emailed Mrs Bull a draft version of an email to go to Mrs Flint about the site ticket system. This email also concerned Mr Flint as he was responsible for that system. The email, as we have found, was Mrs Wilson-Downes notifying Mrs Flint that there was an apparent issue and asking to be put back on the system as she appeared not to be receiving tickets.

834. We did not interpret the draft email as attempting to find fault with either Mr Flint or Mrs Flint, rather Mrs Wilson-Downes was asking for an issue to be resolved as she entitled to do as headteacher. There was nothing untoward in the substance of her email.

835. With respect to sharing the email with Mrs Bull, Mrs Wilson-Downes was entitled to do so in order to obtain professional HR advice as any manager would be entitled to do. This was perhaps more important in this case as Mrs Wilson-Downes had been the subject of a grievance and was keen to ensure that she did and said the right thing.

836. We did not find any detriment to either Mr Flint or Mrs Flint and we dismiss this element of the claim.

1.8 From December 2020, failed to deal promptly and properly with their data subject access request, specifically that the responses were unduly delayed and many documents were inappropriately redacted.

837. During the hearing we clarified with the parties that responsibility for the Data Protection Act does not lie with this Employment Tribunal, and instead lies with the Information Commissioner's Office. Our examination of this matter is limited to considering how a reasonable employer would have conducted the response to Mr Flint and Mrs Flint's DSARs. We are not in a position to make a finding on whether there had been a breach of the Data Protection Act, 2018. Our examination is limited to what we consider a reasonable employer would have done.

838. The maximum amount of time permitted to respond to a DSAR is three months from the date of the request where the request is complex. A data subject is only entitled to receive their own data under a DSAR. As such it is likely that a document released under a DSAR may be redacted to remove personal data belonging to someone else, or possibly to remove

irrelevant data. A different requirement applies to documents disclosed pursuant to the duty of disclosure in Employment Tribunal proceedings. Here the test is of relevance to the issues to be decided. It is still possible that a document may be redacted to remove irrelevant data and that might include the personal data of third parties if they are not relevant to the issues, however given the litigation exemption under the Data Protection Act 2018, it is less likely that a document will need to be redacted to remove irrelevant data, although a party might still choose to do so.

839. On the face of it, Mr Flint's DSAR was completed within the three month time limit for complex requests notwithstanding the pressures the Respondent's staff were under during the COVID-19 Pandemic and the size and complexity of Mr Flint's request. This was completed at the same time as complying with Mrs Flint's DSAR which was also completed within three months.
840. The reference to documents being unduly delayed appears to relate to the alleged failure to release certain documents under the DSAR which were subsequently released under the duty of disclosure in these proceedings. As indicated above, different tests apply – under a DSAR it is only the data subject's data which must be released, under disclosure the test is of relevance. The tests are not synonymous.
841. Mr Flint's resignation letter refers to a failure to supply unredacted documents under his DSAR and a failure to follow a Tribunal Order by not disclosing documents however it does not specify which documents he is referring to. Likewise, Mr Flint's witness statement is silent as to the documents relied upon. Mr and Mrs Flint prepared a list dated 29 June 2022 where they listed the documents they said should have been released unredacted, and we were taken to a number of them in evidence.
842. Mrs Flint put her case and Mr Flint's case to Mr Watts who attended for the Respondent as its former Data Protection Officer, and a number of documents were discussed. A far smaller number of those related to Mr Flint.
843. With respect to an email string of 13 May 2020, we did not receive a satisfactory explanation as to why Mrs Wilson-Downes' comment that "*He's still in a mood with me which is hilarious*" following by a laughing emoji was redacted when her earlier comment that "*He's actually emailed me this time*" followed by a smiling emoji was not. Similarly, there was no explanation as to why Ms Clements' comment "*its so childish!*" with a laughing emoji was redacted whereas her comment "*Wow!! That's progress!! And he didn't copy in his wife!!!*" together with some thumbs up emojis was not. We have found that those redactions were wrongly applied, and this was some limited detriment to Mr Flint as he saw the remainder of the email with the other comments about him.
844. We then looked at the reason why these had been applied. Mr Watts and his assistant would inevitably have been aware of Mr Flint's protected disclosure at some point when they conducted the DSAR response, although it is unclear when this was – but it is sufficient to find that they would have been aware of it before they released the documents. It appeared highly unlikely that the redactions were applied because Mr Flint

