EMPLOYMENT TRIBUNALS

Claimant: Mrs S Fox

Respondent: Hazel Grove High School

Heard at: Manchester **On:** 18, 19, 20, 21, 22, 25, 27, 28 and 29 March 2019

Before: Employment Judge Franey
Ms J K Williamson
Mr B J McCaughey

REPRESENTATION:

Claimant: Mr R Lees, Counsel
Respondent: Mr S Gorton, Queen's Counsel

WRITTEN REASONS

Introduction

1. These are the written reasons for the judgment given orally with reasons at the conclusion of the hearing on 29 March 2019, and sent to the parties in writing on 3 April 2019.

2. The claimant was employed for just over 12 months by the respondent school ("the school") in a pastoral role on the Senior Leadership Team ("SLT") as Director of Student Welfare. She was on a six month probationary period upon appointment in September 2016. At the end of January 2017 the Head Teacher, Mark Sibson, informed her that he was proposing to extend her probationary period. The claimant was subsequently certified unfit for work on account of work related stress, and pursued a grievance about her treatment by Mr Sibson. The grievance was rejected and she appealed. Referrals to Occupational Health ("OH") were made and the school progressed its sickness absence management procedures. The claimant's sickness absence ended in early August 2018 whilst the school was on its summer holidays, but the claimant was informed that there was a proposal to make her role redundant. She was dismissed by reason of redundancy in mid September 2017. Her appeal against dismissal was rejected in October 2017.

3. The claim form was presented on 11 September 2017. It brought complaints of disability discrimination but also made reference to protected disclosures ("whistleblowing"). The substantive content of the form was a copy of the grievance from March 2017. The claimant provided more details in the form of a table of allegations on 21 September 2017.

4. With the assistance of solicitors, the claimant provided further particulars on 15 September 2018. The scope of the disability discrimination complaints was clarified. A number of protected disclosures were identified, and a series of detriments said to have ensued. The claimant also claimed that her dismissal was automatically unfair because the reason or principal reason was whistleblowing. The thrust of her case was that the treatment she received from Mr Sibson and others from the end of January 2017 onwards was a consequence of a series of protected disclosures made to him and to others, partly about safeguarding issues in the school. She believed that the redundancy dismissal was a sham manufactured as a way of terminating her employment.

5. The disability discrimination claims were withdrawn and dismissed at the start of our hearing.

6. The position of the school on the whistleblowing claims was set out in its response form of 11 October 2017, and in a response to the further particulars dated 16 March 2018. It denied that any protected disclosures had been made, but in any event it maintained that there were genuine management reasons for concerns about the claimant's performance resulting in the proposal to extend her probationary period. The steps taken to manage the claimant's absence, and the way in which her grievance was handled had no connection with any alleged disclosures, and the decision to make the claimant's post redundant was made for genuine reasons following the arrest and prosecution of a member of staff in July 2017. That had caused a review of the way in which the school approached safeguarding issues. All the complaints of detriment and of automatic unfair dismissal were denied.

Issues

7. The issues arising had been identified by Employment Judge Ross at a preliminary hearing on 22 March 2018. The protected disclosures on which the claimant relied were found in nine paragraphs of the further particulars. Reliance on the final alleged disclosure in July 2017 was withdrawn during submissions. There were 30 paragraphs which were said to contain a detriment on the ground of a protected disclosure. A number of these were withdrawn during the hearing or in submissions. By the close of submissions the issues to be determined were as follows. It is convenient to retain the paragraph numbering from the further particulars ("FP4" etc).

Preliminary Issue – Protected Disclosures

1. **Can the claimant show that she made a protected disclosure on any of the following occasions, in that:**

   (i) she disclosed information;

   (ii) which she reasonably believed tended to show one or more of the matters set out in section 43B(1);

(iii) she reasonably believed the disclosure was made in the public interest; and

(iv) the disclosure was made to her employer or another person falling within sections 43C – 43G?

(a) FP4: In a series of requests for training on the School Information Management System ("SIMS"), on behaviour management and on middle leadership made between 6 September 2016 and 30 January 2017 to Mr Sibson and to the Deputy Head, Cherry Franklin;

(b) FP6: In concerns about the accuracy of registers, the mobile phone policy, healthcare plans, training needs about behaviour management information and other behaviour management issues raised verbally with Mr Sibson on 4 October 2016;

(c) FP7: In the reiteration of some of those concerns to Miss Franklin on 18 October 2016;

(d) FP8: In the reiteration of some of those concerns to the Safeguarding Governor, Paul Franklin, in a meeting on 9 November 2016;

(e) FP9: In the reiteration of that information to the School Business Manager, Anna Cohen, in a verbal discussion on 9 November 2016;

(f) FP12: In an email of 19 January 2017 to the school nurse, Donna Sorton, about a diabetic student's healthcare plan;

(g) FP13: In a series of disclosures in the week of 23 January 2017 to Anna Cohen, the Head of House, Suzanne Foord, and the Drug and Alcohol Counsellor, Martin Bower, about a student issued with a nicotine spray, and

(h) FP16: In providing Mr Sibson with information about the claimant's concerns about the behaviour of Debi Lowe (Head of House) in relation to Year 10 and Year 11 male students in the course of a probationary review meeting on 30 January 2017.

Detriment in Employment

2. If so, are the facts such that the Tribunal could conclude that on any of the following alleged occasions the claimant was subjected to a detriment by an act or deliberate failure to act for which the school is responsible done on the ground that she had made a protected disclosure?

(a) FP15: In the probation review meeting on 30 January 2017 Mr Sibson said that the Pastoral Office was not welcoming enough;

(b) FP16: In the probation review meeting on 30 January 2017 Mr Sibson said that he liked Debi Lowe's practice and did not want her to modify it, although he would speak to the boys about using inappropriate language;

(c) FP17: In the probation review meeting on 30 January 2017 Mr Sibson said that it was his intention to extend the claimant's probation period and put the claimant on an action plan;

(d) FP18: In the probation review meeting on 30 January 2017 Mr Sibson said that there were four reasons he was extending the probationary period, including the claimant questioning and challenging his methods, lack of experience, and personal policies in an and around the safeguarding of students;

(e) FP19: On 3 February 2017 Mr Sibson issued the claimant with a letter inviting the claimant to a formal probationary review meeting at which she had the right to be accompanied;

(f) FP20: The decision communicated on 10 February 2017 to refer to the claimant to OH on her fifth day of sickness absence;

(g) FP23: The issuing of a letter on 20 March 2017 inviting the claimant to a stage one sickness absence meeting and indicating that her probation would be extended if the claimant did not respond by 24 March;

(h) FP25: The failure to keep confidential the grievance submitted by the claimant on 22 March 2017 when the grievance was sent by the Chair of Governors, Keith Harrington, to Mr Sibson, and Mr Sibson provided a copy to Miss Franklin and to his PA;

(i) FP26: The governor, Colin Walker, investigated the claimant's grievance but failed to investigate a range of matters which were raised;

(j) FP27: In investigating the grievance Mr Walker asked witnesses about the claimant's working ethos, and not the concerns about Mr Sibson. The Heads of Houses were asked for their opinions of the claimant but no questions were put to them about Mr Sibson and there were no questions about his work ethics. The questions were constructed with a bias towards a detrimental response towards the claimant, and each Head of House subsequently received a £4,000 pay rise within a few weeks;

(k) FP28: The decision of 26 May 2017 rejecting the claimant's grievance and the lack of a response to her appeal until 20 July 2017, meaning the hearing did not take place until 5 September 2017;

(l) FP29: The failure to reply to the claimant's requests made on 24 May, 5, 14 and 27 June 2017 for the appointment of an independent body to investigate her complaints;

(m) FP30: The holding of a stage two sickness absence meeting on 14 July 2017 despite the fact that the grievance appeal was still pending, thereby preventing the claimant returning to work, at which the claimant was warned that should she progress to stage three in six weeks' time she would face dismissal;

(n) FP31: The school disregarded OH advice that the claimant was not fit for any management meetings and bullied her into attending sickness absence meetings;

(o) FP35: The outcome of the stage two sickness absence meeting in a letter of 21 July 2017 disputing that the meeting constituted bullying or victimisation and saying its purported intention was to be supportive with the aim of getting the claimant back into work;

(p) FP36: On 8 August 2017 the school informed the claimant that there was a proposal to make her post redundant;

(q) FP37: The rationale for the redundancy proposal was unsound;

(r) FP38: At a meeting with the Director of Education, Stockport LA Safeguarding Lead and Resolutions Officer on 25 July 2017 the claimant was initially not allowed to participate in the meeting, but once allowed in the atmosphere was hostile and no-one would take receipt of the claimant's documents and evidence;

(s) FP39: Holding a joint return to work and redundancy consultation meeting on 4 September 2017;

(t) FP40: The failure to provide the claimant with any notes/minutes showing any consultation between the Board of Governors regarding the claimant's post and possible redundancy, and the failure to answer why a fifth Head of House post had been created and the posts given a £4,000 pay rise when the school was saying that the redundancy was due to "dire financial circumstances";

(u) FP43: Mr Sibson gave a reference about the claimant to a prospective new employer in November 2017. The reference was not satisfactory and cited concerns about team work.

3. If so, can the respondent show the ground for any such act or deliberate failure to act and that it was not any protected disclosure?

4. If not, is an inference that the act or failure to act was materially influenced by a protected disclosure justified?

Unfair Dismissal – section 103A Employment Rights Act 1996

5. FP41: Can the claimant show that the reason or principal reason for her dismissal was one or more protected disclosures?

8. Paragraph 41 of the further particulars contained the allegation about dismissal, but Mr Lees confirmed at the start of the hearing that this was pursued under section 103A only, not as an allegation of detriment.

Evidence

9. The parties had agreed a bundle of documents which exceeded 1,000 pages. A number of documents emerged during the course of the hearing and were added to the bundle by agreement. The names of pupils had not been redacted from the documents before the Tribunal, but we ensured that pupil names were not used during the public hearing and these Reasons will not identify any pupils. Any reference to page numbers in these Reasons is a reference to that bundle of documents unless otherwise indicated.

10. The claimant gave evidence herself. We also heard oral evidence from Paul Franklin, the Safeguarding Governor at the time the claimant was appointed; from the claimant's husband, Richard Fox, and from her friend, Rebecca Linacre, who accompanied the claimant at some of the relevant meetings. There were seven witnesses for the claimant who had prepared written statements, but for whom neither the respondent nor the Tribunal had any questions. We did not hear from those witnesses in person but accepted their evidence in written form. Those witnesses were Linda Robins, who was a Student Support Assistant at the school; Keith Gray, the Town Clerk of Aylesbury Town Council, who accompanied the claimant at a meeting on 17 May 2017; Frank McCarron and Janine McCann who gave evidence about the claimant's abilities from their work with her at previous schools; Hayley Peters and Sharon Dakin, who gave evidence about an issue relating to a pupil at the school, and John Toogood whose stepson was also a pupil at the school.

11. There were five witnesses for the school. Cherry Franklin was the Deputy Head Teacher at the time; Anna Cohen was the Business Director; Vivienne Horsfield was a governor who chaired the panel but heard the grievance appeal;

Robert Marchant was a governor who was part of the panel that determined that the claimant would be made redundant; and Carlos Meakin was a governor and part of the panel that considered the appeal against redundancy. Although there were matters in Mrs Horsfield's statement which were challenged, Mr Lees dealt with those matters in submissions and she was not called in person.

12. The school did not call written or oral evidence from Mr Sibson (who left the school prior to our hearing) or Dr Harrington, the Chair of Governors at the relevant time. However, the Tribunal had copes of contemporaneous emails and other documents from them in the bundle. In addition, we were provided with a note of some agreed facts relating to complaints made by Paul Franklin after new documents emerged during his evidence.

Relevant Legal Principles

Part One: Protected Disclosures

13. A protected disclosure is governed by Part IVA of the Employment Rights Act 1996 ("the Act") of which the relevant sections are as follows:-

> **"s43A: in this Act a "protected disclosure" means a qualifying disclosure (as defined by Section 43B which is made by a worker in accordance with any of Sections 43C to 43H.**
>
> **s43B(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) …**
>
> **(d) that the health or safety of any individual has been, is being or is likely to be endangered…"**

14. The Employment Appeal Tribunal ("EAT") (HHJ Eady QC) summarised the case law on section 43B(1) as follows in **Parsons v Airplus International Ltd UKEAT/0111/17,** a decision of 13 October 2017:

> **"23. As to whether or not a disclosure is a protected disclosure, the following points can be made:**
>
> **23.1. This is a matter to be determined objectively; see paragraph 80, Beatt v Croydon Health Services NHS Trust [2017] IRLR 748 CA.**
>
> **23.2. More than one communication might need to be considered together to answer the question whether a protected disclosure has been made; Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540 EAT.**
>
> **23.3. The disclosure has to be of information, not simply the making of an accusation or statement of opinion; Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38 EAT. That said, an accusation or statement of opinion may include or be made alongside a disclosure of information: the answer will be fact sensitive but the**

> **question for the ET is clear: has there been a disclosure of information?; Kilraine v London Borough of Wandsworth [2016] IRLR 422 EAT."**

15. The decision of the EAT in **Kilraine** was subsequently upheld by the Court of Appeal at **[2018] EWCA Civ 1436**. The concept of "information" used in section 43B(1) is capable of covering statements which might also be characterised as allegations.

16. The worker need only have a reasonable belief that the information tends to show the matter required by Section 43B(1) and that the disclosure is made in the public interest. A subjective belief may be objectively reasonable even if it is wrong, or formed for the wrong reasons.

17. In **Chesterton Global Ltd and anor v Nurmohamed [2017[IRLR 837** the Court of Appeal approved a suggestion from counsel as to the factors normally relevant to the question of whether there was a reasonable belief that the disclosure was made in the public interest.

Part Two: Detriment in Employment

18. If a protected disclosure has been made the right not to be subjected to a detriment appears in Section 47B(1) which reads as follows:

> **"A worker has the right not to be subjected to any detriment by any act or any deliberate failure to act by his employer done on the ground that the worker has made a protected disclosure."**

19. The question of what will amount to a detriment was considered in the discrimination context by the House of Lords in **Shamoon v The Royal Ulster Constabulary [2003] ICR 337**: the test is whether a reasonable employee would or might take the view that he had been disadvantaged in circumstances in which he had to work. An unjustified sense of grievance cannot amount to a detriment.

20. The right to go to a Tribunal appears in Section 48 and is subject to Section 48(2), which says this:

> **"On such a complaint it is for the employer to show the ground on which any act or deliberate failure to act was done".**

21. This does not simply place the burden of proof on causation on the respondent. Mr Gorton identified in paragraph 21 of his written submission a number of authorities on the proper test. A convenient summary is found in **International Petroleum Ltd and ors v Osipov and ors UKEAT/0058/17/DA.** The EAT (Simler P) summarised the causation test as follows:

> **"...I agree that the proper approach to inference drawing and the burden of proof in a s.47B ERA 1996 case can be summarised as follows:**
>
> **(a) The burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.**
>
> **(b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so**

> **inferences may be drawn against them: see London Borough of Harrow v. Knight [[2003] IRLR 140]at paragraph 20.**
>
> **(c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found."**

22. The case came before the Court of Appeal in October 2018 (**Timis and Sage v Osipov and Protect [2018] EWCA Civ 2321**). The main point in the appeal was that of vicarious liability, and the approach of the EAT to causation was not disturbed.

