EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M Sidat	**v**	1. Ayesha Community School 2. Mr Shakil Ahmed

Heard at: Cambridge

On: 14, 17, 18, 19, 20 and 21 July 2018
and 29 & 30 August 2018 in chambers.

Before: Employment Judge Foxwell

Members: Mrs M Prettyman
Mrs L Gaywood

Appearances
For the Claimant: Ms S Garner, Counsel
For the Respondent: Ms M Peckham, Solicitor

RESERVED JUDGMENT

1. The Claimant's claim of disability discrimination is dismissed on withdrawal.

2. The Tribunal makes no order on the Claimant's claim for unpaid wages, the parties having agreed terms in respect of this claim.

3. The Claimant's claims of automatic unfair dismissal and/or of being subjected to a detriment because of a protected disclosure (whistle-blowing) are not well-founded and are dismissed.

4. The Claimant's claims of breach of contract as to notice is not well-founded and is dismissed.

5. The provisional remedy hearing listed on 18 October 2018 is cancelled.

RESERVED REASONS

The parties and claims

1. The Claimant, Mr Mohamed Sidat, is a qualified teacher. In July 2014 he became the Head Teacher of the First Respondent, The Ayesha Community School Limited. The First Respondent is a private faith school situated in Hendon, North West London; we shall refer to it as 'the School' in these Reasons.

2. The School was founded in 2006 by the Second Respondent, Mr Shakil Ahmed. The Second Respondent is the School's principal as well as being a trustee of Ayesha Community Education, which is a charity connected with, but separate from the School. We shall refer to this as 'the Charity' in these Reasons.

3. The Claimant was summarily dismissed on 24 May 2016 for alleged gross misconduct and his dismissal was confirmed after an appeal. Having gone through early conciliation between 11 August 2016 and 11 September 2016, the Claimant presented complaints to the Tribunal of automatic unfair dismissal for making a public interest disclosure ("whistle-blowing"), being subjected to detriments for the same reason, breach of contract as to notice, unlawful deduction from wages, and disability discrimination on 10 October 2016.

4. The complaint of disability discrimination was withdrawn by the Claimant on 5 February 2018 and we have formally dismissed it on withdrawal in our Judgment. The claim for unpaid wages has also been resolved by agreement between the parties and we have therefore made no order in respect of it.

5. The Claimant's claims were made against both Respondents but, as a matter of law, those of unfair dismissal and breach of contract can only be brought against his employer, the School. Additionally, the Claimant did not have sufficient service to claim ordinary unfair dismissal at the date when his employment ended. Accordingly, this aspect of his claim is contingent upon him having made protected disclosures.

The issues

6. Various attempts had been made to distil the issues in the claim into a single document prior to the hearing before us but at the Employment Judge's request, made in a telephone hearing on the first day of the trial (which was a reading day), the parties prepared a single list of the factual and legal issues arising in the claim in the following terms (the 'PD' numbers relate to earlier iterations of the list of issues and are recorded simply to allow cross-referencing with these previous versions). This list of issues was available on the second day of the hearing (the first when the parties were present) and was used as the definitive list throughout the hearing.

Disclosures Relating to Breaches of Legal Obligations by Staff

1. *Did the Claimant report Ms SG* [a teacher] *to the Second Respondent for misconduct, including safeguarding and disciplinary matters including her verbally abusing pupils by shouting, screaming, and throwing items at pupils, on or about 13 November 2014, and bring this to the attention of the Respondent (PD1)?*

   a) An initial meeting where the Claimant informed Ms G of the allegations was held on 13/11/14 attended by Ms O (p.177) and see ps188-189.

   b) It is accepted by the Respondent that this statement was made.

   c) The Respondent accepts that this was a protected disclosure.

2. *Did the Claimant inform the Second Respondent that mobile phones were being used by teachers and/or TAs in the classrooms and playgrounds, orally, at staff meetings and at one to one meetings, in around June and July 2015 (PD2)?*

   a) Was the information capable of amounting to a protected disclosure with reference to the staff's contracts of employment; Teaching Standards 2012 and the ACS Safeguarding Policy 2014?

   b) Did the information disclosed amount to a protected disclosure?

      i did the Claimant believe was there a failure to comply with a legal obligation to which the staff members involved were subject?

      ii did the Claimant believe that the disclosure was made in the public interest?

3. *Did the Claimant inform the Governors that he had concerns about Ms Hf and Ms Hd taking pupils to events in their private vehicles in around July 2015 (PD 5)?*

   a) Was the information capable of amounting to a protected disclosure with reference to the staff's contracts of employment; Teaching Standards 2012 and the ACS Safeguarding Policy 2014?

   b) Did the information disclosed amount to a protected disclosure?

      i did the Claimant believe was there a failure to comply with a legal obligation to which the staff members involved were?

      ii did the Claimant believe that the disclosure was made in the public interest?

4. *Did the Claimant inform the Respondents that he had concerns about teaching staff not supervising children at break times in a grievance he made in July 2015 during a grievance hearing (p.326-329), at one to*

one meetings with the Second Respondent and in staff meetings (and as evidenced by WhatsApp messages p.978-980 WAB 18/11/15 - 11/02/16) (PD 8)?

a) The Respondent accepts that the statements were made but alleges it is not clear who brought it up.

b) Was the information capable of amounting to a protected disclosure with reference to the staff's contracts of employment; Teaching Standards 2012?

c) Did the information disclosed amount to a protected disclosure?
i did the Claimant believe was there a failure to comply with a legal obligation to which the staff members involved was subject?

ii did the Claimant believe that the disclosure was made in the public interest?

5. *Did the Claimant raise concerns with the Second Respondent about SS* [a teacher] *being repeatedly late (and leaving classes of children unattended), on a number of occasions including at the grievance meeting on 7 July 2015 (point 8, p.328); prior to a staff meeting on 2/10/14 (p.148; 149; 150); at a staff meeting 26/01/15 (p.203); following a complaint being made about SS (p. 330; and on WhatsApp (19/11/15, p.921-922 WAB) (PD9)?*

a) The Respondents accept that the statements were made.

b) Was the information capable of amounting to a protected disclosure with reference to the staff's contracts of employment; Teaching Standards 2012?

c) Did the information disclosed amount to a protected disclosure?

i did the Claimant believe was there a failure to comply with a legal obligation to which the staff members involved were subject?

ii did the Claimant believe that the disclosure was made in the public interest?

6. *Did the Claimant raise concerns with the Second Respondent about SS assisting children to cheat in exams at weekly meetings, as evidenced p.450) (PD10)?*

a) Was the information capable of amounting to a protected disclosure with reference to the staff's contracts of employment; Teaching Standards 2012 and the ACS Safeguarding Policy 2014?

b) Did the information disclosed amount to a protected disclosure?

i did the Claimant believe was there a failure to comply with a legal obligation to which the staff members involved were subject?

ii did the Claimant believe that the disclosure was made in the public interest?

7. *Did the Claimant raise concerns with the Respondents about other staff repeatedly being late to lessons or not attending lessons, at the grievance hearing on 7 July 2015 (p. 328); at or before staff meetings (p.148-150) at a staff meeting 3/11/14 (p.172); at a staff meeting 26/01/15 (p.203); evidenced in WhatsApp messages (p.978-980 EAB) (PD11)?*

   a) Was the information capable of amounting to a protected disclosure with reference to the staff's contracts of employment; Teaching Standards 2012 and the ACS Safeguarding Policy 2014?

   b) Did the information disclosed amount to a protected disclosure?

      i did the Claimant believe was there a failure to comply with a legal obligation to which the staff members involved were subject?

      ii did the Claimant believe that the disclosure was made in the public interest?

8. *Did the Claimant raise concerns about staff taking pictures of pupils without ... (sic)* [written consent] *and circulating them (including on WhatsApp) with the Second Respondent at one to one meetings on various occasions in 2015? (PD19)?*

   a) Was the information capable of amounting to a protected disclosure with reference to the staff's contracts of employment; Teaching Standards 2012 and the ACS Safeguarding Policy 2014?

   b) Did the information disclosed amount to a protected disclosure?

      i did the Claimant believe was there a failure to comply with a legal obligation to which the staff members involved were subject?

      ii did the Claimant believe that the disclosure was made in the public interest?

Allegations Regarding the Second Respondent in a Personal Capacity

9. *Did the Claimant raise concerns with the Respondents and the Deputy Head that the 2R had verbally abused a pupil by calling him "stupid" on around 10/12/14 (p.178) (PD2)?*

   a) Was the information capable of amounting to a protected disclosure with reference to the ACS Safeguarding Policy 2014 and the

Statutory Guidance for Schools and Colleges 'Keeping Children Safe in Education' 2014?

b) Did the information disclosed amount to a protected disclosure?

i did the Claimant believe was there a failure to comply with a legal obligation to which the Second Respondent was subject?

ii did the Claimant believe that the disclosure was made in the public interest?

10. Did the Claimant raise concerns with the Second Respondent that he had taken pictures of pupils on his mobile phone, without there being any written consent to such photographs being taken, in one to one meetings with during 2015 (PD4)?

a) Was the information capable of amounting to a protected disclosure with reference to the ACS Safeguarding Policy 2014 and the Statutory Guidance for Schools and Colleges 'Keeping Children Safe in Education' 2014 and 2015?

b) Did the information disclosed amount to a protected disclosure?

i did the Claimant believe was there a failure to comply with a legal obligation to which the Second Respondent was subject?

ii did the Claimant believe that the disclosure was made in the public interest?