had made a protected disclosure as those disclosures had nothing to do with Mr Watts or his assistant, there would have been no reason to retaliate, and moreover it seemed highly implausible these redactions were made whilst other negative comments were released. It was far more likely that the redactions were applied in error and that the person who did so was unclear on what constituted personal data and what could be redacted.

845. The second email we have been referred to was the email from Ms Baty to Mrs Wilson-Downes on 25 January 2021 where she provided an update on her meeting or discussion with Mr Flint and Mrs Flint that day. This email post dates the DSARs from Mr Flint and Mrs Flint, and whilst the email relates to them and thus contains their personal data, it is unlikely that it would have been picked up in a search as it does not mention them by name. We do not find that Ms Baty deliberately used initials to avoid this being picked up by a DSAR as she made use of other initials and acronyms in the email. Given the date of the email and the lack of names we find it was not unreasonable for the Respondent not to have disclosed this email under the DSAR as Mr Watts or his assistant would unlikely have known of its existence at that time. It is only when it came to disclosure that additional documents would have come to light. Given the date of the DSAR we do not find that the failure to release a document coming to light after the DSAR was made was unreasonable.

846. We have also noted that Mr Flint referred to having received further documents under his DSAR on 22 December 2021 and he says that they were heavily redacted or incomplete. We have made a finding that the DSARs had been completed on 12 March 2021 for Mr Flint and 7 April 2021 for Mrs Flint. Anything that was received from the Respondent after those dates would have been disclosure in these Tribunal proceedings and not under the DSAR. This was period when the Case Management Orders required the Respondent to undertake disclosure. It appears to the Tribunal that Mr Flint is likely to have misunderstood why documents were disclosed to him December 2021.

847. The position as regards Mrs Flint's DSAR is different as Mrs Flint has made explicit reference to specific documents she relies upon within her resignation letter and in cross examination of Mr Watts.

848. The email of 4 June 2020 from Mr Woodward to Dr Coulson which stated that "*Sharon cannot continue, neither can Graham - I don't know how we do it, but it is a real millstone!*" was not disclosed to Mrs Flint even though it contained her personal data. When disclosed to Mr Flint it was redacted. It was not disclosed to Mrs Flint until disclosure in these proceedings on 15 February 2022. A reasonable employer would have disclosed this to Mrs Flint as part of the DSAR, but the Respondent failed to do so.

849. The email of 24 April 2020 from Mrs Hughes to Mrs Wilson-Downes primarily concerned Mrs Flint, although there was some reference to Mr Flint. The contents of the email related to alleged performance concerns about Mrs Flint in respect to a DBS check. The email contained personal data about Mrs Flint. A reasonable employer would have released this to Mrs Flint under her DSAR, but the Respondent failed to do so.