Part Three: Unfair Dismissal

23. Section 103A of the Act deals with protected disclosures and reads as follows:-

> **"an employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure".**

24. In **Abernethy v Mott, Hay and Anderson [1974] ICR 323**, Cairns LJ said, at p. 330 B-C:

> **"A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."**

25. In **Beatt** the Court of Appeal described the reason for dismissal as

> **"the factor or factors operating on the mind of the decision-maker which cause them to take the decision – or, as it is sometimes put, what 'motivates' them to do so…"**

26. In **Royal Mail Ltd v Jhuti [2018] ICR 982** the Court of Appeal considered situations where others are said to have influenced the decision maker. Only the mental processes of the decision-maker are relevant under section 103A (paragraphs 57 and 58), even where that person has been manipulated by a line manager of the claimant due to a protected disclosure (paragraph 61). Where the person motivated by protected disclosures undertakes the investigation (such as a disciplinary investigation) which causes the decision-maker to dismiss, that investigator's mental processes may be part of the "reason" for dismissal (paragraph 62). The Court left open whether that would be the position where the manipulator was not an investigator but the person at the head of the organisation (paragraph 63)

27. In a case within section 103A the Tribunal has jurisdiction over the claim even though the employee has not been employed continuously for two years: section 108(3). However, in such cases it is for the claimant to establish that the Tribunal has jurisdiction, so the claimant bears the burden of showing that the sole or principal reason for dismissal was the protected disclosure: **Jackson v ICS Group Ltd UKEAT/499/97.**

Findings of Fact

28. This section of our reasons sets out the broad chronology of events necessary to put our decision into context. Any disputes of fact central to our

conclusions will be addressed in the discussion and conclusions sections below. Where the narrative relates to a pleaded protected disclosure or detriment we will indicate that (e.g "**FP4"**).

The School

29. At the relevant time the school was a single Academy Trust. It is a mixed secondary school with approximately 1,400 pupils aged between 11 and 18, and approximately 180 staff. As an Academy it is regulated by the Education and Skills Funding Agency ("ESFA"), but it also buys in some services from the local education authority, Stockport Metropolitan Borough Council ("SMBC").

30. The Academy has members and Trustees who hold its property, and some of them also sit on the school's Board of Governors. At the relevant time the Chair of Governors was Dr Keith Harrington. The governor designated to have responsibility for safeguarding matters was Paul Franklin.

31. The Senior Leadership Team within the school ("SLT") included the Head Teacher Mark Sibson, the Deputy Heads, Cherry Franklin and Ben Vickers, and from September 2016 the Academy Business Director, Anna Cohen.

32. As well as teaching staff there were members of staff with a pastoral role. That included four "Heads of House" providing pastoral support for Years 7-11. At the relevant time those four Heads of House were Suzanne Foord, Elizabeth Tiffany, Charlotte Brown and Debi Lowe.

School Policies

33. The school had a number of policies which were relevant to this case.

34. The policy on managing attendance and sickness absence appeared at pages 123-147. It aimed to deal in a supportive and compassionate way with employees whose sickness absence had become unsatisfactory. The long-term sickness absence review process appeared at pages 137-139. It made provision for meetings at three stages, and following the stage three meeting a sickness absence hearing could be arranged to consider whether employment could continue. Clause 13.2 provided that employees should be referred to OH after six weeks of absence, or earlier if it was known beforehand that the absence would last six weeks. Clause 14.1 provided that sickness absence meetings could take place in the absence of an employee if she was unable or unwilling to attend the meeting.

35. The staff grievance procedures were based on a model document provided by Stockport MBC at pages 148-157. Grievances were to be heard by the grievance sub-committee of the Governing Body. There was provision for an appeal. Although there were detailed procedural rules for grievance hearings, the procedure did not specify how grievances were to be investigated.

36. The Business Ethic Policy (incorporating the whistleblowing policy) appeared at pages 162-170. Mr Sibson and Miss Franklin were amongst those identified as investigating officers from the SLT. On three occasions the policy said that all matters would be treated in strict confidence. The school would seek to protect the whistleblower from reprisals and not tolerate any attempt to harass or victimise her (page 170).

37. The school had adopted the SMBC policy on probationary service. It provided for a six month probationary period. On pages 175-176 there appeared a section about assessment during probation. It said there should be regular ongoing review of performance during probation and the results communicated to the employee. There was no mention of a specific mid probation review meeting. The policy provided for there to be a formal management interview at which the employee had the right to be represented. That could lead to a requirement for improvements in conduct or performance, and a failure to meet those standards could result in dismissal.

The Claimant

38. Prior to joining the school the claimant had worked in the education and safeguarding sector for many years. She had taken up positions in charitable organisations and obtained a number of relevant qualifications, including qualifications in counselling and safeguarding. From 2007 onwards she was employed as a Pastoral Manager at Stockport Academy, a nearby school. For the latter period she was the designated Safeguarding Lead for that school, and some highly complimentary views expressed by Ofsted in 2015 were attributed directly to her work by the Principal of Stockport Academy at that time, Fran McCarron, in his witness statement for our hearing. It was clear that the claimant was regarded as an experienced and capable Safeguarding Lead.

39. That was reflected in her application for the post of Director of Student Welfare at the school made in July 2016 (pages 181-194). The claimant set out a large number of relevant qualifications in matters relating to safeguarding which she had obtained. Her references from Kate Appleby (pages 195-196) and her former line manager, Janine McCann (page 211) were extremely positive, and in her witness statement for our hearing Ms McCann described her as “totally robust and effective in her role”.

40. The role of Director of Student Welfare was a new post on the SLT at the school. Previously, the role of Designated Safeguarding Lead had been carried out by an Assistant Head Teacher, supported by a Senior Head of House and a Director of Pastoral Matters. When the Director of Pastoral Matters left, Mr Sibson decided that there should be a new role on the SLT. Three members of the SLT had recently been made redundant due to budgetary constraints, and as a consequence the remaining senior leaders would have increased responsibilities. This was the first time that someone who was not a teacher had held the Designated Safeguarding Lead role in the school.

41. The claimant was successful at interview and on 5 August 2016 signed her contract of employment (pages 197-206). She was paid on the national scale Management Band 4, the contract providing for a starting rate of £35,093 per annum. Clause 13 provided for an entitlement of six months of full pay and six months of half pay during sickness absence, and clause 14 provided for a six month probationary period (page 201). It said that the school would assess and review the work performance of the claimant during that time, and that it had the right to terminate her employment with a week’s notice after the first month. The probationary period could be extended at the discretion of the school.

42. The division of roles amongst the members of the SLT in the academic year beginning in September 2016 was evidenced by a document at pages 530-531. As

well as being Designated Safeguarding Lead the claimant had responsibilities in relation to looked after children, attendance and punctuality, behaviour management, medical needs and organisation of the House system. The Pastoral Heads of Houses reported to her.

Induction

43. The claimant was abroad on holiday during August 2016, and contrary to what was later stated by Mr Sibson in his response to the claimant's grievance (page 508) there was no induction conducted by the Head Teacher that month. The claimant was also away on pre-booked leave on 1 and 2 September 2016, which were the "INSET" training days for staff. Mr Sibson also produced in May 2017 an induction check list which he signed on 4 October 2016 (page 528) but the claimant had not signed it, and we accepted her evidence she had not seen it. It simply recorded that a number of different procedures had been shown to her. We were satisfied that the claimant did not have any formal structured induction, explaining why on 20 September 2016 (page 214) she emailed Mr Sibson to make that point and asking to meet as soon as possible. The two of them did meet every day, but that was to review behaviour incidents from the previous day. It was unfortunate that there was no proper structured induction of the claimant given that she was not only new to the school but also new to a role as SLT level.

44. In a response to a request from the claimant, Miss Franklin confirmed by email of 12 October 2016 that she would act as the claimant's SLT mentor (page 235). Mr Sibson remained the claimant's direct line manager.

Requests for Training – **FP4**

45. The absence of any structured induction process meant that the claimant had to pick things up as she went along. She became aware that she needed additional training on certain matters. That included training on how to run data reports from the SIMS, which enabled attendance issues to be identified and addressed. Her request for such training was acknowledged by Miss Franklin following a mentor meeting on 8 November 2016 (page 326). The claimant was prevented by an urgent matter from attending the first training and it was arranged for 16 January. The training was not completed on that occasion (page 348cc). She never received the full SIMS training she had sought.

46. The claimant was also requesting behaviour management training. Miss Franklin sent her by email two opportunities for attending external courses (pages 328 and 329). She expected the claimant to be able to source external training for her herself.

47. The claimant also requested Middle Leadership training.

48. It was the claimant's case that these requests for training in the period between 6 September 2016 and 30 January 2017 amounted to protected disclosures. We will return to that in our conclusions below.

4 October 2016 – **FP6**

49. On 4 October 2016 the claimant had a one-to-one meeting with Mr Sibson. She alleged that in the course of this meeting she made a number of protected

disclosures to him about the inaccuracies in registers, the school's mobile phone policy which allowed students to use their mobile phones outside class times, the fact that healthcare plans in school remained unsigned by Mr Sibson, and some issues about behaviour management. They included him regularly overruling her decisions on sanctions relating to behaviour issues.

50. No notes of this meeting were kept by either party, but the claimant gave an account of that meeting in her grievance of 22 March 2017 (pages 377-378). When Mr Sibson responded to the grievance in May 2017 he gave an account at pages 514-515, but did not mention these matters. We will return to that issue in our conclusions.

18 October 2016 – **FP7**

51. The claimant and Miss Franklin had a mentor meeting on 18 October 2016 (in her further particulars the claimant wrongly identified the date as 6 October). The date was established by a brief exchange of emails at page 328b.

52. A brief handwritten note (dated 8 October not 18 October) from the claimant appeared at page 234a. The claimant's case was that she reiterated the concerns she had already raised with Mr Sibson about the failure to apply a consistent behaviour management policy, the failure to keep an accurate record of pupil attendance through registers, and the problem with individual pupil healthcare plans. The claimant also said that she told Miss Franklin about the lack of induction, the failure of Mr Sibson to provide her with the training she had requested, and the fact that she was the only member of the SLT not to have a partner for "duty day".

53. Miss Franklin's evidence was that these matters were not raised with her save for a discussion about behaviour management training. We will return to that issue in our conclusions.

October 2016 half term week

54. There were a host of issues arising in the day-to-day life of the school in which the claimant was involved during this period. We considered a good many of the relevant emails in the evidence but it is not necessary to summarise the issues that arose here.

55. During the half term week at the end of October 2016, however, there were emails which disclosed some friction between the claimant and Mr Sibson. The claimant was working on a new safeguarding policy to go before the governors (pages 216-234). It identified her as the Designated Safeguarding Lead, but in her absence the role was to be fulfilled by the Head or Deputy Heads. On the afternoon and evening of 30 October 2016 there was a chain of emails at pages 236-238. That was Sunday night before the school resumed after the half term week. Mr Sibson had not responded to an email the claimant had sent on the previous Wednesday. Miss Franklin alerted him to this and he responded saying he had been away with his family and had plenty of other work to do. That email was sent at just after 10.00pm on Sunday and Mr Sibson said of the claimant:

> **"Seriously I am really annoyed at her!"**

56. In further exchanges that evening he told Miss Franklin to make sure she did not become the claimant's "go to person" because of her other responsibilities. He said of the claimant:

> **"I don't know whether she doesn't like me, trust me or thinks that I don't like her but she has an air of distance about her…"**

57. In a further email at shortly before 10.30pm he said:

> **"I do like her as a person, but frustrated as she was appointed to keep behaviour, attendance and safeguarding from our door. She can't do behaviour, she needs help to write attendance plans and we are as much involved with safeguarding (see your previous radio call issue on that Friday) as we ever were.**
>
> **It felt easier with Stuart…I know I need to give her time and support and I will but I expected more…also her friendship with [Heads of House] is not right."**

58. The reference to "Stuart" was a reference to the claimant's predecessor as Safeguarding Lead, who had not been a member of the SLT. The "radio call issue" referred to an incident where the claimant was outside the school dealing with a road traffic accident where a member of the public had been injured but was summoned by radio by Mr Sibson and Miss Franklin to deal with a safeguarding matter within the school. They had not understood how urgent the road traffic accident situation had been and were annoyed that she had not immediately attended to deal with the internal matter.

59. It was clear from this email exchange that the Head Teacher was expressing frustrations with the claimant's approach to her role, but Miss Franklin was trying to urge patience and to say that things would improve as the claimant settled in.

Early November 2016

60. It was also evidenced from emails at the time that Mr Sibson did offer the claimant support and encouragement. He responded to a query about responsibilities for attendance on 31 October 2016 (page 552), and complimented her on her work in emails that day and the following day (pages 553 and 554). On 4 November 2016 Mr Sibson expressed some concern to Miss Franklin about the contact the claimant had with a social worker, Ms Massey (page 241). In an email she had addressed the social worker as "Hi mate". Mr Sibson asked Miss Franklin to bring this up in a mentoring session.

9 November 2016 – **FP8** and **FP9**

61. The claimant had an extremely upsetting and disconcerting experience on 9 November 2016 when the safeguarding governor, Paul Franklin, visited the school. A short time after the meeting she prepared a detailed typed note at pages 924-925. Mr Franklin agreed that its contents were a reasonably accurate record of their conversation, although both the claimant and Mr Franklin also told us that other matters had been raised. Their evidence was that the claimant told him of concerns about health and safety of students and staff, mobile phone use, missing/inaccurate registers, and lack of consistency by Mr Sibson in relation to behaviour management. Those were said to amount to protected disclosures and we will address that in our conclusions.

62. The main import of the meeting at the time, however, was that Mr Franklin told the claimant that she was exactly what the school needed, but she had to keep her head down and her mouth shut for six months. He told her that he thought Mr Sibson did not like to be challenged or criticised, and the claimant needed to be careful in how she dealt with him. He did not think that Mr Sibson was a good Head Teacher but he assured the claimant he would protect her.

63. Understandably the claimant was extremely concerned at what Mr Franklin told her. It put her in an impossible position between one of the governors and the Head Teacher. She had only been at the school two months. She was so concerned that she went to speak to Anna Cohen, who had started at the same time as she had done. There were no notes kept of this discussion, but in her grievance (page 380) the claimant later said that she had shared what had happened with Mr Franklin and Mrs Cohen advised her to speak to Mr Sibson. Mrs Cohen agreed in her evidence that this was an accurate record. The claimant also alleged that she told Mrs Cohen about the concerns she had that she said she had relayed to Mr Franklin; Mrs Cohen denied that these matters were raised with her. We will return to that in our conclusions as it was said to be a protected disclosure to Mrs Cohen.

64. The claimant did go and speak to Mr Sibson. She gave her account in her grievance at pages 380-381. Mr Sibson told her that he regretted she had been placed in such an unacceptable situation. He told her that Mr Franklin had been trying to get him out for some time, and that he would have to speak to his trade union as he could not continue in his role with Mr Franklin as governor. In an exchange of texts that evening (page 321) the claimant expressed the view that Mr Franklin had abused his position. Mr Sibson replied telling the claimant did the right thing and that Dr Harrington would speak to Mr Franklin. He said the claimant was "doing a hard job well".

65. The claimant's typed note of the exchange with Mr Franklin was provided to Dr Harrington. They spoke, and Dr Harrington emailed Mr Franklin on 13 November (pages 337a-337b). His email said he had met the claimant and her husband, and that regarded Mr Franklin as having made a massive error of judgment. He reiterated a request that Mr Franklin resign with immediate effect. Mr Franklin declined that request.

Finances November 2016

66. On 28 November 2016 Mrs Cohen prepared a budget update for the Finance Committee of the governors (chaired by Mr Marchant). It appeared at pages 324a-324d. The minutes of the Finance Committee meeting that day appeared at pages 324e-324i. The update referred to a weak financial position predicting a deficit for the financial year to August 2017 of £296,000. That would reduce reserves from £344,000 to £48,000. She recommended that a savings target of £60,000 in the next 18 months be set. The Finance Committee agreed to take various actions to explore ways of saving money. There was no mention of staff redundancies.

BB Issue and Sibson emails December 2016

67. In early November 2016 an issue arose about a pupil ("BB") who had transferred in from a different school and encountered a child with whom he had had a serious fight at the previous school (pages 319-320).

68. On 17 December 2016 the Head Teacher of that school emailed Mr Sibson to express concerns with the support that BB was receiving from the claimant. The email appeared at page 342, and attached at pages 344-346 was a note of interactions with the claimant in relation to this pupil. The note accused the claimant of negative interactions with the pupil and his family. The email said that the pupil's mother felt that the claimant was not fully supporting her son.

69. This concern led to a series of emails between Mr Sibson and Cherry Franklin (unbeknownst to the claimant) either side of midnight on 19/20 December 2016 (pages 340-341). It was an important exchange.