Allegations Regarding Both Respondents Relating to a Breach of Legal Obligation or Endangerment of Health and Safety

11. Did the Claimant raise concerns with the Second Respondent that teachers were coming late after prayers, causing children to be left unsupervised; and that TAs who were not qualified to do so were looking after classes of children, during staff meetings around or after 8 November 2015 at one to one meetings (evidence WhatsApp (p.1044 WAB)) (PD12)?

a) Was the information capable of amounting to a protected disclosure with reference to the Statutory Guidance for Schools and Colleges 'Keeping Children Safe in Education' 2014 and 2015, and the Education (Independent School Standards) Regulations 2010 and 2014?

b) Did the information disclosed amount to a protected disclosure?

i did the Claimant believe was there a failure to comply with a legal obligation to which the Respondents were subject?

ii did the Claimant believe that the disclosure was made in the public interest?

12. *Did the Claimant raise concerns with the Second Respondent that the pupils were climbing over benches in the playground and were in areas that were not visible by playground supervisors (see para.* [4] *above regarding lack of playground supervision), specifically in one to one meetings with the Second Respondent, before staff meetings (p.150; 184); (PD13)?*

    a) Was the information capable of amounting to a protected disclosure with reference to the the Statutory Guidance for Schools and Colleges 'Keeping Children Safe in Education' 2014 and 2015, and the Education (Independent School Standards) Regulations 2010 and 2014?

    b) Did the information disclosed amount to a protected disclosure?

        i did the Claimant believe was there a failure to comply with a legal obligation to which the Respondents were subject?

        ii did the Claimant believe that the disclosure was made in the public interest?

13. *The Respondents accept that the Claimant informed the Governors that he had concerns about there being sufficient teachers qualified in safeguarding in a grievance he brought in July 2015? (p.326-329) (para. 5 of Particular of Claim, PD15)?*

    a) Was the information capable of amounting to a protected disclosure with reference to paras 29-32 of Keeping Children Safe in Education (KCSIE) 2014 (p.61-62 Regulations Bundle) and paras 34-37 KCSIE 2015(p.110 Regulations Bundle)?

    b) Did the information disclosed amount to a protected disclosure?

        i did the Claimant believe was there a failure to comply with a legal obligation to which the Respondents were subject?

        ii did the Claimant believe that the disclosure was made in the public interest?

14. *Did the Claimant inform the Second Respondent that he had concerns about the Second Respondent's wife (a TA) covering nursery classes, including whether she had a current DBS check, during 2015 when there were staff shortages (PD17)?*

    a) Was the information capable of amounting to a protected disclosure with reference to Keeping Children Safe in Education (KCSIE) 2014 and KCSIE 2015?

b) Did the information disclosed amount to a protected disclosure?
i did the Claimant believe was there a failure to comply with a legal obligation to which the Respondents were subject?

ii did the Claimant believe that the disclosure was made in the public interest?

15. Did the Claimant inform the Respondents that he had concerns about the lack of safeguarding officers – see para. [13] *above) and that the staff were not covering safeguarding rules, and these matters were raised at staff meetings on 2/10/14 at p.149; 3/11/14 at p.172-173; in the grievance hearing on 7 July 2015 (p.328) and via WhatsApp e.g. 30/08/15 (p.899 WAB) and 2/12/15 (p.925 WAB) (PD18)?*

a) Was the information capable of amounting to a protected disclosure with reference to Keeping Children Safe in Education (KCSIE) 2014 and KCSIE 2015 and the Education (Independent School Standards) Regulations 2010 and 2014?

b) Did the information disclosed amount to a protected disclosure?

i did the Claimant believe was there a failure to comply with a legal obligation to which the Respondents were subject?

ii did the Claimant believe that the disclosure was made in the public interest?

16. Did the Claimant inform the Second Respondent during the course of his employment that on three occasions pupils had run away from the School (and were able to do so because of poor security/supervision), in particular:

i a year two pupil ran home after school because he did not want to attend the post score mosque and his parents raised a complaint, which was raised by the Claimant at the of July 2015 at a one to one meeting in the Second Respondent's office;

ii a pupil ran through the main gate across the road as he saw his father and nearly had an accident, which was raised by the Claimant in May 2016 at a one to one meeting with Second Respondent in the Second Respondent's office;

iii and in relation to a Somali pupil, ran by pushing a teacher, Miss RC, onto the main gate because he believed she had been unfair to him; the pupil's parents also complained at a meeting at which the primary deputy head teacher was present along with the Second Respondent;

iv This is supported by the evidence on the issues raised in para. [4 & 12] *above about the poor supervision in the playground and poor safety on 2/12/15 (p924 WAB) (PD20)?*

a) Was the information capable of amounting to a protected disclosure with reference to Keeping Children Safe in Education (KCSIE) 2014 and KCSIE 2015 and the Education (Independent School Standards) Regulations 2010 and 2014?

b) Did the information disclosed amount to a protected disclosure?

i did the Claimant believe was there a failure to comply with a legal obligation to which the Respondents were subject?

ii did the Claimant believe that the disclosure was made in the public interest?

17. Did the Claimant inform the Second Respondent during the course of his employment of multiple failings relating to site safety and breach of health and safety regulations at staff meetings 2/10/14 (p.149) on 6/09/15 (p.902 WAB); 2/12/15 (p.924 WAB); 12/01/16 (p.933 WAB); including in particular the following (PD20): -

i That the radiators were too hot – Staff complained. In winter sometimes, they did not work as students were not allowed to keep coats on. The school should have been closed.

ii The hot water was sometimes too hot, and this could lead to scolding (sic) for the pupils.

iii There were loose wiring pipes. This was dangerous as pupils could be scolded (sic) or trip over them which could lead to serious injury.

iv There were slippery surfaces near the toilets and Wudhu area, where money had been raised to rectify this issue, however this had not been undertaken or authorised by SA.

v There were taps that were loose or broken in the toilets which needed to be repaired. The claimant outlined that they totally could occur and flood the area.

vi The girls' toilets did not have a handle and therefore the pupils there this in there (sic).

vii Toilets not been cleaned.

viii The lack of showers which caused issues with PE lessons. The claimant raised the issue that the lack of showers was against Ofsted criteria.

ix Rubbish being left near doors which could cause a fire hazard.

x The school gates left open, the Claimant highlighted that this was highlighted by Salim, the Ofsted inspector, and this meant that the 30 headteachers during the inspection were just able to walk in.

a) Was the information capable of amounting to a protected disclosure with reference to Keeping Children Safe in Education (KCSIE) 2014 and KCSIE 2015 and the Education (Independent School Standards) Regulations 2010 and 2014?

b) Did the information disclosed amount to a protected disclosure?

i did the Claimant believe was there a failure to comply with a legal obligation to which the Respondents were subject?

ii did the Claimant believe that the disclosure was made in the public interest?

18. If the Claimant is found to have made any of the above disclosures, and that those disclosures amounted to protected disclosures, was the Claimant dismissed by reason of the/those disclosures or was there another reason to dismiss (s.103A)? In particular, considering the case of Royal Mail Ltd v Jhuti [2018] IRLR 251, who was the decision maker and what caused them to dismiss? their reason for dismissing the Claimant?

19. If the Claimant is found to have made any of the above disclosures, and that those disclosures amounted to protected disclosures, did the Claimant suffer any or all of the following detriments on the ground that he had made the protected disclosure, i.e. whether the disclosure(s) materially caused or influenced the employer to act as he did?

The detriments

20. The detriments were: -

a) The First and Second Respondent gave him a negative reference;

b) The First and Second Respondent failed to increase his salary as agreed and/or provide the discretionary bonus indicated at the outset of the Claimant's tenure;

c) The First and Second Respondent instigated malicious disciplinary proceedings against the Claimant;

d) The First and Second Respondent failed to conduct a fair investigation into the disciplinary proceedings against him;

e) The First and Second Respondents' refusal to allow the Claimant to collect and/or deliver his belongings post dismissal;

f) The First and Second Respondent maliciously referred him to the Disclosure and Barring Service (DBS) and the National College for Teaching and Leadership (NCTL) calling in question his fitness as a qualified teacher.

21. Further the allegations of detriment are made against the First and Second Respondent jointly and severally, with detriment (c) and (d) above leading to the detriment of dismissal.

Monetary Claims

22. Was the Claimant subjected to an unlawful deduction from wages? The unlawful deduction in question being quantified at the Case Management Hearing as £666.66 deduction from the Claimant's final pay.

23. Was the Claimant subjected to a breach of contract in respect of non-payment of notice pay?

7. During the hearing, Ms Garner withdrew the allegations in paragraphs 3, 6, 9, 10, 11, 12 and 14 of the above list as protected disclosures. We have not had to make a ruling on these therefore but have noted that the factual allegations at paragraphs 9 and 12 are still relied on as relevant background material. Accordingly, we have had to decide whether the disclosures particularised at paragraphs 1, 2, 4, 5, 7, 8, 13, 15, 16 and 17 of the list are protected disclosures within the scheme in part IVA of the Employment Rights Act 1996.

8. Ms Garner also withdrew the detriment alleged at paragraph 20(f) of the list of issues.

9. We have reached conclusions on the remaining issues and these are set out below.

The hearing

10. The final hearing of these claims was originally listed for six days in Watford, between 20 and 27 November 2017. This hearing was postponed on the joint application of the parties and was relisted for nine days in Cambridge, commencing on 9 July 2018. Due to a lack of judicial resources, the Tribunal could not sit on those days in Cambridge but offered the alternative of a hearing in Norwich. The parties elected to have a shorter hearing in Cambridge. Accordingly, this hearing started at the Cambridge Hearing Centre on Friday 13 July 2018 (which was a reading day) and then continued through the week of 16 to 20 July 2018.

11. The Employment Judge asked the advocates to agree a timetable to ensure that evidence and submissions relating to liability were completed in this

period, which they did. The Tribunal is grateful to them for sticking to the spirit of this timetable. It was agreed at the outset of the Hearing that the Tribunal would deal with the issue of liability only at this stage.