850. The aforementioned email string of 13 May 2020 related to Mr Flint but passing reference was made to copying in his wife. We do not consider that a reasonable employer would have disclosed this to Mrs Flint as she was not named in the string and it did not contain her personal data.
851. The email string of 18 May 2020 between Mrs Wilson-Downes and Ms Clements about lists of work for both Mr Flint and Mrs Flint, and which contained comments about them getting *“pretty fed up quote soon”* and *“I’m sure they are getting well and truly pissed off at the moment but that’s the pint isn’t it?”* had already been disclosed to Mrs Flint unredacted under her DSAR on 7 April 2021.
852. The email string of 28 February 2020 between Mrs Wilson-Downes and Ms Clements about the caretaker interviews where it was said that Mrs Flint would not be on the panel but Rosemary Prince would be put on the panel to *“really piss Sharon off! Yes lets ask her”* had already been disclosed to Mrs Flint unredacted under her DSAR on 7 April 2021.
853. The email string between Dr Coulson and Mrs Bull of 19 and 20 May 2020 concerning the informal discussions about the finance hub manager role was disclosed to Mrs Flint in a redacted form in her DSAR on 7 April 2021 however two parts were redacted. The first related to the maximum amount Mrs Flint might be awarded for unfair dismissal in an Employment Tribunal, and the second related to Mrs Flint *“gearing up for a fight.”* The data related to Mrs Flint, and we find that a reasonable employer would not have redacted it.
854. We have already found that a reasonable employer would not have disclosed the email dated 25 January 2021 to Mrs Flint as it was sent after the DSARs had been issued and it did not reference her name so would unlikely have been picked up in a search.
855. Taken as a whole we find that the Respondent’s handling of Mrs Flint’s DSAR did amount to a detriment to her as a number of documents were not released which should have been, and Mr Watts was unable to explain to us why some redactions had been applied.
856. We have gone on to look at the matter of causation and we again note that the Respondent was under pressure due to the COVID-19 Pandemic together with the volume of material generated by Mr Flint and Mrs Flint’s DSARs. Whereas Mr Watts who conducted the DSAR response, as well as his assistant, would have been aware of the protected disclosures at some point from having conducted the search for documents, it appeared unlikely to the Tribunal that the inappropriate redactions and failure to supply some documents, was influenced by Mr Flint and Mrs Flint having made protected disclosures. It appeared far more likely that these were errors due to the volume of material and also some unfamiliarity on the part of Mr Watts or his assistant, as to the reasons why redactions may be applied.
857. We find this because of the documents we know were released under the DSARs which contained inappropriate comments about Mr Flint and Mrs Flint. We note that those comments caused Mrs Flint a great deal of distress, and this was also apparent during the hearing. However, many

of these documents had already been released under the DSARs, therefore it seems unlikely that other similar documents would have been deliberately suppressed until the litigation disclosure stage. Similarly, it seemed unlikely that the Respondent would deliberately redact two inappropriate comments about Mr Flint by Mrs Wilson-Downes and Ms Clements in their email exchange of 13 May 2020 referred to above, but then leave in two similar comments. Having reviewed the redacted documents to which we were referred and those which were not initially released, and having heard evidence from Mr Watts, we find that the protected disclosures had no bearing on the handling of the DSARs and that the various errors were unintentional and due to volume and a lack of understanding.

858. We therefore dismiss this element of the claim.

1.9 In or around October 2022, the Second Claimant made a successful application for a position at the Albany school. Prior to her appointment the Albany School sought references from her previous employers, including Ms Wilson Downes, the Head Teacher of the Respondent school. Ms Wilson Downes provided a reference dated 22 October 2022, which the Second Claimant had sight of towards the end of October 2022. She considers that references is factually incorrect as regards the dates she was employed by the Respondent and makes unfounded negative references to her professional capabilities.

859. We have already made a finding that the reference provided by Mrs Wilson-Downes was inaccurate in several respects. This inaccurate reference necessitated a risk assessment to be completed before Mrs Flint could be appointed. The provision of an inaccurate reference causing a risk assessment to be completed is a detriment to Mrs Flint notwithstanding that she was still subsequently appointed. The detriment suffered was the fact of having to have an assessment undertaken on her appointment that she would otherwise not have had, together with the distress that the inaccurate reference caused her.

860. The competencies where Mrs Flint was marked as fair (except for management of staff) appeared to the Tribunal to be so at odds with the evidence we had seen of Mrs Flint's performance that we have questioned why Mrs Flint was provided with an inaccurate reference. We have examined whether this was caused by Mrs Flint having made protected disclosures on either 20 February 2020, 29 May 2020, or 29 July 2020. By the time of the references Mrs Wilson-Downes was aware that Mrs Flint had made protected disclosures even though we find that she did not recognise the email of 20 February 2020 as one.