70. It began when Mr Sibson forwarded the email from the other Head to Miss Franklin saying:

> **"More concerns re [Suzanne Fox], need to sit down with you, this is getting more and more like a support plan every day…"**

71. Miss Franklin asked what the other concerns were, and reminded him that the claimant had asked for training and support with behaviour matters. She also said the claimant was feeling very vulnerable at the moment because of Paul Franklin. Mr Sibson responded saying the concerns were too many to put in the message but he identified seven matters. They included the issue with pupil BB. In an email a few minutes later he said:

> **"I think probation meeting is end of June, it's not going well at the moment."**

72. Miss Franklin responded by saying she had a one-to-one meeting with the claimant the following day and asked if there was anything she could raise. Mr Sibson replied as follows:

> **"I think you just being there for her helps, she likes you but I think all the team feel we are carrying her at the moment. She needs to act like a leader, bring solutions to problems before they arise e.g. plan for LGBT week, attendance plans, keeping track of exclusions – we all need her to start operating [as] a higher level strategic manager."**

73. Miss Franklin responded saying that she could reinforce expectations if she had specific issues to raise with the claimant, and that she would ensure the claimant did further work on a strategic plan which had been provided. The first draft had not in her view been good enough as it was the first one the claimant had done.

74. The claimant was unaware of these exchanges and the robust views being expressed by Mr Sibson to Miss Franklin.

75. The claimant spoke to Mr Sibson on 19 December. He told her that Paul Franklin had threatened to destroy them both. He advised her to ensure that every interaction she had was purely professional.

<u>January 2017 SLT Meetings</u>

76. On 10 January 2017 there was an SLT meeting, partly preparing for an Ofsted visit. The notes appeared at pages 348a-348c, and a document recording Ofsted readiness in relation to safeguarding issues appeared at pages 348d-348h. School registers was identified as an area of vulnerability, and the claimant and others had action points resulting from that discussion. The use of mobile phones in school was

discussed. The whistleblowing policy was to be brought up-to-date and shared with staff.

77. At an SLT meeting on 17 January 2017 (pages 348i-348j) it was recorded that three members of the SLT (including Mr Sibson and Miss Franklin) had attended Level 3 and 4 safeguarding training the previous week.

Diabetic Student email **FP12**

78. On 19 January 2017 (page 351) the claimant received an email from a member of staff asking for training on administering insulin to a diabetic student. The forwarded it to the school nurse at Stockport NHS Foundation Trust, Donna Sorton (page 350), copying her email to Mr Sibson. The claimant claimed that this email constituted a protected disclosure and we will return to it in our conclusions.

79. Having received the email Mr Sibson responded to the claimant (page 354). He said:

> **"Can I ask why after sending this me this request to consider, it appears that one minute later you have forwarded this message to the school nurse? I had no time to reply or consider this request. You have sent an internal email from your colleague to an outside professional, without me giving my opinion. Please can you see me on Monday morning to explain why this correspondence was sent. Please do not send any more correspondence in relation to this case to anyone."**

80. At around the same time he emailed the whole SLT saying that there should be no contact with the father, the nurse or the Local Authority about the pupil without checking with him first. He clarified to Miss Franklin that that email was about the claimant's actions.

81. The claimant responded to Mr Sibson on 22 January 2017 (page 354). It appeared that Mr Sibson had misunderstood what email she had sent to the school nurse. He replied thanking her for the clarification, but reiterating that there was no need for the claimant to have forwarded the email from her colleague to the school nurse.

Claimant – Sibson meeting 23 January 2017; Debi Lowe

82. This exchange of emails was discussed at a meeting between the claimant and Mr Sibson on 23 January. There was no formal note of this meeting but the claimant made an entry in her diary using the blank page for Sunday 22 January (page 355a). Her note recorded that she raised concerns with the behaviour of Debi Lowe towards certain pupils. The concerns in that note included "food, mobile etc" and that the pupils would greet Mrs Lowe by saying "Hey sexy". She ended her note with this:

> **"[Mr Sibson] happy but will speak to [students] re comments."**

83. Anticipating slightly, Mrs Lowe was arrested in July 2017 and charged with offences arising out of a sexual relationship with a pupil. In early September 2017 the claimant gave a statement to the police, and in it (page 962b) she recorded that she told Mr Sibson about boys wolf whistling at Mrs Lowe, and that she showed pictures of her adult daughter in a bikini to those boys using her mobile phone. Mrs Lowe would also bring in sweets, chocolates and doughnuts to give to the boys. The

claimant's evidence was that Mr Sibson did not act appropriately once made aware of those concerns: he was happy with her behaviours but would speak to the pupils about the inappropriate comments they made. We will return to this issue in our conclusions.

Nicotine Spray 23 January 2017 – **FP13**

84. An incident where a pupil sprayed another pupil in the eye with a nicotine spray gave rise to the protected disclosure asserted in paragraph 13 of the further particulars.

85. The claimant had previously arranged for the student to come to the Pastoral Office at lunchtime to receive a nicotine tablet as part of a programme to help him stop smoking. Mr Sibson intervened and decided that nicotine tablets were not allowed in school and instead ensured that the student was issued with his own nicotine spray.

86. The claimant alleged that Mr Sibson had not completed a healthcare plan or notified other members of staff of this. She said she had disclosed this incident and Mr Sibson's actions to Mrs Cohen, Suzanne Foord and the Drug and Alcohol counsellor, Mr Bower, during the week of 23 January 2017. However, she offered no details in evidence of what she said or how it amounted to a protected disclosure. Further, the grievance (page 382) said that the incident occurred on 3 February 2017. That was a Friday and the claimant went on sick leave on Monday 6 February. We will return to this issue in our conclusions.

Tiffany email re Debi Lowe

87. To some extent these concerns were shared by the Head of House, Elizabeth Tiffany. On a date in late January 2017 (page 357) she emailed the claimant and Miss Franklin raising concerns about the behaviour of Year 11 students in the Pastoral Office. Pupils had been going behind Mrs Lowe's desk, and ignoring requests to leave and go to lessons. Mrs Lowe entered and joked with those students, providing them with pork pies and doughnuts. There were other occasions when she gave pupils packets of sweets. The pupils were behaving rudely and in an argumentative way which showed no respect for other Heads of House. They were disrespectful to everyone apart from Mrs Lowe.

Probation Review Meeting 30 January 2017 – **FP16; FP15-FP18**

88. Mr Sibson asked the claimant to attend a mid point probation review meeting on 30 January 2017. The mid point of the probationary period had in fact passed at the end of November.

89. This meeting was said to have been the occasion on which the claimant made her penultimate protected disclosure to Mr Sibson, as well as the first four of her alleged detriments. We will return to those matters in our conclusions.

90. No notes of this meeting were kept. The claimant gave an account in her grievance in mid March which appeared at pages 383-387. In his response to her grievance Mr Sibson produced a probationary form at pages 591-593 which contained some notes of what had been raised.

91. In broad terms, however, the claimant's case was that Mr Sibson raised concerns that the Pastoral Office was not welcoming enough, but that the claimant again advised her of her concerns about Debi Lowe. This included telling him that Debi Lowe had shown boys photographs of her scantily clad daughter on her mobile phone, and advising that inappropriate comments of a sexual nature were allowed. She said that Mr Sibson went on to say that he was intending to extend her probationary period and put the claimant on an action plan, giving reasons which included questioning and challenging his approach to safeguarding issues. In her grievance where she gave a detailed account she recorded that he had acknowledged some achievements and that she had met her objectives and targets, but he did not think she was SLT material and was not thinking strategically enough. He raised six specific issues including the nicotine tablets, the email to the school nurse, the claimant having spoken to Anna Cohen after Mr Franklin approached her on 9 November 2016, the complaint from the Head Teacher at another school regarding pupil BB, and the atmosphere in the Pastoral Office.

92. The account given in the claimant's grievance shared some common elements with the probationary review document produced by Mr Sibson (unsigned by the claimant) when he responded to the grievance. In his narrative response (page 518) he denied saying that she had exceeded her objectives but he accepted that he had told her that there were concerns over her performance.

93. We will return to these matters in our conclusions.

Letter 3 February 2017 **FP19**

94. Mr Sibson followed that discussion up with a letter inviting the claimant to a formal probationary review meeting on 16 February 2017. His letter of 3 February appeared at page 363. It said:

> **"The purpose of the meeting is to discuss with you those areas in which I have concerns about the level of your performance, your suitability to the role and the standards required. One of the aims of this meeting is to agree an action plan which it is hoped will enable you to improve your performance to the required standard.**
>
> **One of the outcomes of the meeting could be that your probationary period is extended further and you are subject to another review period. If this review period is not completed successfully it may mean that your appointment cannot be confirmed.**
>
> **You are advised that you have the right to be accompanied by a trade union representative or colleague at this meeting but I must advise you that it is your responsibility to make such arrangements."**

95. This letter had a significant adverse effect on the claimant's health. She had been under considerable strain for some weeks. On 6 February 2017 her GP certified her unfit for work until 20 February because of work related stress. The claimant was to remain on sick leave until early August 2017.

OH Referral **FP20**

96. There was a prompt referral to OH. The claimant was informed of iton 10 February 2017. The form was completed by the Human Resources Manager, Laura Jackson. It was not dated but the resulting OH advice was dated 20 February 2017 following a telephone consultation with the claimant that day (pages 365-368).

97. It advised that the claimant was currently unfit for her role, and was suffering from severe anxiety and severe depression. It reported her feeling isolated at work, with little or no support or guidance from the Head Teacher. She would not be fit to attend a rescheduled probationary review meeting in the last week of February 2017 and there was no recommendation for when she would be fit to return to work.

98. That same day she was issued with a further fit note for one month by her GP.

99. The speed with which this referral to OH was undertaken formed the detriment in FP20 and we will return to it in our conclusions.

Brown Concerns 13 February 2017

100. Mr Sibson later produced in his grievance response a note taken by a colleague, Melanie Majid, on 13 February 2017 (page 597) recording that the Head of House, Charlotte Brown, had told her that she had felt much more relaxed since the claimant had been on sick leave in the previous week. Ms Brown told Ms Majid that she had not been able to know whether she would get praise or criticism from the claimant as her line manager. These concerns were relayed to Mr Sibson.

Finance Committee 13 March 2017

101. There was a further meeting of the Finance Committee of the Governing Body on 13 March 2017. Mrs Cohen prepared a report at pages 368a-368d, and the minutes of the meeting appeared at pages 368e-368i. The report indicated that although performance against the re-forecasted budget was slightly better than predicted, significant savings or income generation was still required. Pupil numbers were going up significantly but the resulting extra funding was delayed by 12 months. The committee discussed ways in which money could be saved.

Letter 20 March 2017 **FP23**

102. On 20 March 2017, anticipating that the fit note was shortly to expire, Mr Sibson wrote to the claimant (pages 370-371) saying that a decision still needed to be made about her probation, and that she could submit a written response by 24 March if unable to attend a meeting. He offered to write to the claimant again outlining the concerns he had already raised. If he did not receive any representations he would assume that an extension to the probationary period was not challenged. The letter also said that the claimant had triggered stage one of the sickness absence policy, but the policy did not strictly apply to attendance during a probationary period. Nevertheless he would follow the timescales in the policy. The claimant was invited to a stage one sickness absence meeting on 27 March 2017. She had the right to be accompanied.

103. The claimant alleged that the issuing of this letter and the move to stage one of the sickness absence management procedure was a whistleblowing detriment and will return to that in our conclusions.

104. On 21 March 2017 the claimant was issued with a further fit note for stress at work saying she would not be fit before 24 April 2017 (page 372).

105. On 22 March 2017 the claimant replied to Mr Sibson by email. Her email appeared at page 373. She said she did not agree to the decision to extend her

probationary period. There had been no mid point probation review at the correct time. She had not had an induction or initial meeting outlining the role and expectations. There had been no help for her to develop into what was her first SLT role. She had not received the training she urgently needed. She would address those issues in more depth in a grievance.

106. An immediate consequence of news of a grievance was that Mr Sibson was no longer going to manage the claimant's sickness absence. He notified her by email of 24 March 2017 (page 454) that Cherry Franklin would do that instead. He also said that the review of her probation would be suspended.

Grievance 22 March 2017

107. The grievance itself appeared at pages 374-391. It opened with the following paragraph:

> **"I am delivering my grievance/complaint of harassment, victimisation and bullying by Mark Sibson, by way of an open letter which I intend to use as part of a Tribunal bundle in the future, should this be required."**

108. Nowhere was the grievance labelled a whistleblowing complaint.

109. The grievance was very detailed. It began by giving a background to the claimant's career and achievements. It then moved to her early days at the school, setting out the lack of any induction or help with SLT activities. She summarised incidents where Mr Sibson had overruled her actions on student behaviour matters, and set out an account of the meeting with him on 4 October 2016. She then gave a detailed account (based on the note she prepared at the time) of her discussion with Mr Franklin on 9 November 2016, and her subsequent discussions with Mrs Cohen and Mr Sibson about that. Moving into the New Year she addressed the email to the school nurse about the diabetic student and the issue with the nicotine spray. She then provided a detailed account of the probation review meeting on 30 January 2017. Her reaction to the invitation letter of 3 February 2017 was set out, and the emotional breakdown which ensued. On pages 15-17 of her grievance the claimant summarised in 11 numbered paragraphs the concerns she had about how she had been treated. She asked for an initial response within seven days.

Reaction to Grievance – **FP25**

110. The grievance was addressed to the Chair of Governors and the Trustees. The allegation of detriment contained in **FP25** was that there was an immediate breach of confidentiality. The Chair of Governors was Dr Harrington, and he emailed Mr Sibson (page 456) saying:

> **"Has arrived…18 pages plus appendix etc. Will get a copy to you soon as I practically can. Nothing to be worried at really, I am sure your points will take care of it…she does have quite a go at [Paul Franklin] which is interesting to read…"**

111. There were further emails on 30 March where the appendices were provided to Mr Sibson, who subsequently shared the grievance letter with Cherry Franklin (page 457). We will return to this matter in our conclusions.

112. The grievance was formally acknowledged by Dr Harrington as Chair of Governors on 3 April 2017 (page 463). He said that because the school's grievance

procedure did not become contractual until an employee had been there for two years, the ACAS Code of Practice on Disciplinary and Grievance Procedures would be followed instead. He provided a link to that Code. He asked the claimant to confirm whether she wanted to have a grievance hearing or to deal with matters by correspondence.

Sickness Absence April 2019 – **FP23**

113. On 7 April 2017 (page 465a) the claimant was invited to a sickness absence meeting on 19 April 2017. This was said to be a whistleblowing detriment and we will return to it in our conclusions.

114. She responded saying she was too unwell to attend any meeting but would continue to comply with the sickness absence procedure. On 11 April 2017 she was certified unfit for work due to stress at work until 15 May 2017 (page 466).

115. Jayne Merron of an external HR advice provider emailed the claimant on 13 April to confirm the options for the meeting (pages 466f-466g). They included meeting off site of conducting it by telephone or in writing. At the claimant's request she set out on 18 April the questions which would be asked (page 466e). The claimant provided a response on 19 April 2017 (pages 466d-466e). She said that she was absent from work due to an acute stress reaction as a result of prolonged and sustained harassment, bullying and victimisation by Mark Sibson. She said she would not be able to provide a likely return to work date as it depended on the outcome of the issues raised in her grievance.

116. The sickness absence review at stage one went ahead in the absence of the claimant on 19 April 2017. It was conducted by Miss Franklin with Jayne Merron present. No notes of that meeting were produced to us but the outcome was confirmed in a letter of 26 April 2017 from Miss Franklin at pages 468-469. The claimant was informed that if she had not returned to work by 19 June 2017 there would be a stage two sickness absence meeting. There was also going to be a further referral to OH. The claimant was offered access to the school ‘s counselling service. The claimant had the right of appeal but did not exercise it.

117. On 27 April 2017 (page 472) the claimant emailed Laura Jackson to say that she was not well enough for any further appointments. An OH appointment provisionally arranged for 3 May was cancelled. On 8 May 2017 the claimant was certified unfit for work by her GP for a further period of three months. This was her final fit note before her return to work in August.