12. The Claimant gave evidence in support of his claim and called one witness, Ms Maymunah Sanni. He relied on witness statements from two other witnesses, Ms Shufiq Hussain and Mrs Henieh Suleman. Ms Sanni worked as a PE and English teacher at the School between October 2013 and August 2016. Ms Hussain was Head of English and Book Strategy at the School between October 2013 and July 2016. Mrs Suleman was an Arabic and Islamic Studies teacher at the School between April 2016 and December 2016.

13. We were told that Ms Hussain was unable to attend the final hearing because she now worked at a school about to have an Ofsted inspection. We were also told that Mrs Suleman felt unable to travel to the hearing without her husband who was unavailable for this purpose. While we accept these explanations, the weight that we can attach to their evidence, which was untested by cross-examination, is less.

14. The Second Respondent gave evidence on his own behalf and for the School. The Respondents called the following further witnesses:

Alim Uddin Shaikh: Mr Shaikh is a consultant in education and community work. He is a qualified ICT teacher and has previously been a Head Teacher. He now works as a consultant to the School. Mr Shaikh chaired the disciplinary hearing following which the Claimant was summarily dismissed.

Michelle Messaoudi: Mrs Messaoudi is an education consultant with 40 years' experience and has worked as an Ofsted inspector. Since 2013 she has provided consultancy services to the School from time to time. Her first contact was in 2011 as an Ofsted inspector. She has carried out mock Ofsted inspections at the School's request in 2013 and 2015.

Raheed Salaam: Mr Salaam is the director of a charity. He was a governor of the School in 2016 and dealt with the Claimant's appeal against dismissal in this capacity.

15. In addition to the evidence of these witnesses, the Tribunal considered the documents to which it was taken in three agreed bundles. These were the main trial bundle, a bundle of 'WhatsApp' messages, and a bundle containing statutory regulations and guidance. Page numbers in these reasons refer to the main bundle unless prefixed by the letters 'WAB' for the WhatsApp bundle, or 'RAG' for the regulations and guidance bundle.

16. Finally, we received written and oral submissions from both representatives. Each had prepared an opening note which we also read.

The legal framework

Protected disclosures

17. Disclosures which might qualify as *'protected disclosures'* are defined in section 43B(1) of the Employment Rights Act 1996 as follows:

> ***43B Disclosures qualifying for protection***
>
> *(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
>
> *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*
>
> *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*
>
> *(e) that the environment has been, is being or is likely to be damaged, or*
>
> *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.*

18. The Claimant contends that his disclosures fall within section 43B(1)(b) and/or (d) as he reasonably believed that they tended to show a breach of legal obligation or that the health and safety of individuals was likely to be endangered.

19. A legal obligation is something binding in law and is more than a guideline or moral obligation. The EAT gave guidance on the findings a Tribunal should make when considering such claims in *Blackbay Ventures Ltd v Gahir [2014] 747* where HHJ Serota QC said (paragraph 98):

> *"Save in obvious cases, if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the employment tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a checklist of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the employment tribunal undertake this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered."*

20. Qualifying disclosures can only be made to certain classes of person; these include a person's employer (section 43C ERA 1996). In this case the Claimant's disclosures, if made, were to his employer.

21. The word *'disclosure'* must be given its ordinary meaning which involves the disclosure of information, that is conveying facts; as a result, the mere making of allegations by a claimant will not be a *'disclosure'* for these purposes (see *Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38*); similarly, merely expressing an adverse opinion of what the employer is proposing to do does not qualify (*see Smith v London Metropolitan University [2011] IRLR 884*). That said, asserting that there has been an omission can be *'information'* for these purposes (*Millbank Financial Services Ltd v Crawford [2014] IRLR 18*) and care must be taken not to draw false distinctions between allegations and information when often a disclosure may be both (*Kilraine v London Borough of Wandsworth [2016] EAT 260*).

22. Where a disclosure is made to an employer it does not need to be true to qualify for protection but the employee must reasonably believe it to be true (*Darnton v University of Surrey* [2003] IRLR 133 and *Babula v Waltham Forest College* [2007] IRLR 346). The test of reasonable belief must take account of what a person with that employee's understanding and experience might reasonably believe (*Korashi v Abertaw Bro Morgannwg University Local Health Board [2012] IRLR 4*). Reasonableness depends not only on what is said in the disclosure but the basis for it and the circumstances in which it was made.

23. Essential components of a protected disclosure are that the Claimant believes that it was made in the public interest and that this belief is reasonable. This was considered by the Court of Appeal in *Chesterton Global Limited v Nurmohamed [2017] EWCA Civ 979* where it held that, provided the subjective belief is found to have been present, the objective test of reasonableness did not have to be judged purely in the context of the claimant's reasons at the time of a disclosure (which could have been unreasonable) but could also be decided by reference to matters thought of afterwards; the only requirements of the statute were that a person subjectively believed that a disclosure was in the public interest and that this was objectively reasonable (see paragraphs 26 to 29 of the judgment).

24. "The public" may be a narrow class of individuals but the interest must be more than the employee's alone (see *Chesterton supra*).

Detriment

25. It is unlawful to subject an employee or worker to a detriment on the ground that he has made a protected disclosure (sections 47B and 48 of the Employment Rights Act 1996). The term *'detriment'* is not defined in the 1996 Act but it is a concept that is familiar throughout discrimination law and is to be construed in a consistent fashion in whistle-blowing claims. A detriment will be established if a reasonable worker would or might take the view that the treatment accorded to them had in all the circumstances been to their detriment. it is not necessary for the worker to show that there was some physical or economic consequence flowing from the matters complained of in order to

establish a detriment (see *Shamoon v Chief Constable of the Royal Ulster Constabulary (Northern Ireland) [2003] IRLR 285*).

26. An employee or worker need only establish that he has made a qualifying disclosure and that he has been subjected to a detriment (see section 48(2) of the 1996 Act); if he does so it is then for the respondents to establish on the balance of probabilities the reason for the detriment and to show that the treatment was not on the ground of the protected act (*Fecitt v NHS Manchester [2011] IRLR 111*). An employer will succeed in this if the evidence shows that the protected act was not a material factor in the application of the detriment. At this stage such a claim will turn, therefore, on the Tribunal's determination of the subjective intention of the Respondents.

27. Under section 47B of the Employment Rights Act 1996 an employer is vicariously liable for detriments imposed on a claimant by a worker engaged by it or an agent acting with its authority. The worker or agent also has personal liability for the unlawful act.

28. While a dismissal cannot be a detriment by virtue of section 47B(2) of the Employment Rights Act, if dismissal is a foreseeable consequence of an unlawful detriment the losses flowing from dismissal may flow from it and therefore be recoverable (see *Royal Mail Ltd v Jhuti [2018] IRLR 251*).

Automatic unfair dismissal

29. It is automatically unfair to dismiss an employee for making a protected disclosure (section 103A Employment Rights Act 1996). Unlike a claim of ordinary unfair dismissal where there is a requirement for an employee to have 2 full years' service, there is no qualifying period for claims of automatic unfair dismissal on this ground.

30. This type of claim can only be brought against an employer.

31. If an employee claims that there was an automatically unfair reason for dismissal, such as making a protected disclosure, he must produce some evidence supporting this positive case. Where the employee has sufficient service to claim ordinary unfair dismissal that does not mean that he has to discharge the burden of proving that the dismissal was for this reason. In that case it is sufficient for the employee to challenge the evidence produced by the employer to show its reason for dismissal; it remains for the employer to establish the reason. Where, as in this case, a claimant does not have sufficient qualifying service to claim ordinary unfair dismissal he must establish the jurisdiction of the Tribunal and therefore show the reason for dismissal (*Kuzel v Roche Products Ltd [2008] IRLR 530*). Nevertheless, we have borne in mind that the relevant evidence is largely in the Respondents' possession and have therefore considered the reasonable inferences which may be drawn from the primary facts; we have looked at the evidence as a whole in order to make a primary finding of fact on the reason(s) for dismissal.

32. The focus of the Tribunal's enquiry in claims of automatic unfair dismissal is the principal reason for dismissal; this requires consideration of what facts and

beliefs caused the decision-maker to decide to dismiss (*Beatt v Croydon Health Services NHS Trust [2017] IRLR 748*). The reasonableness of the decision to dismiss is irrelevant as is the unfairness of any investigation or procedure adopted in dismissing the employee if the principal reason for the dismissal is not the proscribed one, although such factors may lead a Tribunal to draw inferences as to the reason for dismissal.

33. In *Royal Mail Ltd v Jhuti supra* the Court of Appeal considered what has been termed 'manipulation' cases under section 103A of the 1996 Act where the employee has insufficient service to claim ordinary unfair dismissal. A manipulation case is one where the decision-maker may believe he or she has reached an independent decision but in fact the information upon which the decision was based has been contrived or filtered in such a way as to enable another, the "*Iago* character", to procure the employee's dismissal. Underhill LJ, giving the judgment of the Court, confirmed that, while a Tribunal is looking at the decision-maker's reason, it would be open to it to conclude that, say, a senior manager or one with responsibility for an investigation had arranged things in such a way that, in truth, it is his or her decision to dismiss. If in these circumstances the manipulator's reason for acting in this way is a protected disclosure then the claim of automatic unfair dismissal will be established.

Breach of contract

34. The Claimant's claim of breach of contract arises from his summary dismissal without receiving notice or notice pay. An employer may only dismiss without notice where it is entitled to do so because of the employee's repudiatory breach of contract. An act of gross misconduct will in most circumstances be such a breach.

35. The question whether a breach of contract has occurred must be judged by the Tribunal objectively (*Buckland v Bournemouth University Higher Education Corporation [2010] ICR 908*); this requires the Tribunal to assess whether a breach of contract has occurred on the evidence before it. Neither the fact that an employer reasonably believes there to have been a breach, nor that the employee believes he acted reasonably in the circumstances is determinative of this: the test is not one of 'reasonableness' but simply whether a breach of contract has occurred.