861. Mrs Flint's protected disclosures did not directly relate to anything Mrs Wilson-Downes had done specifically, whereas they concerned Ms Clements (and others) and later Mrs Garner particularly in reference to obtaining quotations for work undertaken at the School. The subsequent investigations and outcome reports whilst in many respects were critical of the Respondent, (particularly so in the case of the first investigation) neither were critical of Mrs Wilson-Downes specifically. Our reading of those

investigation reports suggest that the failings identified related to other colleagues at Trust level who were involved in the procurement. Therefore, we found no reason why Mrs Wilson-Downes would seek to retaliate against Mrs Flint for having made her protected disclosures.

862. There were other factors which were more likely to have been the cause of the inaccurate reference. Firstly, we find that Mrs Wilson-Downes had set unrealistic expectations that Mrs Flint should display evidence of having worked on something at a national level, and that influenced her comments and grades in the reference. It appeared to the Tribunal that the reference to Mrs Flint not having worked on things at a national level, suggested that Mrs Flint was assessed as if she was a teacher and not a Business Manager. Secondly, we considered that Mrs Flint having brought a grievance was more likely to have been a factor as Mrs Wilson-Downes has said in her witness statement that she had found the grievance difficult, and it left her terrified of doing or saying the wrong thing. The grievance outcome criticised the Respondent for lack of communication and poor management, and this included (but was not limited to) Mrs Wilson-Downes as the line manager of Mrs Flint, whereas the protected disclosures did not directly implicate her in the same way.

863. We also found some support from Mrs Wilson-Downes' response to the question as to whether she would re-employ Mrs Flint. Mrs Wilson-Downes had replied "*N/A as Sharon has been offered your role*" which we found was a particularly odd or evasive response as the question was about re-employment generally not at that specific time. We did not think that the remark could simply be explained by Mrs Flint's performance and that other factors were at play, in this case it was the grievance which Mrs Flint had brought.

864. We therefore conclude that the protected disclosures were not a material influence on the provision of the inaccurate reference as the evidence did not justify making such a finding. We therefore dismiss this element of the claim.

865. All the complaints of detriment for having made protected disclosures are therefore dismissed.

Constructive Unfair Dismissal – s. 95(1) and s.103A Employment Rights Act 1996

866. Mr Flint and Mrs Flint have argued that the detriments they suffered were due to having made protected disclosures and that these detriments amounted to breaches of the implied duty of mutual trust and confidence entitling them to resign. Whereas we have found that Mr Flint and Mrs Flint did suffer several detriments, after a long and careful analysis, we have not found that any of them were due to having made a protected disclosure.

867. Had the Tribunal found that any of the detriments were due to Mr Flint or Mrs Flint having made a protected disclosure, we would then have gone on to consider whether those detriments amounted to a breach of the implied duty of mutual trust and confidence as has been alleged. However, in the absence of a detriment due to having made a protected disclosure, it is unnecessary for us to do so, and we cannot therefore find that Mr Flint

and Mrs Flint were constructively dismissed for having made protected disclosures and we dismiss that claim.

868. Whereas we have dismissed the Claimants complaints on the basis that they did not suffer a detriment due to having made protected disclosures, we have found that the way the Respondent implemented changes with respect to Mr Flint and Mrs Flint's work was very poorly managed. It appeared to the Tribunal that there was a lack of communication with Mr Flint and Mrs Flint about what has been described as Trust led projects, and a failure to consult with them about changes to their roles. Had these matters been addressed earlier then it is unlikely that many of the issues in these cases would have arisen, and these are considerations which the Respondent may wish to reflect on in future.

Time

869. In the end, it was not necessary to consider time limits in any detail given the findings and decisions made above. As it was, the complaints of detriment and constructive unfair dismissal failed, and therefore no further consideration is required.

870. The Tribunal is grateful to Mrs Flint and to Mr Palmer for the quality of their advocacy and submissions and their assistance to the Tribunal throughout the hearing.

Employment Judge **Graham**

Date 12 January 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON
5 February 2024

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FOR THE TRIBUNAL OFFICE