Grievance Hearing Invitation 26 April 2017

118. On 26 April 2017 there was also a letter issued about the grievance from Mr Roling, a governor. The letter appeared at pages 470-471. It invited the claimant to a grievance hearing on 17 May, noting that the claimant intended the probationary issue also to be considered at that time. He confirmed that a fellow governor, Colin Walker, was the investigating officer, and that Mr Sibson would be present at the meeting. The claimant would be sent documents in advance and could indicate which witnesses she wanted to call. She was allowed to be accompanied by her friend and former colleague, Keith Gray.

119. Mr Walker had been contacted by Dr Harrington and Mrs Merron on 18 April 2017 and asked to carry out the investigation. Another governor had been asked first but had been unable to do that. Mr Walker did not contact the claimant direct at this stage.

Safeguarding Review 27 April 2017

120. The absence of the claimant on sick leave meant that Mr Sibson was performing the duty of Designated Safeguarding Lead. He invited the Local Authority's Senior Adviser for Safeguarding in Education to review safeguarding in a visit to the school on 19 April 2017. Ms Storey's report was produced on 27 April 2017 (pages 476a-476j). It reviewed the position in relation to training, attendance and other matters, and concluded that there was evidence to support a positive picture of effective safeguarding.

Walker Investigation and Report **FP26** and **FP27**

121. Mr Walker had been pursuing his grievance investigation. The detriment contained in **FP26** was that he failed to investigate certain matters and we will return to that in our conclusions.

122. He had prepared a series of questions for witnesses and allowed then to respond by email, attaching documents where appropriate. A total of 11 witnesses were contacted in that way, including Mr Sibson, Mrs Franklin, Anna Cohen, the four Heads of Houses, and Keith Harrington. These were attached as appendices to his investigation report which appeared between pages 478 and 634. The detriment contained in **FP27** that he asked Heads of Houses for their opinions about the claimant not about Mr Sibson, and that his questions were constructed with a bias against the claimant. We will return to that in our conclusions.

123. The substantive content of his report focussed on the 11 allegations enumerated by the claimant towards the end of her grievance. He also investigated some additional matters which arose during the investigation. He summarised the evidence and reached a conclusion on each of those numbered matters and additional matters. His conclusion (pages 490-491) was that without notes the claimant's recollection of events should be queried where it conflicted with what the witnesses said, the lack of an appropriate induction was due in part to the claimant being on holiday for the "INSET" days and did not support a complaint of bullying, there should be an apology for the delay in providing SIMS training, the probationary policy should be reviewed to ensure a formal mid probationary review meeting takes place, but the meeting of 30 January and its outcome did not amount to bullying, harassment or victimisation, and some of the examples provided by the claimant were totally unfounded. He found no evidence that Mr Sibson bullied the claimant or that he harassed her.

124. Mr Walker's report was sent to the claimant and to Mr Sibson (page 459). It was to be discussed at the hearing on 17 May.

ESFA Visit May 2017

125. On 3 May 2017 Mr Franklin made a complaint to the ESFA which included a summary of what the claimant said in her grievance about Mr Sibson's actions

(pages 389-390). Around the same time the claimant's husband made his own complaint to the ESFA.

126. On 15 May 2017 (page 635a-635c) the ESFA wrote to Dr Harrington giving him a summary of the allegations made (without identifying the complainants) and seeking an assurance about safeguarding matters. The letter said a number of the allegations were sourced from an ongoing staff complaint. There was to be a visit to the school by an Education Adviser shortly.

127. Mr Harrington immediately forwarded the covering email and letter to his fellow governors, including Mr Roling and Mr Walker. His email said:

> **"Really [for your information] …could be [the claimant] or [Paul Franklin] …have asked the EFA for clarification. Much of this is now vexatious. Mark [Sibson] needs our support more than ever and has simply 'had enough'."**

128. Alan Beswick from the Local Authority was involved. He had an exchange of emails with Mr Sibson on 20 and 21 May about the visit of the Education Adviser on 22 May. In an email at page 640 Mr Beswick said that the Local Authority Team (including Ms Storey) were trying to support Mr Sibson. In his response Mr Sibson said:

> **"Background to case happy to share with you but I think you may have gathered from the others that I am being bullied and harassed by Paul Franklin and Suzanne Fox."**

129. Following the visit the report of 23 May appeared at pages 640a-640e. The inspector was satisfied that the statutory duties regarding safeguarding of pupils were being met, and that attendance data was accurately and robustly collected and analysed. Some of the concerns raised by the claimant (such as use of mobile phones and inaccuracies in registers) were considered and addressed. There were recommendations that the school should amend its current behaviour policy and accelerate a review of guidance on the use of mobile devices.

Grievance Hearing 17 May 2017 and Outcome **FP28**

130. In the meantime, the claimant had her grievance hearing on 17 May 2017. She prepared a statement at page 636 which said that the investigation by Mr Walker had neither been impartial nor thorough. She identified witnesses who were not interviewed (including Paul Franklin) and suggested there had been a bias towards protecting Mr Sibson. She asked that the investigation be conducted by an independent body and emphasised the continuing impact on her health.

131. The claimant was accompanied at the grievance hearing by Keith Gray. The statement was read out and the concerns about the process made clear. Copies were distributed and the claimant and Mr Gray left the meeting. The hearing then heard from Mr Walker and then Mr Sibson.

132. The outcome was conveyed in a letter of 26 May from Mr Roling at pages 641-642. This was said to be the detriment contained in **FP28** and we will return to it in our conclusions. In brief, Mr Roling said that as the claimant raised whistleblowing in her statement at page 636, he had referred that matter to Mr Harington as Chair of Governors. He summarised what Mr Walker said and concluded that there was no evidence that Mr Sibson had bullied, victimised or harassed the claimant. He

acknowledged the recommendations made by Mr Walker and also recommended that there be mediation between the claimant and Mr Sibson when she returned to work. The grievance was otherwise rejected. The claimant was given the right of appeal.

133. Dr Harrington considered the suggestion that the grievance should have been dealt with under the whistleblowing legislation and responded to the claimant on 30 May at page 643. He said that those complaints that could be deemed to be whistleblowing in accordance with the policy had been thoroughly considered by independent external bodies, including the ESFA. The school had been found to be meeting its statutory duties. He was satisfied that the scrutiny had found no issues which could be described as whistleblowing.

Request for Independent Investigation **FP29**

134. On 5 June 2017 (pages 644-645) the claimant made a wide-ranging request for data under the Freedom of Information Act 2000. She also wrote to Mr Harrington reiterating her concerns about the grievance process (pages 646-647). Her letter began by saying that it should not be regarded as an appeal but she reiterated her request for an independent investigation. The detriment set out in **FP29** was that there was no reply to her request for an independent investigation and we will return to this in our conclusions.

Finance Committee Meeting 12 June 2017

135. In preparation the summer term meeting of the Finance Committee, Anna Cohen prepared a report on 12 June 2017 at pages 651a-651c. There was an overspend of £110,000, some £50,000 higher than the original budget but almost £90,000 lower than the re-forecasted budget. There were free reserves of £175,000. The cash position remained critical. There had been further recruitment in September 2017 following a significant increase in pupil numbers, but she emphasised again that the 12 month funding lag meant that the money for this would not arrive until September 2018.

136. Under the section headed “Budget Update” she included this passage:

> **“In summary we are looking at an in-year deficit budget of £30,000. With a forecasted brought forward deficit of £80,000, this will leave reserves depleted to just £50,000. After the school informed the ESFA of our financial position at Christmas, the ESFA instructed us to avoid setting a deficit budget. Therefore it is suggested that at least one redundancy is to be considered. To be discussed at the meeting.”**

137. The notes of the subsequent Finance Committee summer term meeting appeared at pages 651d-651n. Those notes incorporated some questions and answers provided by email. There was a discussion of ways in which the school could cut costs and increase income. Part of the claimant's case on her unfair dismissal complaint was that this discussion showed that there was no need to make a member of staff redundant, supporting her contention that the redundancy was a sham designed to get rid of her because of protected disclosures (**FP37** and **FP41**). We will return to that issue in our conclusions. It is necessary here only to record that on page 651i the areas at risk of cuts identified included staff. There was no detailed discussion of redundancies at the meeting.

OH Report June 2017

138. On 13 June 2017 lawyers instructed by the school, Cook Lawyers, wrote to the claimant asking whether she would attend an OH appointment following the cancellation of the appointment in early May. Stage two of the sickness absence procedure was to be triggered on 19 June.

139. The claimant agreed to this in an email to Dr Harrington of 14 June (page 654). She noted that the letter said she had not appealed the grievance outcome. Her email of 14 June said she had appealed in her letter of 5 June, in the sense that she had asked for an unbiased and proper investigation. She formally confirmed that she was appealing. She also confirmed that she would see OH if required, but emphasised that she would not be well enough to come back until her grievance had been investigated and resolved satisfactorily.

140. An OH referral was subsequently made and an appointment arranged for 27 June. The claimant was seen in person by Dr Lloyd. The report appeared at pages 656-659. It recorded the absence since early February, and the diagnosis of severe anxiety and depression. That was confirmed by further clinical assessment. The claimant had been prescribed anti-anxiety and anti-depressant medication. She was unfit for her role. She might benefit from maximising her treatment and counselling. That would take approximately 8-12 weeks. The possibility of a referral for CBT was raised.

141. In addition Dr Lloyd answered the question of whether the claimant was able to fully engage in meetings with management as follows:

> **"Suzanne is currently unable to fully engage in meetings with management. She might be fit when her treatment is maximised and this will take between 8-12 weeks."**

142. The allegation that the respondent ignored this advice and bullied the claimant into attending a stage two sickness absence meeting was found in **FP31** and we will return to it in our conclusions.

HOH Restructuring June/July 2017

143. On 28 June 2017 Ms Jackson of HR wrote to the claimant enclosing for her information some documents relating to a possible reorganisation to the Head of House role. The consultation document and a proposed job description for a new post for Head of Year appeared at pages 662-665. The proposal was to replace the four Heads of House with five Head of Year Pastoral Managers. Those five Heads of Year would still report to the claimant as Director of Student Welfare. The pay scale was about £1,000 higher than the current rate for Heads of House. The current Heads of House would automatically be allocated a post for Years 8-11, and there would be a recruitment of a new "Head of Transition" to act as Head of Year 7.

144. The claimant relied upon this restructuring with its additional cost as supporting her case that her own redundancy was unnecessary and not genuine. We will return to that point in our conclusions.

Stage 2 Sickness Absence Meeting July 2017 – **FP30**, **FP31** and **FP35**

145. On 28 June the claimant was invited to a stage two sickness absence meeting on 14 July by a letter from Cherry Franklin at page 674. There was to be discussion of an action plan for the future with a likely return to work date, informed by the OH report. The letter said:

> **"Please note that should you reach the third stage of the procedure and remain unable to return to work or provide a return to work date within a reasonable timescale, a sickness absence hearing will be arranged to consider your continuing employment on the grounds of incapability due to ill health."**

146. The allegation in **FP31** was that the claimant was bullied into this meeting despite the OH advice. We will return to that in our conclusions.

147. The stage two sickness absence meeting of 14 July 2017 was conducted by Cherry Franklin supported by Mr Spence, an HR Business Partner from Cook Lawyers. The claimant prepared a list of questions and a note about her position at pages 680a-680c. The note made clear that she did not want to discuss further the reason behind her absence, and that the meeting caused her significant detriment to her mental health. She said she was suffering detriment due to her protected disclosures.

148. There were no formal notes of the meeting kept but a manuscript note was kept by the claimant and Ms Linacre who accompanied her. That manuscript note appeared at pages 680d-680f. Part of the allegation of detriment made in **FP30** was that at the start of the meeting the claimant was told that if she did not return to work in six weeks she would be dismissed. That alleged comment was not recorded in the notes kept by Ms Linacre, and nor did it form any part of the letter of 21 July 2017 confirming the outcome of the meeting. We will return to that matter in our conclusions. The note of the meeting showed that at the start the claimant was told that she had moved to stage two because she had been absent for over six weeks, and that she would go to stage three in two months. The claimant and her representative rejected the suggestion that the meeting was a supportive management measure.

149. Following the meeting Mr Spence prepared a draft letter which he emailed to Cherry Franklin on 18 July (pages 692b-692e), and Miss Franklin suggested some additions. The letter itself was issued on 21 July at pages 694-695. It recorded a recent increase in medication, and that the claimant said she could only look at returning to work once the issues she had raised were investigated. She agreed with the June 2017 OH report. There was a warning that she might have to go to stage three and that it could lead ultimately to termination. It did not agree that there was bullying or victimisation. This formed the detriment in **FP35** and we will return to it in our conclusions.

150. On 21 July 2017 at page 693 Laura Jackson also wrote to the claimant to inform her that she would go onto half pay with effect from 6 August 2017.

Grievance Appeal Arrangements

151. The grievance appeal confirmed by the claimant on 14 June was acknowledged by the PA to the governors on 11 July 2017 (page 675), and on 14

July (pages 679-680) the claimant was invited to a grievance appeal hearing on 2 August 2017. The panel hearing the appeal was composed of three governors: Viv Horsfield, Suzanne Keyworth and Colin Cliffe. Mr Sibson and his representative would also be present.

152. At the end of July the claimant was sent the pack of papers for her grievance appeal. On 1 August she sent an email (page 703) to say that she would not be attending because she had not received the necessary documents. There had been problems accessing the link sent to her work email because she was unable to access her work emails. The meeting was postponed.

Debi Lowe's Arrest

153. In the meantime Debi Lowe had been arrested on 12 July 2017 and charged on 17 July with abusing a position of trust by forming a relationship with a male student who had previously left the school in June 2016. There were allegations - denied by Mrs Lowe - that there had been sexually activity when he was aged 15. The school immediately suspended Mrs Lowe. She was eventually acquitted of criminal charges in April 2018.

154. The arrest and criminal charges understandably caused great concern at the school. A police investigation ensued. On 19 July the claimant emailed Laura Jackson to say that she intended to return to work in the near future and wanted to be kept informed. She took it upon herself to contact Greater Manchester Police by an email the same day (page 686) in which she said:

> **"It has now come to my attention this morning that a member of HGHS's staff, Debi Lowe, has been arrested for having sex with a pupil and for grooming offences. I personally raised concerns about this member of staff and her relationship with boys of the school but the Head Teacher said he was happy with her relationships with these disaffected students and did not want to challenge her practices. Another member of my staff, Liz Tiffany, also raised these concerns in an email to Cherry Franklin, Deputy Head, and this email has been submitted as part of my grievance bundle."**

155. This led to the claimant providing further information to the police, including an email of 21 July 2017 at pages 687-688. She provided more details about matters she said she had relayed to Mr Sibson in January 2017, including the "Hi sexy" comments, wolf whistles, and seeing Mrs Lowe show the boys pictures of her daughter on her mobile phone.

Return to Work August 2017

156. In her email of 1 August about the grievance appeal the claimant also informed the school that she was intending to return to work on Monday 7 August 2017. She would need a phased return. That was a period during school holidays so she would not actually be required to attend work until early September. This was supported by a fit note saying that the claimant would be fit for work with reasonable adjustments between 7 and 14 August 2017 (page 708).

157. In a subsequent email of 4 August 2017 (page 707) she confirmed that the delay in the grievance appeal process, initially due to a failure to acknowledge her appeal promptly, left her with no alternative but to return to work to avoid being

disadvantaged financially through no fault of her own. That was a reference to the impending reduction to half pay.

Restructuring Proposal August 2017 – **FP36** and **FP37**

158. The possibility of a staff redundancy had been raised in the report of Anna Cohen in June 2017, and on 7 August 2017 Mrs Cohen circulated to selected governors her consultation document for the proposed restructure and possible redundancy of the claimant's post. The decision to proceed was for a panel known as "Panel A", composed of the Deputy Head, Ben Vickers, Rob Marchant, the Chair of the Governing Body Finance Committee, and another Governor, Heather Illingworth. The proposal was sent to them at just after 5.00pm on 7 August, and by 8.15pm on 8 August all three of them had approved it by email.