Jurisdiction

36. It is conceded by the Respondents that the claims have been presented in time and we find this concession to be correct.

The scope of our findings

37. The Tribunal heard a substantial amount of evidence over 4 days. Issues were tested and explored by the parties through their questions. We have not attempted to set out our conclusions on every question or controversy raised in the evidence, but we have considered all of the evidence in reaching the conclusions set out below. The findings we have recorded are limited to those

we consider necessary to deal with each of the issues raised by the parties. We have made our findings unanimously (save in two limited respects recorded below and which did not affect the outcome) and on the balance of probabilities.

38. We have borne in mind that whistleblowers may often be perceived as difficult, pedantic or obstructive by those they challenge at work and reminded ourselves that the law affords a high degree of protection to them precisely because of this risk.

Findings of fact

The claimant's appointment and his terms and conditions

39. The School is a faith school serving the Muslim community in North London. It was established in 2006 as a girl's school with a small number of pupils. In 2009 it moved to larger premises with an increased number of pupils, including boys. The School operates a nursery, a primary school and a Secondary school. There was a sixth form which closed at the end of the academic year in 2014. The number of pupils has fluctuated over the years, but the Second Respondent told us that there are approximately 250 pupils and 50 members of staff (equivalent to 35 full-time staff).

40. An Ofsted inspection in June 2013 rated the overall effectiveness of the School as 'adequate'. The School's rating was 'adequate' or 'good' in all the assessment areas (page 125). The School was rated as 'good' in the area of pupil welfare, health and safety.

41. The School teaches the National Curriculum and pupils sit SATs and GCSEs. It is nevertheless a private fee-paying school, although fees are relatively modest as these things go (£3,240 per annum in 2013). The School is not a registered charity but Ayesha Community Education ('the Charity') is associated with it and is responsible for providing an Early Years Foundation stage for which it receives separate funding in the region of £60,000 per annum.

42. The Claimant's predecessor as head teacher resigned in 2014 leaving at the end of that academic year. The Claimant was appointed to replace her and took up his post on 1 July 2014 so that there was a short period of handover.

43. The Claimant's terms and conditions are set out in an offer letter dated, 20 February 2014 (page 127). His starting salary was £40,000 per annum plus a discretionary bonus of £5,000 which was contingent upon him achieving agreed targets. These were referred to as Key Performance Indicators, or 'KPIs'. It was also a term of the Claimant's contract that he should comply with teacher standards, (page 128).

44. The Claimant's duties were set out in a job description which showed him as reporting to the Principal and Board of Trustees (pages 134–137). The broad categories of tasks identified in the job description were "strategic direction and development of the school", "to lead and manage teaching and learning", "to lead and manage staff", "the effective and efficient deployment of staff and resources", "maintaining accountability, safeguarding children and ensuring safe recruitment".

There were also other duties relating to the wider community and professional development.

45. Although there is a reference to managing finances in the Claimant's job description, he and the Second Respondent agree that the Second Respondent retained control of this aspect of the School's affairs.

46. The Claimant asked to be paid as a consultant through a management company rather than as an employee. The Second Respondent agreed to this in principle but the arrangement was not in fact put in place. The Respondents concede that the correct position is that the Claimant was an employee of the School. We agree that this concession is correctly made.

Our approach to further fact-finding

47. The Claimant's allegations of unlawful treatment during and after his employment by the School are wide-ranging and based on a large number of alleged protected disclosures (even after the withdrawal of some). We have therefore approached matters by looking firstly at and reaching conclusions on the alleged protected disclosures. We have then gone on to consider the detriments alleged, whether they occurred and the reasons for them. We have also considered the reason for dismissal. Finally, we have considered whether, judged objectively, the School was entitled to dismiss the Claimant summarily for gross misconduct, in other words because of such conduct being a repudiatory breach of contract.

The alleged protected disclosures

1. Did the Claimant report Ms SG [a teacher] *to the Second Respondent for misconduct, including safeguarding and disciplinary matters including her verbally abusing pupils by shouting, screaming, and throwing items at pupils, on or about 13 November 2014, and bring this to the attention of the Respondent?*

48. The Respondents concede that the Claimant reported SG to the Second Respondent in November 2014, for alleged misconduct amounting to a potential safeguarding issue. The allegation was that she had verbally abused and shouted at pupils as well as throwing things at them. The Respondents concede that this was a protected disclosure and we accept that this concession is correctly made. The Second Respondent reported the allegations against SG to the Local Authority Designated Officer, or "LADO", on 27 November 2014 (page 297(i)) as he was required to do under safeguarding procedures and she advised that the matter be referred to the Disclosure and Barring Service ("DBS"). That referral was not made until January 2016 and the Second Respondent accepted in evidence that he had overlooked this until reminded of it by the Claimant (pages 297a–h).

2. Did the Claimant inform the Second Respondent that mobile phones were being used by teachers and/or TAs in the classrooms and playgrounds, orally, at staff meetings and at one to one meetings, in around June and July 2015?

49. We find on the balance of probabilities that there were discussions between the Claimant and the Second Respondent concerning staff using their mobile phones at work. These took place in the early part of 2015; there is an exchange of emails at page 276 at about this time concerning changes to the staff handbook reflecting concerns about mobile phone use. It was something that the Claimant was rightly anxious about because of his role as the Designated Safety Lead ("DSL") for the School. The Claimant became the DSL in about March 2015. The evidence shows that the Second Respondent was also concerned about this (see page 276 and WAB page 1018). We find it probable that the Claimant reported infractions of the revised mobile phone rule in the months after it was introduced by way of amendment to the staff handbook. The Second Respondent accepted this in evidence too, although he could not remember specific examples.

50. The staff handbook is silent on whether it has contractual effect but paragraph 21 of the Claimant's terms and conditions of employment (page 132) shows that the handbook was intended to have contractual effect for him. We infer that this applied to other staff too under their contracts. Accordingly, we find that breach of the mobile phone policy by a member of staff would be a breach of a legal obligation to which they were subject falling within the scope of section 43B(1)(b) of the Employment Rights Act 1996. Furthermore, as the prohibition was intended to ensure that staff were fully focused on the welfare of the children they were teaching or supervising, we find that the Claimant reasonably believed that such a disclosure was in the public interest. We find, therefore, that disclosures concerning mobile phone usage in the period after March 2015, were protected disclosures. We accept the Claimant's evidence that he made such disclosures in June and/or July 2015.

4. Did the Claimant inform the Respondents that he had concerns about teaching staff not supervising children at break times in a grievance he made in July 2015 during a grievance hearing (p.326-329), at one to one meetings with the Second Respondent and in staff meetings (and as evidenced by WhatsApp messages p.978-980 WAB 18/11/15 -11/02/16)?

51. We accept the Claimant's evidence that he raised day-to-day issues about some teachers not supervising children at break times. He did this in a WhatsApp group accessible to the senior management team. This is demonstrated at pages WAB 1245-1247, but there is no evidence to show that the Second Respondent was a part of this group.

52. We do not find, on the balance of probabilities, that the Claimant raised the same issue in a grievance hearing before the School's governors. There was no reference to this in either his written grievance, the meeting minutes or the governors' outcome letter (pages 324a-329). We note that the governors upheld the Claimant's grievances in part. We should add that the governing body have been referred to in evidence as 'shadow governors' as they were in the process of being established but were not a fully-functioning governing body (there is no requirement for school governors in the independent school sector).

53. We find it probable that the Claimant raised concerns about individual teachers not carrying out their supervisory duties with the Second Respondent in

their regular one-to-one meetings. There are no records of these meetings but we do not find this surprising. Any such failure by a teacher was plainly a matter of concern to the Claimant not only because of the children's welfare but also because he was responsible for overseeing the teaching staff on a day to day basis.

54. Stepping back from this evidence, we find that such discussions were a disclosure of information showing a potential breach of regulation 15 of the Education (Independent School Standards) Regulations 2010, and/or regulation 14 of the Education (Independent School Standards) Regulations 2014. These impose an obligation on the proprietor of an independent school to ensure that staff are deployed to ensure proper supervision of pupils. This is also a matter referred to in the staff handbook (page 304).

55. We note that the allegation at paragraph 12 of the agreed list of issues above concerning children climbing on benches is no longer relied on as a protected disclosure in its own right but is given as an example of what can happen if there is inadequate supervision. We note too, that an issue recorded in minutes of a staff meeting on 2 October 2014 concerned pupils moving benches which points to some problems with supervision during break times. According to these minutes responsibility for addressing this was allocated to the Claimant (page 150).

56. In these circumstances we find that the Claimant reasonably believed these disclosures to be in the public interest as they concerned the welfare of children. Accordingly, we find that the disclosures were protected.

5. Did the Claimant raise concerns with the Second Respondent about SS [a teacher] *being repeatedly late (and leaving classes of children unattended), on a number of occasions including at the grievance meeting on 7 July 2015 (point 8, p.328); prior to a staff meeting on 2/10/14 (p.148; 149; 150); at a staff meeting 26/01/15 (p.203); following a complaint being made about SS (p. 330; and on WhatsApp (19/11/15, p.921-922 WAB)?*

57. We accept the Claimant's evidence that he raised the question of a teacher, SS, regularly arriving late to work; this is referred to in the staff meeting minutes of 2 October 2014 and in the minutes of the grievance hearing before the governors on 7 July 2015. The Claimant also raised this directly with the Second Respondent in a WhatsApp conversation on 19 November 2015 (WAB page 921).

58. There is no evidence that children were left unsupervised because of SS's lateness as teaching assistants were present. Furthermore, we accept the Second Respondent's evidence that he tolerated SS's conduct such that it was not unauthorised because he was aware that one of her children was sick and this was the reason for her lateness. We are not satisfied therefore that the Claimant's disclosures showed a breach of legal obligation by either SS, the First or Second Respondent. Accordingly, we reject the Claimant's case that this qualifies as a public interest disclosure.