159. The proposal was sent to the claimant by email on the afternoon of 8 August (page 713). The document itself appeared at pages 715-716. As background it recited the fact that a member of the pastoral team had been charged with offences contrary to the Sexual Offences Act 2003. It said that as a result the Governing Board had asked the school to make suggestions to improve safeguarding and child protection procedures. It recorded that the Director of Student Welfare was a non-teaching member of the SLT. The core proposal was as follows:

> **"It is proposed that the Pastoral Team could be overseen by a more senior, teaching member of staff. Each Head of Year would work with a Director of Learning – a teaching member of staff who has responsibility for overseeing the academic monitoring of the students in their year group. If this proposal was put into place it would mean that role of Director Student Welfare would be made redundant."**

160. The document went on to identify two reasons for the proposal. The first was to strengthen safeguarding and child protection procedures. A Deputy Head teacher would oversee pastoral care instead of the Director of Student Welfare. The second was financial: removing the Director of Student Welfare post from the structure would represent a significant cost saving for the school and have a positive impact on its financial position. The Deputy Head Teacher was said to have experience of working within a pastoral setting, and to be safeguarding trained to Level 3. The experience of senior leadership was seen as a vital characteristic to lead the new proposals.

161. The claimant responded immediately to the email (page 717) saying that she was on holiday from 10 August until 2 September. The consultation period was due to end on 22 August. Mrs Cohen confirmed on 9 August (page 717) that it would be extended, and suggested a meeting on 4 September 2017 to discuss the consultation document and to discuss the return to work. The claimant confirmed she would attend on 4 September and she was not required to come in before then.

162. On 21 August the claimant was informed that her grievance appeal hearing would take place on 5 September (page 722).

4 September 2017 **FP39** and **FP40**

163. The claimant had her combined return to work and consultation meeting with Cherry Franklin and Mr Spence on Monday 4 September 2017.

164. The return to work form appeared at page 725. It was agreed there would be a referral to OH to see what action was needed to help the claimant return.

165. As for the consultation element, the claimant provided Miss Franklin with a counter proposal (page 724). She said she did not agree with the proposal to make her post redundant. She gave eight reasons. They included the concerns she had previously raised about Debi Lowe, and that the Deputy Head that it was proposed would take over (Cherry Franklin) did not have the same level of training and experience in safeguarding as she did. She said that the proposal to make her post redundant was a result of protected disclosures and was further victimisation. Miss Franklin did not consider these matters herself but simply passed them on. We will return to the allegations of detriment about this meeting in our conclusions.

5 September 2017 Grievance Appeal Hearing

166. On Tuesday 5 September the claimant attended the appeal hearing in relation to her grievance appeal. She had prepared a list of questions and notes at pages 726a-726c. The claimant had also prepared a statement at pages 959-961 which made it clear that she only thought she was going through this process because she had made protected disclosures as Safeguarding Lead. She took issue with a number of points Mr Sibson had made to Mr Walker in his response to her original grievance.

167. The information before the appeal panel included statements from Dr Harrington and Mr Roling, as well as the grievance document and Mr Walker's investigation report. Dr Harington's statement dealt with how he responded to the suggestion there were whistleblowing issues. Mr Roling explained how he handled the grievance decision. There were substantial appendices and the total bundle occupied pages 730-954 in our bundle.

168. The formal notes of the appeal hearing before the panel chaired by Mrs Horsfield appeared at pages 955-958c. The claimant was accompanied by Ms Linacre. The claimant presented her case and said she had further damning evidence which would be used at a Tribunal if necessary. She was questioned by the panel. There was a challenge to Mr Roling's ability to deal with the original grievance. The notes at the top of page 958b recorded Mr Roling saying that he had not read the grievance when it was initially lodged. The claimant and Ms Linacre believed that he was saying he had never read her grievance document itself.

169. After the meeting Mr Roiling provided a further document at page 958d in which he clarified some answers he had given.

170. There was no decision from the grievance appeal panel on the day. However, by email of 7 September 2017 at age 965 Mrs Horsfield confirmed to the claimant that the appeal panel had found that the initial investigation was not sufficient rigorous or comprehensive, and that they were recommending a reinvestigation by an independent agency before the appeal panel reheard the grievance and made a final finding. Details were to be confirmed. The claimant responded promptly saying that she found this encouraging but wanted to know who the outside agency would be.

Redundancy Consultation 6 – 13 September 2017

171. On 6 September 2017 (page 964) Miss Franklin wrote to the claimant to confirm that her post was at risk of redundancy. Her letter referred to the arrest and prosecution of Debi Lowe. It said that the school would continue to explore ways of avoiding the redundancy. The claimant was asked if she had any suggestions. There would be a further consultation meeting on 13 September.

172. The claimant made a second counter proposal on 11 September at page 971. It began by proposing the replacement of Mark Sibson as Head Teacher and of Keith Harrington as Chair of Governors. She was to be allowed to remain in her role and to do her job without fear of reprisal. Her note then made some suggestions about actions that could be taken on behaviour, the Pastoral Office and safeguarding training. She said that her role was essential and no-one could do it better than she could.

173. The second consultation meeting occurred on 13 September. No formal notes were kept but the claimant and her Unison representative, Maggie Hindle, prepared a typed note at pages 969 and 970. Miss Franklin discussed the counter proposal with the claimant. The claimant had no other options to offer. The claimant queried why she had not been "bumped" into the new Head of Transition role which had recently been filled. The claimant asked who the members of Panel A were and was told that Miss Franklin would get back to her. She was concerned because there were two factions to the Governing Body, and she felt the inner sanctum (including Rob Marchant, Keith Harrington and Mark Sibson) was against her. The meeting closed by the claimant being told that the consultation process would end at noon on Friday 15 September.

Dismissal Decision – **FP41**

174. The day after the meeting Mrs Cohen forwarded to Panel A the proposals made by the claimant (page 972). She asked the panel to make a decision by noon on 15 September whether the original decision to make the post redundant still stood. That was confirmed by the three members of Panel A at shortly before 2.00pm on 15 September (page 976). We will address the reason or principal reason for this decision in our conclusions below.

175. Mr Spence informed the claimant who was on Panel A on 18 September (page 983). The claimant wrote to the four Academy members (Dr Harrington, Mr Franklin, Mr Roling and Mr Marchant) on 19 September 2017 at page 984. She said she was concerned about the composition of Panel A. Staff governors were involved: Mr Vickers. There had been a breach of protocol. She did not know that Panel A had already approved her dismissal by reason of redundancy.

176. That was confirmed by a letter of 19 September 2017 at pages 987-989. The claimant was made redundant with immediate effect, albeit paid in lieu of notice. The reasons for the redundancy were said to be the need to strengthen safeguarding and child protection measures, and the budgetary position. The counter proposals made by the claimant would not have any positive impact on the budget position. It was denied that the redundancy was due to a protected disclosure. The letter said the school had explored other ways in which it could have been avoided but no possibilities had been identified. The claimant had the right of appeal.

Grievance Reinvestigation

177. In the meantime the claimant had been in correspondence with Mrs Horsfield about the proposed independent reinvestigation of her grievance. She had emailed the grievance panel members on 15 September (page 978) to raise her concerns about the composition of Panel A in the redundancy process, and she said she had been told by Mr Spence at the second consultation meeting on 13 September that the grievance appeal panel had been aware of the proposed redundancy at the hearing on 5 September. In fact the panel members had said to her that they were not aware of it. This caused her some concern. She felt she had been hoodwinked. Mrs Horsfield replied on 16 September (page 981) to say that she had heard moments before the appeal hearing started that the claimant had been advised of a consultation process, but she had not been aware of the full details. She denied having hoodwinked the claimant.

178. As to the independent reinvestigation of the grievance, Mrs Horsfield agreed at the claimant's request to find a different external provider, but on 19 September (page 986) the claimant wrote to Mrs Horsfield saying that she would not participate because she had now been made redundant. She would wait to share her evidence before the Employment Tribunal.

Appeal against Dismissal

179. The claimant appealed against dismissal by a letter of 21 September 2017 at pages 991-992. She complained about the involvement of staff governors in an HR matter, and asserted that neither of the two alleged rationales for her redundancy made sense. She said that the redundancy was further victimisation of her because of protected disclosures.

180. The dismissal appeal hearing before “Panel B” was arranged for 11 October. Panel B consisted of Dr Harrington and his fellow governors, Carlos Meakin and Heather Watts. Mr Spence was going to attend as HR support. The invitation letter of 9 October 2017 at page 1000 said it would be a review of the original decision.

181. A bundle of papers was prepared which included email queries raised by Mr Meakin on 10 October (pages 1000b-1000c). He raised some questions about the budget deficit which Anna Cohen answered, and about the capacity of the Deputy Head to lead on safeguarding which Mr Sibson answered. He also raised a query about the redundancy policy and was told the ACAS Code of Practice was followed. Queries about support in finding alternative employment were raised but not answered prior to the hearing.

182. The notes of the appeal hearing appeared at page 1000e. The claimant presented her case including the counter proposals and talked through the points she had raised. She was accompanied by her union representative. The panel responded on some points.

183. The appeal outcome was set out in a letter of 19 October 2017 signed by Dr Harrington. The decision to make the post redundant was upheld. The composition of Panel A and Panel B was explained by limited resources, and as the school was an Academy it was not bound by the strict Local Authority policy template. Panel B considered that allocating the safeguarding lead to a Deputy Head Teacher would

strengthen the position and that the Deputy Head had the skillset qualifications and capacity to fulfil those duties. Reasons for rejecting the claimant's counter proposals were rejected. The fifth Head of Year position had been filled prior to consultation commencing. There was no suitable alternative employment. The savings from losing the claimant's post would exceed £30,000.

184. Dr Harrington's letter also included this paragraph:

> **"You have stated that you believe the redundancy is entirely related to the protected disclosures you have made and is victimisation of you as a whistleblower. Your comments have been noted but we disagree with this statement. We feel strongly that the new structure will improve safeguarding and child protection at Hazel Grove High School and has a positive impact on the financial position."**

185. Dr Harrington did not give any evidence to our hearing. We heard from Mr Meakin. He said that he had not been aware of any whistleblowing taking place, and although he could not recall the discussion of Panel B in detail, he was not aware of it as an issue. However, he said it had not influenced his decision.

Reference – **FP43**

186. In November 2017 the claimant was offered a role as Pastoral Manager at a local primary school, subject to references. She gave Kate Appleby as one of her referees. The reference from Kate Appleby indicated that her teamworking was only satisfactory. The school therefore sought a reference from Hazel Grove High School.

187. On 13 November the claimant was informed that the job offer was withdrawn due to the fact that this reference also raised concerns about team work.

188. The reference provided by the school appeared at pages 1015-1016. It described the standard of performance as "good" but gave no rating for honesty. There was also no rating for relations with managers, although the rating for relations with team members and customers were both "good". When asked if the school would re-employ the claimant the response was that it preferred not to comment. The claimant maintained that this reference was a further act of victimisation by Mr Sibson and we will return to that in our conclusions.

189. Finally, on 5 January 2018 the National College for Teaching and Leadership wrote to Mr Franklin with the outcome of an investigation into Mr Sibson's actions which had been under way since August 2017 (page 1026-1029). It recorded that Mr Sibson had said that the claimant had been subject to disciplinary proceedings before she began her sick leave. That was not correct.

Submissions

190. At the conclusion of the evidence each side made a submission to the Tribunal to help us make our decision. Helpfully both advocates had produced detailed written submissions which we read prior to hearing oral submissions.

Respondent's Submission

191. Mr Gorton's written closing submission ran to 19 pages. He began by addressing issues of credibility, and submitted that where there was a conflict of evidence we should prefer the respondent's witnesses. He placed particular

emphasis on the evidence given by the claimant that she told Mr Sibson about the "Hey Sexy" and wolf whistle matters concerning Mrs Lowe when such details were omitted from the grievance document and only one of them appeared in the late disclosed note at page 351a. He also emphasised the evidence from the claimant and Mr Franklin that she had told him about Mrs Lowe on 9 November 2016, when her detailed account of their discussion at page 924 made no mention of that, and her grievance was also silent on the point. He suggested they had colluded to give false evidence.

192. Mr Gorton went through each of the disclosures and submitted that none of them met the legal test. For some there was a lack of information, for others there was a factual dispute about whether anything was said or not, and for a number of them the claimant had not identified the source of the legal obligation she said was engaged. A number of them were simply mundane matters raised by the claimant in the course of struggling to get to grips with her job.

193. Mr Gorton then addressed each of the detriments and made submissions in writing as to why they either did not amount to a detriment or were not causally linked to any of the alleged protected disclosures.

194. Turning to the dismissal, the submission that it was simply a redundancy for the two reasons set out in the relevant correspondence: the economic case for saving money and the desire to restructure safeguarding following the arrest of Debi Lowe. He submitted that there was no evidence adduced by the claimant that showed that the panel which decided to dismiss her knew of any protected disclosure, let alone that it was the reason or principal reason for their decision. Although he acknowledged that in principle a failure to act fairly might shed light on the reason for dismissal, in this case the redundancy consultation procedure and dismissal had been fairly handled. He therefore invited us to dismiss all the claims.

Claimant's Submission

195. Mr Lees had prepared a written submission which ran to 13 pages in which he addressed the legal framework, the protected disclosures, the detriments and the unfair dismissal complaint. In addition we had a supplementary submission by way of email from Mr Lees after oral submissions in which he identified the statutory obligations relating to safeguarding.

196. In the course of submissions he withdrew any reliance on the protected disclosures said to have occurred in FP38 (a meeting on 25 July 2017 with Stockport MBC), and on the detriments in relation to the decision to hold a mid point probationary review in January 2017, the absence of a reply to the claimant's letter of 22 March 2017, the failure to give the claimant a pay rise when the Heads of House were subject to restructuring, and the reduction of sick pay to half pay in August 2017.

197. In relation to the disclosures he identified the factual content of each disclosure by reference to pages in the bundle. He submitted that the claimant reasonably believed that the information disclosed on each occasion tended to show that a person had failed to comply with a legal obligation. The legal obligation identified was that of safeguarding. However, he also relied on concerns about the health and safety which the disclosures represented.

198. As to the detriments, a core proposition was that Mr Sibson developed a mindset against the claimant as evident from a number of emails where he expressed frustrations with her, and that this mindset was a consequence of protected disclosures. He reminded us that after the claimant left Mr Sibson had wrongly told the National College for Teaching and Leadership that the claimant had been subjected to disciplinary proceedings. This fed into his core proposition that the true reason for dismissal was not a redundancy or a desire to restructure safeguarding, but an intention on the part of Mr Sibson to get rid of the claimant. The economic case for redundancy was undermined by a close examination of the financial position of the school, and the proposed restructuring would reduce the priority given to safeguarding because there would be no person at SLT level dedicated primarily to safeguarding matters. In that sense the proposed extension of the probationary period and the redundancy proposal produced in August 2017 by Mr Sibson and Mrs Cohen were both part of a process designed to remove the claimant from her role.

199. The remainder of the submission addressed the individual detriments and explained why the claimant considered they were materially influenced by one or more protected disclosures.

Discussion and Conclusions – Protected Disclosures

200. The Tribunal decided to address the protected disclosures first before moving on to the allegations of detriment and the dismissal issue. In considering whether any of the alleged disclosures were protected disclosures we bore in mind the legal framework summarised above, and in particular the requirement that the claimant must disclose information rather than making a bare allegation. She must also have had a reasonable belief that the information disclosed tended to show one of the matters set out in section 43B(1), and that her disclosure was made in the public interest.

201. For some of these alleged protected disclosures it was necessary for us to make a finding of fact prior to applying the law.

202. For convenience we will reproduce each alleged disclosure from the list of issues before addressing it.

> **FP4: In a series of requests for training on the School Information Management System ("SIMS"), on behaviour management and on middle leadership made between 6 September 2016 and 30 January 2017 to Mr Sibson and to the Deputy Head, Cherry Franklin.**

203. This alleged protected disclosure concerned a series of training requests made by the claimant to Mr Sibson and Miss Franklin between September 2016 and January 2017. We recorded in our factual summary above that such requests were made, and indeed Miss Franklin responded to the requests in relation to SIMS and behaviour management training.

204. Applying the law, we were satisfied the claimant had disclosed information, namely that she had not had such training and believed that she needed it in order to do her job better. However, we unanimously concluded that the claimant did not reasonably believe that this information tended to show any breach of a legal obligation or that the health and safety of any individual was likely to be endangered.

The claimant was by her own account an experienced and capable safeguarding lead. No legal obligation to provide such training nor any risk to health and safety was identified. These were nothing more than requests for additional training to help her get to grips with a new role at SLT level. They were not protected disclosures.

> **FP6: In concerns about the accuracy of registers, the mobile phone policy, healthcare plans, training needs about behaviour management information and other behaviour management issues raised verbally with Mr Sibson on 4 October 2016.**

205. The claimant's case was that she informed Mr Sibson of a range of safeguarding concerns which we summarised above. We needed to make a factual finding as to whether that was an accurate account or not.

206. The claimant gave an account of the meeting in her grievance of 22 March 2017 at pages 377-378. She described it as her first one-to-one meeting with Mr Sibson, and recorded that she raised incidents where she felt undermined by him. Her grievance account said there was discussion about medical needs being a priority. There was also reference to her requests for training. However, the account in the grievance made no reference to the inaccuracy of registers, concerns about the mobile phone policy or that healthcare plans remained unsigned.

207. The account given by Mr Sibson was in his response to the grievance at page 514. It was understandable that he did not address the matters not included in the grievance. He only responded to the points that were mentioned in the grievance itself.

208. At this point we considered the attack upon the claimant's credibility mounted by Mr Gorton in paragraph 8 of his written submissions. Mr Gorton suggested that her evidence on this issue was unreliable and that we should reject it even though we had no direct evidence from Mr Sibson to contradict what the claimant said.

209. We thought there was some considerable force in his points about the extent to which the claimant spoke to Mr Franklin about Debi Lowe on 9 November 2016 and to Mr Sibson about Debi Lowe on 30 January 2017. We will return to those points below when those alleged disclosures are considered. We did not think that his points made in paragraphs 8.1-8.5 were as strong. The claimant had plainly been seriously affected by the sequence of events beginning with the formal invitation to a probationary review meeting, and the suggestion that her probationary period might be extended, and had formed a hostile view of Mr Sibson largely as a consequence of those matters. That explained the force of her subsequent criticisms of Mr Sibson.

210. Set against those concerns, however, we noted that this was one of the first (if not the first) one-to-one meetings between the claimant and her line manager to review her progress as the new Head of Safeguarding, and it seemed to us entirely probable that the claimant would have raised with him concerns which had arisen in the first few weeks of her employment. Some of those concerns had already been canvassed in emails, such as concerns about the register and about behaviour management.

211. The Tribunal therefore unanimously found as a fact that the claimant did provide information to Mr Sibson in their meeting on 4 October 2016, namely that there were inaccuracies in the taking of registers, that pupils were using their mobiles at social times during school hours, that the healthcare plans in the school

remained unsigned by the Head, that she had some training needs, and that there had been occasions when Mr Sibson had overruled her decisions which led to a lack of consistency and behaviour management. The fact that many if not all of these matters were already known to him does not mean that the information cannot form the basis of a protected disclosure.

212. Having made that finding of primary fact we applied the law. Did the claimant have a reasonable belief that this information tended to show any of the matters set out in section 43B(1)? For reasons set out above we did not consider that references to additional training could give rise to a reasonable belief in such matters. The same was true in our judgment of concerns about inconsistency in behaviour management, or the fact that healthcare plans had not been signed by the Head Teacher. They seemed to be matters of best practice rather than reasonably viewed as tending to show a breach of a legal obligation or that health and safety might be endangered.

213. In relation to mobile phones, Mr Lees did not identity any legal obligation which was breached by the information disclosed by the claimant. The claimant did mention in cross examination a concern about whether looked after children had consented to their pictures being taken, but this was not a situation where it was the school taking pictures and requiring consent from the Local Authority. We noted that when the matter was discussed at the January 2017 SLT meeting (page 348f) the claimant said that "information from safeguarding" did not agree with mobile phone usage in schools. She was not recorded as asserting that allowing pupils to have mobile phones in schools was in breach of the law. We therefore concluded that the information about mobile phone usage could not reasonably be viewed as giving rise to any of the matters in section 43B(1).

214. In relation to the concerns about inaccurate registers, there was no specific legal obligation identified by Mr Lees in submissions or by the claimant in her evidence, although we noted that in paragraph 9 of her witness statement Linda Robins said she understood there to be a legal obligation to take registers twice a day. However, that was academic because we concluded that the information disclosed by the claimant was something which she reasonably believed tended to show that the health and safety of pupils might be endangered. Without an accurate record of which pupils were in and out of school, the school could not guarantee their safety. This was also information which the claimant reasonably believed was in the public interest: it did not affect her personally but was an issue for pupils at the school, and their families.

215. We therefore concluded that the claimant had made a protected disclosure to Mr Sibson on 4 October 2016 about the inaccuracy of the registers.

FP7: In the reiteration of some of those concerns to Miss Franklin on 18 October 2016.

216. The claimant's pleaded case was that in a one-to-one meeting with Miss Franklin she reiterated her concerns about Mr Sibson's failure to apply a consistent behaviour management policy, the failure to keep an accurate record of pupil attendance through the registers, the lack of induction and her need for training, the fact she had not been given a partner for her duty day, and that some of the individual pupil healthcare plans were out of date.

217. There was no note kept by either party of this meeting save for a document which was disclosed during our hearing from the claimant's diaries, being a brief handwritten note at page 234a. It was dated 8/10 instead of 18/10. It did however purport to be a record of a one-to-one meeting with Miss Franklin. It showed that the claimant had raised the lack of a second person for her duty days, that Mr Sibson had been overruling her on behaviour management issues, that she had been made responsible for a week of anti-bullying action without being told what was required, her need for training, and some issues with Elizabeth Tiffany.

218. Miss Franklin had not kept any note. She accepted that the concerns about duty day had been raised but not the issues about inconsistent behaviour management or Elizabeth Tiffany.

219. Immediately after the meeting the claimant sent an email at page 328b which said:

> **"Even though I've come out with even more to do I feel better for having our catch up and feel reassured that the support is ongoing."**

220. We noted that of the content set out in FP7, the behaviour management issues, induction/training and the lack of a partner for duty day were essentially matters of good practice or good management rather than information which could give rise to a reasonable belief within section 43B(1). The matters which could potentially engage that section were the concerns about the accuracy of registers (see above) and a suggestion that individual pupil healthcare plans were out of date. That is information which the claimant could reasonably consider tended to show that the health and safety of a pupil might be endangered if information relevant to medical care was not up to date and available.

221. However, Miss Franklin denied that either of these matters had been raised. There was no mention of them in the brief email after the meeting. Importantly, there was no mention of them either in the claimant's handwritten note at page 234a. The Tribunal unanimously concluded that the claimant had not told Miss Franklin about concerns over the accuracy of registers or out of date healthcare plans. She had mentioned the other matters in that note but they were not matters which she could reasonably conclude tended to show a breach of any legal obligation or that the health and safety of any person was being endangered. We concluded there was no protected disclosure made on 18 October 2016.

> **FP8: In the reiteration of some of those concerns to the Safeguarding Governor, Paul Franklin, in a meeting on 9 November 2016.**

222. The further particulars identified the protected disclosure as relating to information about four matters.

223. The claimant did not specify in her witness statement what the concerns in relation to health and safety were. We had insufficient detail to find that there was any protected disclosure about those matters. For reasons set out above her concerns about mobile phone use appeared to be matters of policy rather than anything which might tend to show a breach of one of the matters in section 43B(1). The same was true of concerns about the lack of consistency in behaviour management.

224. Our focus, therefore, was on whether the claimant had relayed to Mr Franklin on this occasion her concerns about inaccurate registers in the school. For reasons set out above that was a matter which was capable of being a protected disclosure.

225. This alleged disclosure occurred in the first part of a three part meeting with Mr Franklin that day. The claimant and Mr Franklin were due to meet with Mr Vickers at 11.30am. Mr Franklin approached the claimant about 20 minutes earlier and the two of them spoke alone. They then had a discussion with Mr Vickers and then spoke again after seeing Mr Vickers.

226. Although Mr Franklin and the claimant both said in their witness statements that the claimant raised concerns about matters including inaccurate registers, the Tribunal was troubled by the difference in their accounts of how the initial part of this meeting arose. The claimant said in the note prepared shortly after the meeting (pages 924-925) that Mr Franklin approached her unannounced and that the discussion about Mr Sibson arose as a consequence of the fact that Mr Vickers was attending the meeting. Her own note made no mention of discussion of these other safeguarding matters: the discussion recorded was all about Mr Franklin's views of Mr Sibson and his approach. In contrast, Mr Franklin's account (paragraph 18 of his witness statement) was that this "introductory chat" began with the relaying to him of safeguarding concerns, and that this then led on to a discussion about Mr Sibson. Those two accounts were impossible to reconcile.

227. It was also significant in our view that Mr Franklin said in his witness statement that the claimant had told him on that occasion about inappropriate staff relationships, yet this was not the evidence of the claimant. Nor was it what Mr Franklin put in his subsequent witness statement to the police on 11 August 2017 (pages 688a-688e). This discrepancy caused a serious concern about the reliability of Mr Franklin's evidence.

228. Overall, we preferred the account given by the claimant because it was recorded in her detailed note shortly after the meeting at pages 924-925. Mr Franklin produced no note of the meeting.

229. We noted that during the course of our hearing the claimant produced an entry from her diary headed "Safeguarding Governor 9/11/16" (page 320a) which set out a list of bullet points, amongst which "registers" appeared. However, we concluded that this was not a note of what was discussed but rather a list of points she wanted to raise with the safeguarding governor at their forthcoming meeting. We found as a fact that the claimant did not raise those matters because the discussion was derailed by what Mr Franklin said about Mr Sibson.

230. The Tribunal therefore found as a fact that the claimant had not raised with Mr Franklin on the morning of 9 November 2016 those matters set out in paragraph 8 of her further particulars which were said to form the basis of any protected disclosure. We were satisfied that discussion was entirely about Mr Franklin's views of Mr Sibson as accurately recorded on pages 924-925. There was no protected disclosure made on this occasion.

FP9: In the reiteration of that information to the School Business Manager, Anna Cohen, in a verbal discussion on 9 November 2016.

231. The claimant's case was that after her encounter with Mr Franklin she told Anna Cohen about what had happened and also repeated to her the disclosures she had made to Mr Franklin.

232. We concluded unanimously that this was not the case and that the discussion with Anna Cohen only concerned what Mr Franklin had said about Mr Sibson, not the claimant's own concerns about registers and other matters.

233. Firstly, for reasons set out above we concluded she had not told Mr Franklin about these things.

234. Secondly, her own note of the discussion in her grievance at page 380 only recorded her concerns about what Mr Franklin had said, not about any further disclosures to Anna Cohen. That was entirely consistent with the subsequent exchange of text messages between the claimant and Mrs Cohen at page 322 which was all about Mr Franklin's actions. There was no mention in that exchange of texts about any concerns regarding registers or other operational matters.

235. Thirdly, Mrs Cohen gave evidence that the claimant had not raised these matters with her.

236. Fourthly, there would appear to be no reason for the claimant to tell Anna Cohen about operational details which were not her concern.

237. It followed that there was no protected disclosure as set out in **FP9**.

FP12: In an email of 19 January 2017 to the school nurse, Donna Sorton, about a diabetic student's healthcare plan.

238. The claimant's case was that she made a protected disclosure to Donna Sorton, a nurse employed by Stockport NHS Foundation Trust, by forwarding an email from Lisa Martin requesting training on how to administer insulin to a diabetic student. The allegation in paragraph 12 of the further particulars was that the claimant told Mrs Sorton that the second respondent had varied the student's healthcare plan without consulting the claimant. In her witness statement she explained that the alteration was to insert the name of Mrs Martin as a member of staff trained to deliver insulin when that was not the case. That triggered the request by Mrs Martin for training, which the claimant forwarded to Ms Sorton.

239. This allegation failed on the facts. The claimant did not tell Ms Sorton in the email at page 350 that Mr Sibson had altered the care plan. She simply forwarded the request for training from Lisa Martin which contained no such allegation. We were satisfied this was simply a request for training by Ms Sorton and therefore not capable of being a protected disclosure.

240. It was in any event not made to the claimant's employer, and Mr Lees did not argue that it was made under any other circumstances covered by sections 43C-43G.

241. We concluded this was not a protected disclosure.

> **FP13: In a series of disclosures in the week of 23 January 2017 to Anna Cohen, the Head of House, Suzanne Foord, and the Drug and Alcohol Counsellor, Martin Bower, about a student issued with a nicotine spray.**

242. There was a concerning discrepancy about dates in this allegation. The pleaded case was that disclosures had been made in the week of 23 January following a situation in which a pupil used a nicotine spray on another pupil. The claimant's case was that the situation had been caused by a decision of Mr Sibson. In his grievance response (pages 516-517) he made clear his view that it was the claimant who was at fault. Some handwritten notes made by the claimant on that grievance response appeared to acknowledge an error in paperwork on her part although she maintained that the situation had arisen because of his intervention.

243. The practical difficulty faced by the Tribunal was that the claimant offered no detailed evidence of what she said, to whom and when. Her witness statement (paragraph 42) told us nothing more than what was in her further particulars. It could not be factually correct because her own grievance of 22 March 2017 at page 382 said that the incident with the spray occurred on 3 February 2017.

244. The claimant had not proven that she had disclosed any information as pleaded which could have amounted to a protected disclosure and we concluded unanimously that no protected disclosure had been made as she asserted.

> **FP16: In providing Mr Sibson with information about the claimant's concerns about the behaviour of Debi Lowe (Head of House) in relation to Year 10 and Year 11 male students in the course of a probationary review meeting on 30 January 2017.**

245. It was necessary for us to make a finding of fact about what the claimant told Mr Sibson at the informal probationary review meeting on 30 January 2017. The claimant's case was that she made a protected disclosure on that occasion by telling Mr Sibson of some specific serious concerns about Ms Lowe allowing students to have treats of food, showing them photographs on her personal mobile phone of her scantily clad daughter, and allowing inappropriate comments of a sexual nature.

246. There were no notes kept of this meeting. However, the claimant gave a detailed account in her grievance between pages 383 and 387, and Mr Sibson when responding to the grievance produced a probationary form at pages 591-593. We did not have any evidence on oath from Mr Sibson.

247. The concerns which the claimant claims to have raised on that occasion were potentially serious matters, particularly the allegation about Mrs Lowe having shown students a photograph of her adult daughter in a bikini. If Mr Sibson had simply brushed these complaints aside by an inadequate response we thought it highly likely that the claimant would have made that point in her grievance about him filed six weeks later. Instead, the grievance gave a detailed account of the discussion with only a passing reference to Mrs Lowe. It recorded that Mr Sibson said he was concerned that the atmosphere in the Pastoral Office was not welcoming enough, and that in response the claimant pointed out that Year 11 boys were coming into the pastoral area at every opportunity to see Mrs Lowe. According to her grievance she then moved on to deal with a different point entirely.

248. We accepted that the claimant had raised some concerns with Mr Sibson a week earlier as recorded in her diary note at page 355a. Those concerns included

concerns about showing students her mobile phone (there was no reference to Mrs Lowe's daughter) and providing food, and the "Hey Sexy" comment. The response from Mr Sibson on 23 January was in line with the claimant's allegation in her further particulars about the meeting on 30 January. However, we concluded that the claimant had confused the two meetings, and that her grievance was an accurate account of what occurred on 30 January 2017. The reference to Mrs Lowe in that meeting was a passing reference without any of the details the claimant now relies upon. We found as a fact she had not mentioned anything on 30 January about treats, photos of the daughter or inappropriate comments of a sexual nature.

249. As a consequence we concluded that there was no protected disclosure made about Debi Lowe by the claimant to Mr Sibson on 30 January 2017.

Summary

250. For the reasons set out above the Tribunal concluded unanimously that the claimant had established only one of her pleaded protected disclosures, being the concerns about the accuracy of registers raised with Mr Sibson on 4 October 2016. None of the other protected disclosures were proven.

Discussion and Conclusions – Detriments

251. In this section of the Reasons we address each of the detriments on which the claimant relied. For some of them it was necessary to make a finding of fact before deciding whether any of the protected disclosures had had a material influence on the act or deliberate failure to act. For convenience each paragraph from the list of issues will be reproduced before our conclusions on it. Some alleged detriments were considered together as they were factually linked.