7. Did the Claimant raise concerns with the Respondents about other staff repeatedly being late to lessons or not attending lessons, at the grievance hearing on 7 July 2015 (p. 328); at or before staff meetings (p.148-150) at a staff meeting 3/11/14 (p.172); at a staff meeting 26/01/15 (p.203); evidenced in WhatsApp messages (p.978-980 EAB) (PD11)?

59. We accept the Claimant's evidence that he raised concerns about staff being late to lessons in his grievance hearing before governors on 7 July 2015. This was also something raised at staff meetings on 2 October 2014, 3 November 2014 and 26 January 2015 (though we note that the Claimant was responsible for addressing these issues). The issue raised by the Claimant concerned persistent lateness to lessons. Non-attendance for break time supervision was a separate issue which we have dealt with above.

60. There is no evidence to show that children were left unsupervised because of teachers' lateness to lessons but, nevertheless, persistent lateness without cause or permission would be in breach of an individual teacher's obligations under his or her contract of employment and therefore a breach of legal obligation. Furthermore, we find that the Claimant reasonably believed that the raising of this issue promoted the welfare of the pupils and therefore was in the public interest. We are satisfied therefore that this disclosure qualifies as a protected disclosure.

8. Did the Claimant raise concerns about staff taking pictures of pupils without [written permission] *and circulating them (including on WhatsApp) with the Second Respondent at one to one meetings on various occasions in 2015?*

61. We do not find this allegation to be established on the evidence. We accept the Second Respondent's account that he did not take photographs of children using a personal mobile phone. Rather, he used the school camera or phone to take pictures, which were then checked by administrators to ensure that relevant parental consent had been obtained. We accept, of course, that the taking and publishing of unauthorised photographs of children would be a safeguarding concern, but it was clear from Mrs Messaoudi's evidence that, if permission had been obtained, the taking and use of such photographs is not prohibited. Furthermore, had the Claimant known that unauthorised photographs had been taken he would have been obliged to report it to the LADO immediately and that did not occur. Accordingly, we think it less than probable that this happened. This allegation fails on the facts.

13. The Respondents accept that the Claimant informed the Governors that he had concerns about there being sufficient teachers qualified in safeguarding in a grievance he brought in July 2015? (p.326-329) (para. 5 of Particular of Claim)?

62. This allegation relates to a requirement that schools have a Designated Safeguarding Lead; the 'DSL'. We find that this was a legal obligation contained in statutory guidance issued to schools by the Department of Education in 2014 and 2015 entitled, 'Keeping Children Safe in Education'. In our judgment this 'guidance' is sufficiently underpinned by section 175 of The Education Act 2002

and by the Education (Independent School Standards) Regulations 2014 to amount to a legal obligation.

63. We find that the Claimant raised the fact that there had been a gap in DSL coverage at the School in his grievance hearing before the governors in July 2015. The governors upheld this allegation in part and it is conceded by the Respondents in these proceedings. The background is as follows: when the Claimant joined the School the outgoing head teacher was the DSL; no one replaced her in this role when she left. Mrs Messaoudi picked this omission up when conducting a mock Ofsted inspection in February 2015, and the Claimant then stepped into the role. He received appropriate training for this. Other members of staff were then put forward for training so that when Mrs Messaoudi reviewed the position in May 2016, there were six staff members who had had the relevant training.

64. We accept Mrs Messaoudi's evidence that a school of the First Respondent's size required only one DSL. Accordingly, we find that the Claimant disclosed information to the governors that the School had been in breach of its legal obligation but in circumstances where he, and they, knew that this had, and was being addressed. In these circumstances we do not find that the Claimant reasonably believed that this disclosure was in the public interest. Accordingly, we reject the Claimant's case that this was a protected disclosure.

15. Did the Claimant inform the Respondents that he had concerns about the lack of safeguarding officers – see para. [13] *above) and that the staff were not covering safeguarding rules, and these matters were raised at staff meetings on 2/10/14 at p.149; 3/11/14 at p.172-173; in the grievance hearing on 7 July 2015 (p.328) and via WhatsApp e.g. 30/08/15 (p.899 WAB) and 2/12/15 (p.925 WAB)?*

65. The allegation that the Claimant informed the Respondents of a concern about a lack of safeguarding officers (DSL's) is dealt with above. What is left are allegations that staff were not *"covering"* safeguarding rules, which we understand to be an allegation that they were not attending relevant training.

66. The evidence that the Claimant disclosed this information to the Second Respondent is limited. Although it was suggested that this has been mentioned at staff meetings in October and November 2014, we could find no reference to this in the minutes of those meetings. The July 2015 grievance meeting before the governors concerned the gap in DSL coverage (which we have dealt with above). What is left are some brief WhatsApp comments. On 30 August 2015, the Claimant commented to the Second Respondent in a WhatsApp conversation as follows (WAB page 899):

> *"What are we going to do with staff who don't attend especially the training on safeguarding etc as staff are emailing they might not be able to attend. This will cause issues later on and to be honest unacceptable as they has two months to sort this out [sic]."*

67. The Second Respondent did not reply to this point in their on-line conversation. We note that it was made before the beginning of the school term.

We do not know whether members of staff in fact failed to attend relevant training which is likely to have been in term-time rather than the long summer holiday.

68. On 2 December 2015, the Claimant complained in a WhatsApp conversation as follows (WAB page 925):

> *"This madrasah and safeguarding is a big issue and staff are not complying. It seems no one cares. Students are leaving early and no one stops them [sic]."*

69. Once again, the Second Respondent did not reply to this point in his on-line conversation with the Claimant, but we note that he had already said earlier that he had to leave so this omission is not consistent with him deliberately ignoring the point.

70. There is a further reference to a teacher not attending safeguarding training in a conversation on 6 January 2016 (WAB page 932) and the Claimant describes this as *"a common trend"* but the context of this comment suggests that the trend relates to the individual teacher's behaviour rather than the behaviour of a group of teachers.

71. Against this background, we do not find that there is evidence of a disclosure of information by the Claimant tending to show that staff in general were failing to attend safeguarding training. The fact that there may have been individuals who did not do so is unsurprising in a large organisation like a school. We note also that in the case of the teacher referred to in the January 2016 conversation, she had been off work sick. For these reasons, this claim fails on the facts. That is not to say that the Claimant as head teacher, and the Second Respondent as proprietor, did not discuss issues such as non-attendance at training of all types from time to time; we consider that this is part and parcel of the day-to-day management of the School.

16. Did the Claimant inform the Second Respondent during the course of his employment that on three occasions pupils had run away from the School (and were able to do so because of poor security/supervision), in particular:

i a year two pupil ran home after school because he did not want to attend the post score (sic) [school] *mosque and his parents raised a complaint, which was raised by the Claimant at the of July 2015 at a one to one meeting in the Second Respondent's office;*

ii a pupil ran through the main gate across the road as he saw his father and nearly had an accident, which was raised by the Claimant in May 2016 at a one to one meeting with Second Respondent in the Second Respondent's office;

iii and in relation to a Somali pupil, ran by pushing a teacher, Miss RC, onto the main gate because he believed she had been unfair to him; the pupil's parents also complained at a meeting at which the

primary deputy head teacher was present along with the Second Respondent;

iv This is supported by the evidence on the issues raised in para. [4 & 12] *above about the poor supervision in the playground and poor safety on 2/12/15 (p924 WAB)?*

72. It is common ground that the Claimant reported the first and second of these incidents to the Second Respondent. The Claimant's evidence was that the first incident occurred in July 2015, the second in May 2016 and the third in March 2015. The Claimant has provided no evidence, apart from a date given in cross-examination, to support the third allegation; it is not referred to in his witness statement or original Grounds of Claim and it is simply mentioned but not elaborated on in the various iterations of the list of issues. Accordingly, we do not find that the Claimant has discharged the burden of proof in respect of this aspect of his allegations and it therefore fails on the facts.

73. The first and second allegations occurred at going-home time when children are given over to the care of parents or guardians. Mrs Messaoudi made the point that responsibility for children passes to parents at the end of the school day, though she added that teachers retain a moral responsibility until a child is physically handed over. We do not agree with this aspect of Mrs Messaoudi's evidence. We find that the School retained a legal as well as a moral obligation to supervise and ensure the safety of pupils until handed over into the custody of their parents or guardians. This obligation arises under common law which imposes a duty of care in such circumstances. It also arises under the 2014 Regulations.

74. We find that the Claimant's disclosures were disclosures of information in the public interest as they related to the safety of children at going-home time. Having said that, we note that as head teacher it was the Claimant's responsibility to ensure the effective and efficient deployment of staff and, given this, it is understandable why he reported these lapses to his employer.

75. We accept the Second Respondent's evidence that steps were taken to tighten supervision of children following the incident in July 2015, in particular by requiring parents not to distract teachers by asking questions of them at going-home time. Accordingly, we find that the Claimant made public interest disclosures in respect of the first two factual allegations under this head, these disclosures related to a breach of legal obligation and endangerment of health and safety. We find, therefore, that they were protected disclosures.