252. We bore in mind the legal framework summarised above. An unjustified sense of grievance does not amount to a detriment. If a detriment has resulted from any act or deliberate failure to act, there has to be evidence from which the Tribunal could conclude that there was a causal relationship before the burden falls on the respondent to show what the ground for the treatment was. If the respondent shows that the ground was in no sense whatsoever a protected disclosure, the allegation fails. If, however, the respondent fails to do that, the Tribunal should still only reach a conclusion in favour of the claimant if such an inference is justified by all the evidence. In practice it may not be necessary for the Tribunal to apply the burden of proof in a mechanistic way if a firm finding about the reasons for any detrimental treatment can be made.

253. It is also incumbent on the claimant to identify which disclosure has caused the detriment. Given our finding that the claimant made only one protected disclosure, that was less important than it might have been, but it is still a matter to which we had regard in considering the reason for the actions said to form the whistleblowing detriments.

> **FP15: In the probation review meeting on 30 January 2017 Mr Sibson said that the Pastoral Office was not welcoming enough.**
>
> **FP16: In the probation review meeting on 30 January 2017 Mr Sibson said that he liked Debi Lowe's practice and did not want her to modify it, although he would speak to the boys about using inappropriate language.**

> **FP17: In the probation review meeting on 30 January 2017 Mr Sibson said that it was his intention to extend the claimant's probation period and put the claimant on an action plan.**
>
> **FP18: In the probation review meeting on 30 January 2017 Mr Sibson said that there were four reasons he was extending the probationary period, including the claimant questioning and challenging his methods, lack of experience, and personal policies in an and around the safeguarding of students.**

254. It was convenient to deal with these detriments together because they all related to what Mr Sibson was alleged to have said in the probationary review meeting on 30 January 2017.

255. For reasons set out above, we found that the course of that meeting was as indicated by the claimant in her grievance between pages 383 and 387.

256. The allegation that in that meeting Mr Sibson said that he liked Debi Lowe's practice and did not want her to modify it failed on the facts. There was a discussion along those lines on 23 January, but not on 30 January where the claimant made only a passing reference to Mrs Lowe in the course of defending herself against an allegation that the Pastoral Office was not welcoming enough. No such detriment took place on 30 January.

257. In relation to the other allegations, we accepted the facts as set out in the grievance. Mr Sibson did say that the Pastoral Office was not welcoming enough, but this was not because of any protected disclosure. It was because the Year 11 boys had made a complaint to that effect, possibly because of the fire drill incident which the claimant mentioned in her grievance. There was no causal link between the protected disclosure on 4 October 2016 and Mr Sibson raising this issue on 30 January 2017.

258. The remaining two allegations were taken together as they concerned the proposal to extend the probationary period and put the claimant on an action plan, and the reasons given for that.

259. We concluded that the proposal of Mr Sibson to extend probation with an action plan could not reasonably be seen as a detriment by the claimant. We acknowledged that the claimant reacted very badly indeed to this proposal, and its formalisation in the subsequent letter precipitated a period of work related stress absence for several months. We did not doubt the genuineness of that reaction. However, viewed objectively this was the claimant's first appointment at SLT level. She had high regard for her own abilities, particularly in safeguarding. Her working relationship with Mr Sibson had been eroded by personal friction between them to some extent, and also (importantly) by what Mr Franklin told her on 9 November 2016. Viewed objectively we were satisfied that the situation could not be viewed as a detriment because the alternative was not confirmation in her role, but termination.

260. Putting that aside, however, we also considered whether the approach Mr Sibson took was influenced to any degree by the protected disclosure made on 4 October 2016 to him about inaccurate registers. We considered the evidence available to us about why Mr Sibson acted as he did.

261. At the end of October during the half-term week Mr Sibson expressed his annoyance that the claimant was chasing him for a response to a draft report (pages

236-238). In that email exchange with Miss Franklin he referred to the claimant having an "air of distance", and he expressed himself frustrated that she could not deal with behaviour matters, needed help with attendance plans and that he and Miss Franklin were still involved in safeguarding issues (such as the radio call incident). Nevertheless he acknowledged the need to give her time and to support her to help her develop.

262. In early November he did offer the claimant support and encouragement (pages 552-554), although he was also concerned at her use of the greeting "Hi mate" to a social worker in the email exchange at page 241.

263. Following the claimant telling him of what Mr Franklin had said to her on 9 November, he expressed support in his text at page 321 saying that the claimant was "doing a hard job well". This was plainly an attempt to support and encourage the claimant when she had been placed in an impossible position because of Mr Franklin's actions.

264. Importantly, however, we considered the sequence of emails that followed the complaint from the Head of a different school at pages 342-346. It resulted in an exchange of emails about the claimant between Mr Sibson and Miss Franklin either side of midnight on 19/20 December at pages 340-341. He commented that it was more and more like a support plan and that the probation was not going well. He felt the team were carrying the claimant and that she needed to act like a leader. He identified seven specific concerns that had led to that conclusion, six from the previous week alone. Miss Franklin offered her own concern about the first draft of the strategic plan. We considered that these unguarded emails sent late in the evening were a good insight into the view that both managers genuinely held about the claimant at that time.

265. In mid January 2017 there was the issue over the claimant's email to the nurse about the request for diabetes training (page 354). Mr Sibson was clearly further concerned by this email.

266. Overall, therefore, the Tribunal found unanimously that his approach to the extension of the probationary period was driven by genuine concerns about the claimant's performance in her SLT role. It was unrelated to the concerns raised about registers in her protected disclosure on 4 October 2016, or indeed to the concerns she raised about mobile phones or Debi Lowe's relationships with Year 11 boys. Consequently, even if the proposal to extend probation had been a detriment, it was not in any sense a consequence of a protected disclosure.

267. As a result, all the allegations of detriment about the probation review on 30 January 2017 failed.

> **FP19: On 3 February 2017 Mr Sibson issued the claimant with a letter inviting the claimant to a formal probationary review meeting at which she had the right to be accompanied.**

268. Although this letter had an extremely serious effect on the claimant, we were satisfied that it had nothing to do with any protected disclosure. It was simply the implementation in a formal way of the approach Mr Sibson had already decided to adopt as conveyed to the claimant on 30 January 2017. The need to write a letter to make it a formal meeting reflected the probationary service policy, as did the

provision saying that the claimant had the right to be accompanied by a colleague or trade union representative. The letter did not say that the claimant might be dismissed at that meeting: the possibility was that there would be an extension of the probationary period, and only if the claimant did not complete that extended review successfully would her appointment not be confirmed.

269. The allegation that this was a detriment because of a protected disclosure failed.

> **FP20: The decision communicated on 10 February 2017 to refer to the claimant to OH on her fifth day of sickness absence.**

270. The referral to OH was surprisingly swift. Following her mental breakdown on receipt of the letter of 3 February 2017, the claimant was certified unfit for work because of "work related stress" until 20 February by her GP (page 364). She was informed four days later of the referral to OH. The sickness absence management policy at clause 13.2 (page 137) envisaged a referral to OH after six weeks of absence, or earlier if it was known beforehand that the absence will last six weeks. On the face of it, therefore, the referral to OH was outside the school's own policy.

271. However, for two reasons this allegation failed as an allegation of whistleblowing detriment.

272. Firstly, a referral to OH cannot reasonably be viewed as a detriment. Getting more information about the medical position is of benefit to both parties, particularly where the condition appears to be work related. The claimant's perception that this was detrimental was based on a distorted view of matters attributable to the impact on her health of recent events and her views of how Mr Sibson had behaved towards her.

273. Secondly, in any event this had nothing to do with any protected disclosure. We accepted the unchallenged evidence of Miss Franklin that it was policy to make an immediate OH referral where the absence was due to work related stress. Indeed, Miss Franklin told us that he same had happened when she was off for a similar reason in the past.

274. Accordingly this allegation failed.

> **FP23: The issuing of a letter on 20 March 2017 inviting the claimant to a stage one sickness absence meeting and indicating that her probation would be extended if the claimant did not respond by 24 March.**

275. The gist of this allegation was that the letter of 20 March 2017 at pages 370-371 was written despite the contents of the Occupational Health report at pages 366-368. The OH report said that he claimant was suffering from severe anxiety and severe depression, which she reported was due to work related stress. She was not fit for a probationary meeting and not fit to return to work. She was advised to discuss with her GP further medical assessment and intervention.

276. Despite that Mr Sibson wrote to the claimant on 20 March. His letter had two strands. The first was to say that there would be no probationary review meeting but it would be dealt with in writing. The claimant had until 24 March to make any written representations. The letter said that if she did not do so it would be assumed she

agreed to the extension of her probationary period. The second strand was to invite the claimant to a stage one sickness absence management meeting on 27 March, albeit recognising that if she was unable to attend she could send a representative or make written representations. We considered each strand in turn.

277. As to the continuation of the probationary review procedure, the Tribunal considered this to have been an insensitive and inappropriate move by Mr Sibson. The medical evidence was such that it was unrealistic to expect the claimant to participate in any meaningful way (whether in person or in writing) in such an important matter. The proper course of action was to have suspended that, as Mr Sibson did once the grievance was lodged. However, we were satisfied that it was not due to the protected disclosure about registers made on 4 October 2016. There was no evidence from which we could reach that conclusion.

278. In relation to the stage one sickness absence meeting, the letter was in line with the policy which indicated a move to such a meeting once the employee had been off for six weeks and an OH report had been received (clause 13.4 on page 138). Although the letter recognised that a change of venue might be possible, or that the claimant might not be well enough to attend, its tone was in our view not as sensitive as it could have been given the severity of the claimant's anxiety and depression according to the OH report. Nevertheless we concluded that this letter simply represented an application of policy and was not influenced to any extent by a protected disclosure.

279. For those reasons the allegation contained in FP23 failed.

> **FP25: The failure to keep confidential the grievance submitted by the claimant on 22 March 2017 when the grievance was sent by the Chair of Governors, Keith Harrington, to Mr Sibson, and Mr Sibson provided a copy to Miss Franklin and to his PA.**

280. This allegation concerned the immediate sharing of the claimant's grievance by Dr Harrington with Mr Sibson (page 456), and the allegation that Mr Sibson then shared it with Miss Franklin.

281. It was clear that Dr Harrington had sent it immediately to Mr Sibson, but we concluded Mr Sibson had not sent it to Miss Franklin. The email exchange at page 457, and her oral evidence, showed that she only received the "without prejudice" letter which accompanied the grievance at page 450.

282. In assessing Dr Harrington's actions, we bore in mind that we heard no evidence from him.

283. We considered the position under the relevant policies. The whistleblowing policy at page 162 contained three different assurances that any whistleblowing complaint would be treated in strict confidence, but the claimant did not label her grievance a whistleblowing complaint. It was only later on that she retrospectively identified that there were whistleblowing complaints contained in it (although she did not argue in these proceedings that it was itself a protected disclosure).

284. The grievance procedure at page 148 onwards, in contrast, contained no assurance of confidentiality. It was a model SMBC procedure which was almost entirely procedural. We took into account that the claimant began her grievance by saying that it was an open letter which she intended to use as a part of a Tribunal

bundle in the future. In those circumstances we concluded that she could not reasonably view the sharing of her grievance at some point with Mr Sibson as a detriment. There were detailed allegations about him contained within it and it was only fair for him to see it.

285. However, we considered that the timing and tone of Dr Harrington's email was inappropriate. It appeared to be an informal "heads up" for Mr Sibson about the problem done in a way which suggested that Dr Harrington was far from impartial. In our view that was not an appropriate course of action for the Chair of Governors to take.

286. Nevertheless, we were satisfied that there was no evidence this was due to a protected disclosure about registers made on 4 October 2016, or to any other of the matters which the claimant labelled as protected disclosures in these proceedings. This allegation failed.

> **FP26: The governor, Colin Walker, investigated the claimant's grievance but failed to investigate a range of matters which were raised.**
>
> **FP27: In investigating the grievance Mr Walker asked witnesses about the claimant's working ethos, and not the concerns about Mr Sibson. The Heads of Houses were asked for their opinions of the claimant but no questions were put to them about Mr Sibson and there were no questions about his work ethics. The questions were constructed with a bias towards a detrimental response towards the claimant, and each Head of House subsequently received a £4,000 pay rise within a few weeks.**

287. We dealt with these two allegations of detriment together because they both concerned Mr Walker's investigation.

288. The allegation in **FP26** was that the investigation did not consider everything raised in the grievance. We found as a fact that allegation was correct. The matters not investigated were accurately recorded in **FP26**.

289. Nor did Mr Walker interview the claimant herself, or Paul Franklin. The claimant should have been interviewed as part of his investigation, preferably at an early stage. By the time the claimant met Mr Walker they were in a confrontational position at the hearing of her grievance after she had seen his report recommending rejection of almost all her allegations. That failing on his part was recognised by Mrs Horsfield's panel in recommending an independent reinvestigation.

290. However, although the claimant could reasonably see this as a detriment, the question for us was whether it was influenced to any extent by her protected disclosure. There was no evidence from which we could conclude that Mr Walker was aware the claimant had raised a concern about inaccurate registers with Mr Sibson on 4 October 2016. Her own account in the grievance document on pages 377-378 did not mention that, and accordingly neither did Mr Sibson's reply at page 514. There was therefore no evidence from which we could conclude that there was any causal link in the sense that the disclosure influenced his mental processes. It appeared to us most likely that Mr Walker concentrated on the 11 points set out in summary at the end of the grievance (which the claimant described as representing her "whole experience"), because it was easier to do that than to trawl through what was a lengthy and discursive grievance. We bore in mind that he also looked at matters other than those 11 summary points. This allegation failed on causation.

291. As for **FP27**, the core of it was an allegation of bias in the questions put to the Heads of House at pages 499-502. Each of them was asked the same nine questions.

292. We rejected the contention that there was no question about Mr Sibson. Question 7 was an invitation to talk about how the Head of House felt about Mr Sibson if that person had said her position was untenable. Question 9 was an open question about any additional comments. However, the majority of the questions were focussed on the claimant and there was no direct question about Mr Sibson's treatment of the claimant. These questions did not give the uninformed reader the impression that there was the unbiased enquiry into Mr Sibson's actions to be expected given that the grievance consisted of allegations about him. To that extent the claimant could reasonably view these questions as a detriment.

293. However, for the same reasons we concluded that this had nothing to do with any protected disclosure. Mr Walker was not aware of the protected disclosure. The cause of his flawed approach must lie elsewhere.

> **FP28: The decision of 26 May 2017 rejecting the claimant's grievance and the lack of a response to her appeal until 20 July 2017, meaning the hearing did not take place until 5 September 2017.**

294. We took this paragraph to contain two allegations of detriment. The first was in the decision to reject the grievance made by Mr Roling. Related to that was the allegation that he said later on that he had not even read the grievance. The second part was the failure to respond to claimant's letters appealing the grievance.

295. Dealing firstly with the grievance outcome itself, we concluded that Mr Roling had not properly engaged with the claimant's concerns about the limits of Mr Walker's investigation which she set out clearly in her written statement for the grievance at page 636. The failure to engage properly with them may have been attributable in part to the fact that the claimant and her representative, Mr Gray, were unable to stay for the whole of the grievance hearing, but Mr Roling failed to appreciate the points upon which Mrs Horsfield's panel alighted at the appeal stage.

296. Related to this was a dispute about whether Mr Roling he had not even read the claimant's grievance. The claimant and Mrs Linacre were adamant that he had made this surprising statement at the appeal hearing. The case put forward by Mr Gorton based upon the notes was that this related only to when the grievance originally arrived, as he wished to keep himself separate from the process at that stage. It was not necessary for us to resolve this dispute in order to reach a conclusion on this matter, although we noted that his outcome letter was consistent with him not having read the claimant's grievance but simply "rubber stamping" the Walker report. That was academic, however, because there was no evidence that his approach to this grievance was influenced in any way by the protected disclosure about registers made on 4 October 2016. Like Mr Walker, he was not aware of this as the claimant had not mentioned it in her grievance.