17. Did the Claimant inform the Second Respondent during the course of his employment of multiple failings relating to site safety and breach of health and safety regulations at staff meetings 2/10/14 (p.149) on 6/09/15 (p.902 WAB); 2/12/15 (p.924 WAB); 12/01/16 (p.933 WAB); including in particular the following (PD20): -

i That the radiators were too hot – Staff complained. In winter sometimes, they did not work as students were not allowed to keep coats on. The school should have been closed.

ii The hot water was sometimes too hot, and this could lead to scolding (sic) for the pupils.

iii There were loose wiring pipes. This was dangerous as pupils could be scolded (sic) or trip over them which could lead to serious injury.

iv There were slippery surfaces near the toilets and Wudhu area, where money had been raised to rectify this issue, however this had not been undertaken or authorised by SA.

v There were taps that were loose or broken in the toilets which needed to be repaired. The claimant outlined that they totally could occur and flood the area.

vi The girls' toilets did not have a handle and therefore the pupils there this in there (sic).

vii Toilets not been cleaned.

viii The lack of showers which caused issues with PE lessons. The claimant raised the issue that the lack of showers was against Ofsted criteria.

ix Rubbish being left near doors which could cause a fire hazard.

x The school gates left open, the Claimant highlighted that this was highlighted by Salim, the Ofsted inspector, and this meant that the 30 headteachers during the inspection were just able to walk in.

76. Ten separate issues, all said to relate to breach of legal obligation and/or endangerment to the health and safety of an individual, are raised under this allegation. We shall consider each in turn adopting the same order as in which they have been raised:

76.1 *Radiators* The Claimant has not provided evidence to support this allegation apart from a broad assertion that he raised it at weekly meetings with the Second Respondent. If the Claimant thought that the state of the heating system placed the School in breach of legal obligation, or endangered the health and safety of pupils we would have expected to see some documentary evidence of him raising this contemporaneously. It is notable that this allegation is not dealt with in any detail in the Claimant's witness statement either. We do not find that he has discharged the burden of proof in respect of it.

76.2 *Hot water* For the same reasons as given in respect of issue radiators, we do not find that the Claimant has discharged the burden of proof in respect of this allegation.

76.3 *Loose wiring* We accept the Claimant's evidence that he raised an issue about an electrical wire hanging loosely between two buildings. He alleged that this was an area where children played ball games. His evidence to us was different to the pleaded allegations where it was said that there were, *"loose wiring pipes which were dangerous as pupils could be scalded or tripped up…"*, (page 69). We were shown a photograph of the wire trailing at about roof height between two single-storey, temporary buildings, which we understand to be to one side of the playground. The photograph simply does not support the Claimant's pleaded case. There was no risk of children scalding themselves or tripping on this wire, which was well above head height. The reality is that the wire was a maintenance issue, and it is noteworthy that it was referred to by him in a list of similar building-related maintenance issues (WAB page 924). Against that background, the Claimant's pleaded claim fails on the facts. Nor do we find that he reasonably believed that this was an area where the pupils were generally at risk. Accordingly, his claim based on his oral evidence to us also fails on the facts.

76.4 *Slippery surfaces* The Claimant's evidence is not consistent with this allegation. His reference to WAB page 1015 in support concerns pupils blocking sinks and flooding the toilets and Wudhu areas and is nothing to do with a lack of maintenance or alleged misapplication of funds for this purpose. We noted that the Claimant refers to the outside steps of the toilets in the secondary school being slippery in the list of maintenance items he shared with the Second Respondent on 2 December 2015, (WAB page 924) but this was wholly unparticularised there or elsewhere. So, once again, we find that the Claimant has failed to discharge the burden of proof insofar as he relies on this as a protected disclosure.

76.5 *Broken taps* We accept the Claimant's evidence that he raised the issue of broken taps with the Second Respondent; this is referred to in the staff meeting minutes of October and November 2014. There is also reference to a loose tap in a WhatsApp conversation in January 2016, (WAB page 933). It is difficult to know whether this is the same or a different problem. We accept that these were disclosures of information tending to show a threat to health and safety and a possibility of a breach of legal obligation were a leak to happen. Accordingly, we accept his case and find that these disclosures were protected.

76.6 *Girls' toilets* This allegation is unsupported by coherent evidence. The only reference is to *"door locks broken"* in the Claimant's list of remedial works at WAB page 924. The Claimant has not discharged the burden of proof in respect of this.

76.7 *Dirty toilets* We find that the Claimant told the Second Respondent that the toilets had not been cleaned and were smelly and dirty in his WhatsApp of 2 December 2012 (WAB page 924). There is no other reference given. We accept that failing to keep toilets clean is a breach of legal obligation and, in extreme circumstances, could endanger health and safety. Independent schools have a legal obligation to ensure

relevant health and safety laws are complied with and to draw up and implement a risk assessment policy which in our judgment would include routine sanitary cleaning. We find, therefore, that this was a protected disclosure.

76.8 *Showers* We find that the Claimant raised an issue about the lack of girl's showers with the Second Respondent in a WhatsApp message on 6 September 2015 (WAB page 902). It is clear from the context that the Claimant had expected these showers to be provided over the summer and this had not happened. Despite his obvious disappointment, the Claimant said at the time that the School was unlikely to fail an Ofsted inspection because of this. This does not suggest that he believed that the School was in breach of legal obligation or was endangering the health and safety of any person because of this. This claim fails on the facts.

76.9 *Rubbish* The Claimant has produced some photographs of what appears to be rubbish at pages WAB 1062, 1212, 1235 and 1236 but it is difficult to tell whether these had been left at, or near fire exits. Apart from this, documentary evidence of any disclosure in respect of rubbish is scant. There is a reference to not blocking fire doors in the staff meeting minutes of October 2014 (page 148) and the Claimant makes a cryptic reference to there being, *"behind PE equipment rubbish…"* in his WhatsApp message on 2 December 2015 (WAB page 924). Based on this limited evidence, we do not find that the Claimant has discharged the burden of proof in showing that he made a disclosure of information tending to show a breach of legal obligation or that the health and safety of an individual was endangered because of rubbish near doors which could cause a fire hazard. We have no doubt that the Claimant will have made general comments about rubbish and fire risks to the Second Respondent in the course of the day to day running of a school but this does not amount to a specific protected disclosure for the purposes of Part IVA of the Employment Rights Act 1996 on the evidence before us.

76.10 *School gates* The main school gates, which are automatic and are normally closed, were open on a day when a group of teachers from the Association of Muslim Schools attended the School and we are sure that this was the cause of some embarrassment. The Claimant referred to the outside main gate in his WhatsApp message of 2 December 2015 (WAB page 924). The evidence we received, however, was that on the day when teachers from other schools visited the electric gates had malfunctioned and had to be left open to allow staff members to drive in and out. We were told, and accept that staff at the main gate were asked to be extra vigilant because of this. There is nothing to suggest that a repair was not carried out in the ordinary course of events.

76.11 The Claimant also referred in his WhatsApp list (WAB page 924) to the lack of a lock on the gate to the primary school. We were told, and find, that this was an internal gate between the primary and secondary schools. As there was no risk of pupils leaving the school premises unsupervised through this gate we are not satisfied that the absence of a

lock shows a breach of legal obligation or that the health and safety of an individual was endangered.

76.12 Accordingly, we do not find that the Claimant's disclosures in his WhatsApp conversation showed a breach of legal obligation or that the health and safety of an individual was endangered, so this claim fails on the facts.

The broader factual background, the alleged detriments and the Claimant's dismissal

77. In the preceding part of these Reasons we set out our findings and conclusions on each of the many alleged protected disclosures asserted by the Claimant and still relied on as such in this case. We have approached our fact-finding and conclusions in this way because it is necessary to establish what protected disclosures were made and when in order to consider whether they were a cause of any detriments which may be established on the evidence and/or whether they constituted the principal reason for the Claimant's dismissal.

78. In this section of our Reasons we address the detriments alleged at paragraph 20 of the agreed list of issues, but shall do so in a different order to the one set out there.

79. *Pay and bonus* The first issue we shall address concerns pay. The Claimant's allegation is that the First and Second Respondent failed to increase his salary *"as agreed"* and/or to pay him a bonus as indicated at the outset of his employment because of his protected disclosures. Our findings and conclusions in this regard are as follows.

80. The Claimant agreed to an annual salary of £40,000 on taking the Head Teacher position in 2014. The payment terms, including those relating to a potential bonus, were set out in an *"Agreement for Services"* between the School and the Claimant's company, Abuhafsah Ltd (page 140a). While this agreement was not signed by the parties, we find on the balance of probabilities that it records what was agreed between them. As noted above, the Claimant provided his services to the School directly as an employee and not through his limited company.

81. The written agreement provided for an annual salary review but did not specify whether, or by how much salary would be increased. The KPIs which the Claimant had to achieve to receive a bonus were a "good or better" Ofsted rating, 90% pass rates for five GCSEs or more at A to C, including English and Maths, SAT 2 results showing 90% or more pupils with level 5 results in all measured subjects, and overall school attendance of 95% or above. These were ambitious targets and it is common ground that the Claimant did not achieve them during his time at the School. The thrust of the Claimant's evidence to us was that these targets were, in fact, impossible to achieve. Nevertheless, they were the ones he agreed to and we observe that he was an experienced head teacher when he took on the role in 2014 so he knew what he was agreeing to.

82. At some point during the 2014/15 academic year, in all probability towards the end, the Claimant requested a salary increase of between £10,000 and £20,000 per annum in discussions with the Second Respondent. The Claimant had raised a grievance against the Second Respondent at this time (we have mentioned this already in the context of the Claimant's disclosures and shall refer to it in more detail below) and the Second Respondent's evidence was that he was advised by the School's HR consultants to defer consideration of a pay increase until after the grievance against him had been resolved. We accept that evidence. The Claimant had a grievance meeting with the governors on 7 July 2015, and they provided him with a written outcome on 6 October 2015. In the meantime, the Claimant formalised his request for a significant pay increase by putting it in writing on 27 September 2015, (page 324a-b). He requested payment of the £5,000 bonus and an increase in his annual salary to £50,000 per annum.

83. The evidence shows that the issue of pay was considered by the governors, who heard submissions on this from the Claimant and the Second Respondent. The Second Respondent was opposed to any pay increase. Mr Azam, one of the shadow governors, set out the sequence of events in his letter to the Claimant dated 2 March 2016 (pages 404-407). He referred to a meeting with the Claimant in November 2015 concerning pay and to the Claimant's written submission for this meeting, which is at pages 138-140. The essence of the Claimant's submission was that he deserved higher pay as he had taken on significant additional duties and made substantial improvements at the School. Mr Azam said that the Second Respondent's objection to a pay rise was because the Claimant's overall workload had not increased as, while a nursery school had been opened, the sixth form had been closed since he had joined. The Second Respondent also objected on the basis that the School could not afford a substantial pay rise and, even if it could, there were other members of staff who had gone many years without a pay increase and were at least equally deserving. Mr Azam noted that the Claimant felt that his work and achievements were not recognised.

84. Having regard to this evidence, we find on the balance of probabilities that the decision not to award the Claimant a bonus or a pay rise was made by the governors and not by the Second Respondent directly. Furthermore, while the Second Respondent's views were plainly influential and found favour with the governors, the tone and terms of Mr Azam's letter are inconsistent with them having been manipulated by the Second Respondent into reaching this conclusion or having simply followed his lead. We note, in this respect, that the same governors had upheld some of the Claimant's grievances against the Second Respondent in their decision of 6 October 2015.

85. We find too that the Claimant had no contractual right to a bonus or to a salary increase. He had a contractual right to a salary review and this took place, albeit delayed because of the need to deal with his grievance. In the circumstances, we reject the Claimant's case that not giving him a salary increase or paying him a discretionary bonus was a detriment for these purposes in the sense of it being unfavourable or disadvantageous treatment. It was simply disappointing treatment from the Claimant's perspective.

86. Were we wrong in our primary conclusion however, and were these steps a detriment for the purposes of a whistle-blowing claim as alleged by the Claimant, we would find that they were not related in any sense to the protected disclosures which have been established. The decision not to give him a pay rise or a bonus was made by the governors weighing the competing arguments of the Claimant and the Second Respondent; we have referred to evidence of the governors' independence from them both and this is further illustrated by Mr Azam's frank description in his letter to the Claimant of his failure to understand why the Claimant and the Second Respondent had been *"unable to agree priorities"* in the work to be delivered for the School (page 407). This claim of detriment fails on the facts.

87. *Commencing disciplinary proceedings* We turn next to the allegation at paragraph 20(c) of the agreed list of issues which concerns the instigation of disciplinary proceedings against the Claimant.

88. It was clear to us from the evidence that there was a significant difference in the management styles of the Claimant and the Second Respondent; the Claimant's approach was more formal and authoritarian than the Second Respondent's (we are not educationalists and are not expressing a view on which approach is better). This made managing the School complicated as responsibility for different aspects was split between them: the Claimant was responsible for teachers, teaching standards and the day to day welfare of pupils; the Second Respondent was responsible for financial and administrative matters, including HR.

89. We find that the Second Respondent had engaged the Claimant in the expectation that he would raise standards by taking a more formal and authoritarian approach to running the School, perhaps recognising that his more relaxed approach was not necessarily what the School needed. We find that the Claimant went about the task of raising standards vigorously (that is not intended as a criticism) and in doing so upset some of the teachers, many of whom had been there for some years. A particular fault line lay between the primary and secondary schools; we can understand why a tougher, results-focused approach would be welcomed by teachers dealing with secondary pupils but how this might be less attractive to the nursery and primary teachers. One of the secondary teachers, Ms Sanni, gave evidence to us which demonstrated her clear admiration for the Claimant's leadership style. On the other hand, the Claimant faced a grievance from one of the primary school teachers, SG, early in his employment (page 177). This was the teacher who he had investigated for alleged inappropriate behaviour in the classroom. The Second Respondent investigated SG's grievance against the Claimant and dismissed it on 26 January 2015 (page 195).

90. The Claimant raised his own grievance about the Second Respondent and we have referred to this on several occasions already. Somewhat surprisingly, and despite the large number of documents put before us, neither party has produced a copy of the Claimant's grievance. It is clear from the minutes of the grievance meeting in July 2015 and the subsequent grievance decision, however, that the Claimant had raised concerns about teachers going above his head directly to the Second Respondent and about teachers not being dealt with

formally for issues such as lateness. He also referred to a lack of clarity in the division of roles and responsibilities between the Second Respondent and him. He complained, for example, of an occasion when new policies had been introduced by the Second Respondent without consulting him. Finally, he referred to unfounded rumours circulating among staff that he was having an affair at work.

91. Stepping back from this evidence, we find that the Second Respondent engaged the Claimant to be the metaphorical 'new broom', but the Claimant's style, which was autocratic compared to the Second Respondent's rather more relaxed management style, and his attempts to change the School, upset some of the staff and within a short while put him in conflict with the Second Respondent.

92. On or about 13 February 2016, two of the primary school teachers, SS and RC, lodged complaints about the Claimant (pages 345-369). These complaints concerned several issues, but the most recent had happened on 11 February 2016, when RC, alleged that the Claimant had made her cry in a meeting. The essence of the complaints was that the primary teachers were unwilling to speak out against the Claimant for fear of retribution despite their belief that his methods were unsuitable for the primary school. The complainants referred to alleged incidents in which the Claimant had acted in a hostile manner or made individuals cry.

93. A question raised in this case is whether the two complainants were put up to making these complaints by the Second Respondent, and whether they colluded with one another in doing so. We have seen no evidence to suggest that the complainants were encouraged to complain by the Second Respondent or anyone else for that matter. It is clear from the timing that the complainants must have discussed lodging complaints with one another before doing so but we do not regard this as sinister or evidence of dishonest collusion. On the contrary, it appears to us quite normal for colleagues to discuss problems they may have at work. Similarly, given the nature of the complaints, it does not surprise us that the two teachers decided to act together rather than separately.

94. The Claimant accepted in evidence that once these issues had been raised by staff members, the School was obliged to investigate them.

95. The Second Respondent began investigating SS and RC's complaints. He held separate interviews with each of them and with a third teacher, HG, on 17 February 2016. The meetings were formally minuted and the minutes are at pages 394-401. He also compiled a spreadsheet analysis of the complainant's allegations based on more wide-ranging interviews of staff (pages 377-389d, 390 and 391-393). These investigations lent weight to the complainants' complaints about the Claimant. A particular issue was the appropriateness of certain exams in the primary school.

96. We find that it was in this context that the Second Respondent wrote to the Claimant on 2 March 2016, informing him that he was suspended pending an investigation into allegations of inappropriate behaviour towards colleagues and staff members, of dereliction of duty by ignoring teachers' advice on exams in the

primary school, and of failing to provide adequate and meaningful feedback to teachers (page 408). The Second Respondent told us, and it is clear from the terms of this letter, that he and the School were receiving HR advice from their consultants in respect of this investigation at the time. The letter warned the Claimant that the allegations were potentially acts of gross misconduct but that the suspension was precautionary and was not a penalty and did not imply prejudgment of the allegations.

97. Pausing there, we find on the evidence that the reason for instigating this disciplinary investigation was the complaints of SS and RC, which were corroborated to some extent by other members of staff. While we accept that being subject to a disciplinary investigation is a detriment if done without cause, here there was cause and in our judgment the reason for this was wholly unconnected with the Claimant's protected disclosures. The protected disclosures related principally to matters that had either been resolved, or concerned the fabric of the School's buildings.

98. We reject the Claimant's case that the instigation of the investigation was malicious or orchestrated. We consider that if the Second Respondent had simply been intent on removing the Claimant he would have acted sooner, for example when the Claimant raised his successful grievance or was demanding a substantial pay increase.

99. We also find that it was reasonable to suspend the Claimant in these circumstances given the nature of the allegations against him and the management responsibility he would otherwise have had for the complainants had he remained in post. We make that clear, notwithstanding, that suspension is not relied on as one of the detriments in this case.

100. This claim of detriment fails on the facts

101. *Failing to conduct a fair investigation* The Claimant alleges that the First and Second Respondents failed to conduct a fair investigation in the disciplinary proceedings against him because of his protected disclosures. When considering this issue, we have borne in mind that the question for us is whether the investigation was done in a way detrimental to the Claimant because of his protected disclosures but that the disclosures need only be a material part of the reason for the alleged detriment, rather than the sole or principal reason. That said, we are not concerned with a more general inquiry into the adequacy of the investigation process, as might be the case in a claim of ordinary unfair dismissal.

102. The Claimant's criticisms are that he was not informed of the allegations against him when they were first made but two weeks later and after the Second Respondent had done some investigation. The Claimant also argues that the Second Respondent should not have investigated at all but delegated this to a third party such as one of the governors. He alleges that the Second Respondent was too close to the allegations and had himself been the subject of the Claimant's own grievance only the year before. The Claimant contends that the allegations he faced were wide-ranging and ill-defined and that he was denied access to relevant documents and records. He alleges that the Second Respondent only spoke to selected members of staff and not those who might

have supported him. He also alleges that there was a lack of specificity in an allegation relating to a G-drive which we shall deal with below.

103. We do not find that the course and manner of the investigation was affected in any sense by the Claimant's protected disclosures. We do not regard the criticism of the Second Respondent for investigating and conducting preliminary investigations before notifying the Claimant of the allegations to be well-founded: given that the complaints were about the head teacher, they had to be investigated at a senior level and the Second Respondent was the obvious person to do this, particularly as the governors were part-time volunteers. It was also appropriate to conduct preliminary investigations as these may have shown that there was nothing in the complaints.

104. It was open to the Claimant to suggest that further members of staff be spoken to in the investigation meetings he attended but he did not do so.

105. Mrs Gaywood considered that, ideally, a different person from the Second Respondent could have been appointed to investigate; the other members of the Tribunal did not share this concern. None of the Tribunal concluded that a reason for the Second Respondent's decision to investigate himself was because of or related to the protected disclosures.

106. The Claimant did not tell us that the Second Respondent failed to interview any witness he asked him to speak to. The Claimant was provided with the evidence arising from the investigation, including the notes of the two interviews the Second Respondent conducted with him; these took place on 3 and 8 March 2016 (pages 410 and 420). The Claimant had the opportunity to comment on and correct the minutes of these meetings, which he took (pages 427-427a). There was no reference in the minutes to other witnesses who needed to be spoken to.

107. Mrs Gaywood had some reservations about whether a witness who might have been identifiable as a supporter of the Claimant's methods should have been interviewed to achieve what she considered to be a more balanced view but, nevertheless, the Tribunal as a whole concluded that the selection of witnesses was not because of, or related to the Claimant's protected disclosures.

108. We do not accept the Claimant's case that there was a lack of specificity in the allegations concerning the G-drive. This was a simple allegation, namely that the Claimant had blocked access to it.

109. We reject the Claimant's case that the First and Second Respondent failed to conduct a fair investigation for these reasons. We find that the manner and content of the disciplinary investigation was not influenced or affected in any sense by the Claimant's protected disclosures.

110. *The Claimant's dismissal* Dismissal is not a detriment as a matter of law and the test of causation for a claim of automatic unfair dismissal based on a protected disclosure is different as we have explained above. Nevertheless, it is convenient and logical to address dismissal here as it was the result of the

disciplinary process with which we have just dealt. We shall then return to the remaining detriment claims which relate to treatment after dismissal.

111. By letter dated 28 April 2016, signed by the Second Respondent, the Claimant was instructed to attend a disciplinary hearing on 6 May 2016. The hearing date was subsequently changed to 10 May 2016 for reasons which were not explained to us. The charges were the matters referred to in the Second Respondent's suspension letter of 2 March 2016 plus an additional charge relating to the School's G-drive. The additional charge was that the Claimant had deleted the drive which contained the School's data, causing disruption to the School's operations. The letter enclosed the evidence relied on by the School, and informed the Claimant that the hearing would be chaired by Mr Alim Udin Shaikh, the head teacher of Harrow Primary School and who was an independent person chosen by the governors. The Claimant was told that he would be able to record the hearing and could be accompanied at it by a colleague. He was told that the allegations were ones of potential gross misconduct. He was given the opportunity to contact members of staff who he might wish to call to give evidence on his behalf, though he was asked to do this through the School (pages 575-576).

112. We pause to set out the background to the additional disciplinary charge. One of the steps the Claimant had taken on joining the School was to purchase a G-drive on which to store the School's policies and data. A G-drive is a cloud based storage facility in which authorised people can amend, store and retrieve data and share it amongst themselves. The School's G-drive included sensitive data relating to staff, pupils and parents. Members of staff had access to the G-drive to upload or amend documents insofar as they were authorised to do so.

113. On Friday, 18 March 2016, the Second Respondent emailed the Claimant asking him to reinstate reports he had allegedly removed from the G-drive. The Second Respondent also requested a password to access the drive; he said that he had asked the Claimant for this three times before (page 476). The Claimant replied promptly to say that the drive contained his personal information but that he was willing to take steps to remove this and to close the drive down. He asked the Second Respondent to decide whether he wanted this done by the following Monday. The Second Respondent replied saying that he did not want the G-drive closed down, rather he required access to it and for the Claimant to remove his personal information from it. The Second Respondent offered to reimburse the Claimant for any expense he had incurred in providing the G-drive in the first place. The Claimant's response was that he needed to speak to a lawyer before he could do this.

114. On Monday 21 March 2016, the Second Respondent emailed the Claimant to say that staff had mentioned that their files had been deleted from the G-drive (page 521). He asked for the Claimant's proposals to restore this. The Claimant replied as follows (page 521):

> *"Due to security concerns. The G drive will no longer be active. There was no way to delete my personal archived files and anyone can have access to these. Hence, it is better to now delete the system as you clearly stated it was a security issue. No security issue now remains.*

> *Furthermore, you have all files and individual staff have their own. I would not discuss this matter anymore as I believe everything has been said. I feel very threatened by the nature of the emails and it is causing great distress, anxiety and making me feel ill."*

115. The Second Respondent responded the following day, saying as follows (page 522):

> *"I apologise if you find the nature of the emails threatening, I do not believe they are however I am sure you can appreciate that the removal of school data, some of which is of a sensitive nature is a very serious situation and one I have to ask questions about in an attempt to understand where the data is, I do not believe this is unreasonable."*

116. The Second Respondent added that the Claimant's deletion of the G-drive had caused severe disruption to the running of the School.

117. On 29 March 2016, by agreement the Claimant attempted to transfer data to the Second Respondent but this attempt failed. The Claimant has characterised this as, *"blocking"* the attempt, (see the Claimant's email of 31 March 2016, at page 528).

118. The dispute about the G-drive continued in similar vein and on 31 March 2016 the Second Respondent wrote to the Claimant requiring him to attend an investigatory meeting in respect of it. The Claimant did not do so, but subsequently set out his account of events relating to the drive in an email on 18 April 2016, which responded to questions put by the Second Respondent (pages 564 and 566). We note that in his answers to the Second Respondent's questions, the Claimant refers to the "deletion" of the G-drive (page 564).

119. Full access to the G-drive was restored in April 2016, but as at 30 March 2016, some important documents were still missing (page 527).

120. Against that background we return then to the disciplinary proceedings. The disciplinary hearing took place on 10 May 2016. It was recorded and a transcript is at pages 580-602. The Claimant was accompanied at this meeting by Ms Sanni. We note that the Claimant was in receipt of legal advice at the time as he referred to the need to speak to his solicitor during this meeting.

121. Mr Shaikh sent his decision to the Claimant by letter dated 24 May 2016 (pages 604-608). He found the allegations established and that they constituted gross misconduct. It was put to Mr Shaikh that he had been influenced, or manipulated into this conclusion by the Second Respondent or by the manner in which the Second Respondent had investigated the allegations. Mr Shaikh firmly refuted this in his evidence and we believe him. He was an impressive witness. He emphasised the seriousness of the Claimant's actions in withholding access to the G-drive, which contained the School's up-to-date data. He rejected the suggestion that paper copies, which the Claimant said were still in the School, were a sufficient substitute when it was put to him that these were located in, or near the Claimant's office. Mr Shaikh pointed out that a G-drive is constantly

changing and contains important information such as pupil files, medical information and urgent contact details. There is no evidence that Mr Shaikh was party to the protected disclosures. Furthermore, we find that this is not a case falling within the *Iago* example envisaged by the Court of Appeal in the *Jhuti* case. Accordingly, we do not find that the principal reason for the Claimant's dismissal was his protected disclosures. We find that his protected disclosures had nothing to do with his dismissal at all.

122. In reaching our conclusion on the reason for dismissal we noted that the Claimant referred to there being up to "a hundred safe guarding issues" in the School at the end of the disciplinary meeting before Mr Shaikh, but provided no particulars of these at the time. We also noted that Mr Shaikh asked the Claimant in writing whether he was raising a grievance before communicating his decision (page 602a). The Claimant confirmed that he was not despite this being an opportunity to set out those alleged safeguarding issues (page 603). We also noted that the Second Respondent conducted an audit of safeguarding procedures in light of the Claimant's broad allegation (pages 602b-m).

123. It was not suggested that the Claimant's appeal against dismissal was rejected because he had made protected disclosures. For the avoidance of doubt, however, we do not find on the evidence that this was the case in any event.

124. For these reasons the Claimant's claim of automatic unfair dismissal fails.

125. *The collection of belongings* The Claimant alleges that the First and Second Respondents refused to allow him to collect, or failed to deliver up to him his belongings after dismissal. He asserts that this was a detriment imposed because of his protected disclosures.

126. We note that the Claimant provided the Respondent with a list of items he said belonged to him on 24 June 2016 (page 723). This was responded to on 26 July 2016 (page 722). There was clearly some delay in the Claimant identifying items he said were his and in the Second Respondent replying to this. It is also clear from the evidence that there was a dispute about the ownership of some football equipment (page 743). We find that this dispute and its tenor arose from the acrimony of the dismissal and was unrelated to the Claimant's protected disclosures which concerned much earlier and very different events. This claim fails on the facts.

127. *Negative references* The Claimant alleges that the Respondents gave him negative references because of his protected disclosures.

128. On 16 March 2016, that is before the Claimant's dismissal, the Second Respondent provided a factual reference for the Claimant at the request of the Andalucía Academy in Bristol (page 450a). We have received no other satisfactory evidence to support the Claimant's case that the Respondent failed to act on any reference requests. There is no evidence in particular to show that a school in the Middle East made a reference request despite the Claimant's alleged loss of earnings from this potential post being a substantial part of his claim for compensation at an earlier stage in these proceedings. We find that the

Claimant has failed to discharge the burden of proof in respect of this alleged detriment and it therefore fails.

129. For these reasons the Claimant's claim of detriments short of dismissal and/or of automatic unfair dismissal for making protected disclosures fail and are dismissed.

130. *The Claimant's money claim* This aspect of the Claimant's claim was resolved by agreement and the Tribunal therefore makes no Order in respect of it.

131. *Breach of contract as to notice* Judged objectively, we find, on the evidence, that the Claimant's withholding of access to the G-drive was gross misconduct entitling the Respondent to dismiss summarily. This finding is based on the evidence of Mr Shaikh and Mrs Messaoudi, which we accept.

132. For these reasons, we do not find the Claimant's disputed claims to be well-founded and they are dismissed. The provisional remedy hearing listed on 18 October 2018 is therefore cancelled.

_____
Employment Judge Foxwell

Date: 3 October 2018……..

Sent to the parties on: .....

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For the Tribunal Office