297. As to the lack of acknowledgement of her appeal, the claimant's letter of 5 June 2017 at page 646 to Dr Harrington expressly said that the letter should not be regarded as an appeal. Although it appeared to us that the claimant was meaning to say that the investigation had been so flawed that it could not validly be appealed, and was clearly requesting a re-investigation, those words were sufficient to make it

reasonable for the school and its advisers to conclude that she was not pursuing an appeal under the procedure. The claimant only clarified that on 14 June at page 654, responding to a communication from Cook Lawyers the previous day (pages 652-653) which noted that no appeal had been lodged.

298. There was still a delay at that point, however, because there was no acknowledgement of that from the PA to the governors until 11 July, almost a month later. No explanation was offered. The claimant could reasonably view that delay as a detriment, particularly when she was on sick leave at the time and unable to return until her issues were properly addressed. However, there was no evidence from which we could conclude that the acknowledgement of her appeal was delayed as a consequence of the protected disclosure made about registers to Mr Sibson on 4 October 2016. This allegation therefore failed on causation.

> **FP29: The failure to reply to the claimant's requests made on 24 May, 5, 14 and 27 June 2017 for the appointment of an independent body to investigate her complaints.**

299. The request for an independent investigation in relation to the grievance was first made in the claimant's letter of 5 June 2017 at pages 646-647. She reiterated her request in her email of 14 June at page 654, when she also made clear that she was appealing. As mentioned above, there was an unexplained delay in that appeal being acknowledged, but the question of whether there should be an independent investigation formed part of the appeal process.

300. The appeal chaired by Mrs Horsfield considered this at the appeal hearing on 5 September, and conveyed the decision to recommend an independent re-investigation to the claimant by email of 7 September 2017 at page 965.

301. Accordingly the factual allegation that there was never a response was incorrect. Insofar as that response was delayed, the actions of the school in treating it as part of the appeal were reasonable given the terms of the claimant's correspondence. The claimant could not reasonably see this way of dealing with it as a detriment and in any event it had nothing to do with any protected disclosure. This allegation failed.

> **FP30: The holding of a stage two sickness absence meeting on 14 July 2017 despite the fact that the grievance appeal was still pending, thereby preventing the claimant returning to work, at which the claimant was warned that should she progress to stage three in six weeks' time she would face dismissal.**
>
> **FP31: The school disregarded OH advice that the claimant was not fit for any management meetings and bullied her into attending sickness absence meetings.**

302. These two alleged detriments were considered together as they overlapped.

303. There were two main elements. The first was the comment made at the start of the meeting warning the claimant of dismissal. The second was the proposition that the meeting should not have been held at all when the claimant had her appeal pending and would not be able to return to work until the internal matters were resolved. The respondent had received the OH report of Dr Lloyd dated 27 June at pages 656-659 which confirmed severe anxiety and depression, recommended counselling, further treatment and CBT, and said the claimant was currently unable to fully engage in meetings with management. The report said she might be fit when her treatment was maximised and that would take between 8-12 weeks.

304. On the question of whether the meeting should have been held at all (**FP31**), we could see the force of the claimant's argument in the light of the Occupational Health advice that she was not fit for any management meeting. However, it could equally be argued that the phrase "management meeting" could reasonably be interpreted by the school as not prohibiting a sickness review meeting, since otherwise an employer might be prevented from addressing sickness absence if the medical condition remained sufficiently severe. The policy itself did not indicate that the claimant had to attend such meetings, and nor did the invitation letter. Indeed, that letter offered adjustments to the venue and in allowing the claimant to be accompanied by a friend rather than simply by a colleague or union representative. As to the relevance of the grievance appeal, the grievance itself had been concluded even though the claimant was seeking to challenge the outcome on appeal. Ultimately, however, whatever the rights and wrongs of the decision to hold this meeting, there was no evidence from which we could conclude that it was materially influenced by any protected disclosure. It was simply the continued application of the sickness absence policy by the school.

305. The second issue concerned what was said at the meeting (**FP30**). The pleaded case was that the claimant was warned that should she progress to stage three in six weeks' time, she would face dismissal. This was broadly in line with what was recorded in the contemporaneous documentation. The possibility of dismissal was mentioned in the invitation letter at page 674. The notes of the meeting kept by Mrs Linacre at page 680d recorded that the claimant would go to stage three in two months. The outcome letter at pages 693-695 confirmed that if the claimant hit the next trigger point a stage three hearing would be held which may lead to the termination of her employment. It was likely this was said at the meeting. However, that would be an accurate statement of the position under policies and informing the claimant of that could not reasonably be viewed as a detriment.

306. In oral evidence, however, the claimant and Mrs Linacre gave a slightly different account, which was that at the start of the meeting Mr Spence said that if the claimant was not back at work in six weeks she would be dismissed. Surprisingly this comment was not recorded in the notes kept by Mrs Linacre. There was no record of it having been said. It did not match the claimant's pleaded case in **FP30**. Even if this was said, there was no evidence that it was connected to any protected disclosure.

307. For these reasons the allegations contained in **FP30** failed.

> **FP35: The outcome of the stage two sickness absence meeting in a letter of 21 July 2017 disputing that the meeting constituted bullying or victimisation and saying its purported intention was to be supportive with the aim of getting the claimant back into work.**

308. This allegation focussed on the passage in the outcome letter recording a discussion at the stage two sickness absence meeting about whether it was bullying or victimisation of the claimant because of whistleblowing. It recorded the views of Mr Spence and Miss Franklin that this was not the case.

309. For reasons set out in relation to the previous allegations we concluded that the meeting was not bullying or victimisation due to whistleblowing, and therefore this was an accurate statement in the letter. It could not reasonably be viewed as a detriment, and nor was it said by reason of any protected disclosure.

> **FP38: At a meeting with the Director of Education, Stockport LA Safeguarding Lead and Resolutions Officer on 25 July 2017 the claimant was initially not allowed to participate in the meeting, but once allowed in the atmosphere was hostile and no-one would take receipt of the claimant's documents and evidence.**

310. We decided to address this allegation next because it came prior to the allegations about the redundancy and dismissal.

311. We accepted the factual evidence of the claimant and Paul Franklin that the officers of SMBC did not want to listen to the claimant's complaints and refused to take from her copies of her grievance and supporting documents. The argument that this amounted to a whistleblowing detriment for which the school was responsible faced three significant difficulties.

312. Firstly, the claimant's grievance was plainly a matter for the school. As an Academy the school had a limited relationship with SMBC. There were other routes by which any safeguarding concerns could be raised with the Local Authority.

313. Secondly, there was no evidence from which we could conclude that the approach taken by the SMBC officers was due to any protected disclosure. That was particularly the case where the grievance itself did not mention the protected disclosure of 4 October 2016 about inaccurate registers.

314. Thirdly, these were not actions for which the school could be legally responsible. The claimant failed to show that there was any agency relationship between the SMBC officers and the school.

315. For these reasons this complaint failed.

> **FP36: On 8 August 2017 the school informed the claimant that there was a proposal to make her post redundant.**
>
> **FP37: The rationale for the redundancy proposal was unsound.**

316. The Tribunal decided to take these two matters together as they were both concerned with the proposal to make the claimant's post redundant and the rationale behind it. This was in many ways the allegation at the heart of the claimant's case: that the redundancy was a sham designed to get rid of her due to protected disclosures.

317. We reviewed the factual background leading to the proposal to make the claimant redundant. In November 2016 the budget update (pages 324a-324i) said that the school was in a weak financial position, with a significant deficit and there was a need to save costs. There was, however, no mention of redundancies at that stage.

318. In March 2017 (pages 368a-368i) performance had improved somewhat but there was still a need for savings and/or income generation. There was reference to the significant increase in pupil numbers due in September 2017, and to the 12 month delay before the additional funding for that would arrive. There was a discussion on the Finance Committee about ways to make further savings.

319. On April 2017 Julia Storey of SMBC prepared a report which effectively gave the school a clean bill of health on safeguarding matters (pages 476a-476j).

320. The June 2017 budget report and Finance Committee documents appeared between pages 651a-651n. They showed that there was an overspend of £110,000, being an in-year deficit projected to be £30,000 and £80,000 carried forward from the previous year. There was £175,000 in the reserves, but clearing that deficit would take the reserves down to £50,000. For the first time Mrs Cohen as Business Manager proposed that there be at least one redundancy.

321. The unchallenged oral evidence of Anna Cohen, which we accepted, was that at that time in her one-to-one meetings with Mr Sibson she discussed possible redundancies amongst the grounds staff and the IT department. We also accepted her evidence that Mr Sibson was reluctant to make redundancies. In the previous year three members of the SLT had been made redundant and it had been a painful process.

322. Despite the concerns about savings, however, on 28 June the proposal to reorganise the Heads of House was made (pages 662-665). This undoubtedly involved additional cost. The existing four Heads of House were going to receive a salary increase of approximately £1,000 each because of a job evaluation recommendation as to the pay grade for the new role of Head of Year. In addition a fifth Head of Year would be recruited to act as Head of Transition for Year 7. Mr Lees understandably emphasised that this proposal contained no reference to cost savings and would increase outgoings. Equally, the school's witnesses pointed out that with additional pupils coming it was a move which had to be made, and that additional funding for the school due to increased pupil numbers would be forthcoming, albeit delayed by 12 months.

323. This proposed restructuring was swiftly followed by the arrest of Debi Lowe on 12 July and the criminal charges about a week later. Mrs Cohen gave important evidence which was not challenged and which we accepted. She said that following the arrest of Debi Lowe there was discussion with Mr Sibson about improving the structures. Mr Sibson said that the Safeguarding Lead on the SLT needed to be a person with a teaching role. Mrs Cohen told us that it was she who suggested that that would mean making the claimant's post redundant because the school could not afford to add another post at SLT level. We noted that this suggestion did not come from Mr Sibson.

324. That resulted in the proposal sent to the claimant on 8 August 2017 at pages 715-716. The document identified two reasons for the proposal: (1) the economic position and (2) the need to revamp safeguarding following the Lowe arrest. Mr Lees submitted that these reasons did not withstand scrutiny, and that there must be something else behind the proposal.

325. He firstly attacked the economic case for the redundancy. In cross examination he took Mrs Cohen (and to a lesser extent Mr Marchant) through the June 2017 finance document and pointed out a number of places where there were funds available (e.g. reserves) or options for saving money not fully explored. Reflecting on the answers which Mrs Cohen and Mr Marchant gave to those points, we concluded that the economic case for redundancies withstood that scrutiny. The funding of academies is a complex area and the pressure upon cost appears a constant one. It could not be said that the suggestion made in June that there be at least one redundancy was irrational or without any financial foundation. It made sense.

326. As to the safeguarding element, it was clear that the Lowe arrest and charges formed the immediate trigger for identifying the claimant's post as the one to be considered for redundancy. There was some force in Mr Lees' argument that removing the dedicated safeguarding role from the SLT and allocating lead responsibility to a Deputy Head was unwise. It was right to say that the claimant had a broader range of safeguarding relevant qualifications than Miss Franklin (we did not have details of the qualifications held by Mr Vickers, the other Deputy Head). However, in the Safeguarding Policy which the claimant herself drafted (page 216) it was clear that both Deputy Heads were regarded as competent to deputise as Safeguarding Lead when the claimant was not in work. Further, the claimant had been off work since February 2017 by this time. Additionally, and importantly, both Deputy Heads had teaching experience which the claimant did not possess.

327. The other criticism of the proposal was that the Deputy Heads were just too busy. That, however, was based upon the allocation of roles and responsibilities amongst the SLT for the academic year beginning in September 2016 (pages 530-532). Miss Franklin was not challenged when she explained that the roles and responsibilities and reallocated each year, so that if a Deputy Head were to be allocated a significant safeguarding role that would mean a corresponding reallocation of other duties.

328. Putting these matters together we unanimously concluded that there was a rationale for the redundancy which was unaffected by any protected disclosure.

329. The case for a redundancy was made by Anna Cohen for purely financial reasons in June 2017, and Mr Sibson did not at that stage immediately alight upon the possibility of making the claimant redundant. The focus on the claimant's post was a consequence of the review of safeguarding in the aftermath of the arrest of Debi Lowe. It was entirely understandable that an event of that kind would cause a school to review its safeguarding measures so as to be able to show that it had taken the situation seriously. The proposal to allocate the lead safeguarding role to a more senior member of staff with teaching experience was a logical one, even though it would mean the removal from the SLT of a role which had safeguarding as its main focus.

330. Of course, retaining the claimant's post and making other changes would also have been an appropriate way of responding to the situation. However, the question for us was not whether the respondent alighted upon the best solution to the problem; the question was whether it chose the solution it did influenced to any material extent by a protected disclosure.

331. We were satisfied that was not the case and it was entirely and genuinely a consequence of the financial position and the arrest and charges of Debi Lowe in July 2017.

332. These two allegations therefore failed.

> **FP39: Holding a joint return to work and redundancy consultation meeting on 4 September 2017.**
>
> **FP40: The failure to provide the claimant with any notes/minutes showing any consultation between the Board of Governors regarding the claimant's post and possible redundancy, and the failure to answer why a fifth Head of House post had been created and the posts given a £4,000 pay rise when the school was saying that the redundancy was due to "dire financial circumstances".**

333. We dealt with these two matters together because they both concerned the combined meeting on 4 September 2017 by way of a return to work meeting and a redundancy consultation meeting.

334. **FP39** seemed to be simply a statement that the meeting occurred. Insofar as this was an allegation of detriment, we did not consider it could reasonably be viewed in that way. A return to work meeting was required given that the claimant had been absent from work between February and early August. Given our conclusion that the rationale for the redundancy was genuine, it was plainly in the claimant's interest to have a consultation meeting with her about it. Indeed, the date for that meeting had been delayed because of her absence on holiday during August.

335. As to **FP40**, there were three elements contained in it.

336. The first element was criticism that the claimant was not shown any notes of the governors being consulted about the proposal to make her post redundant. It is clear that Panel A was asked to approve the proposal by Mrs Cohen on 7 August 2017 by email. Two of them responded very promptly and the proposal was then issued to the claimant. The third responded with her approval later that evening. There was no evidence before us of any detailed debate or scrutiny of the proposal by the governors, yet it did not come "out of the blue". The governors had been warned in the June meeting of the Finance Committee that there was at least one redundancy to be contemplated, and of course they were aware of the arrest of the Debi Lowe from the proposal document itself. The fact that the claimant was not made aware of this process was not in any way due to any protected disclosure.

337. The second element related to the failure to consider the claimant for another role by "bumping" the newly appointed Head of Transition out of that post. That person had been appointed in July 2017 and was due to take up employment in September. Had this been an ordinary unfair dismissal case with the claimant having more than two years' employment, there might have been some force in the argument that it was outside the band of reasonable responses not to consider withdrawing this appointment and creating a post to enable the claimant to avoid being made redundant. However, this Tribunal was not concerned with issues of fairness in that way but only with the reason for the treatment. We were unanimously satisfied the reason the school did not consider taking that action was unrelated to any protected disclosure. It was because of a combination of factors including the significant drop in salary for the claimant which such a move would entail, the fact the claimant had been off sick for six months with work related stress, and the perception that the claimant had not been performing as well as expected in her role. There was no other vacant role at the time into which the claimant could have been moved as an alternative to redundancy.

338. The third element was the failure to explain why the school could afford to spend more money on the Heads of House restructure when having to make the claimant redundant. In fact the claimant had been given the rationale for the Heads of House restructuring at the time. There was no additional information withheld from her. She was not really complaining about not getting an answer, but pressing her case that the two situations were irreconcilable unless her redundancy was due to a protected disclosure. We rejected that case for the reasons set out above. In any event there was no link between the information given and the protected disclosure about registers in October 2016.

339. We concluded that none of this was related to a protected disclosure and these allegations failed.

> **FP43: Mr Sibson gave a reference about the claimant to a prospective new employer in November 2017. The reference was not satisfactory and cited concerns about team work.**

340. The final allegation of detriment was in relation to the reference given by Mr Sibson on 7 November 2017. The reference itself appeared at pages 1015-1016.

341. The claimant was told by Ms White of the prospective new employer that the reference given by Stockport Academy indicated that her teamworking was only "satisfactory". For that reason they sought a second reference from the school. The claimant was told on 13 November (page 1017) that the reference from the school raised the same concerns about teamwork.

342. The reference itself gave the claimant a "good" rating for relations with others. It used that word itself for the subcategories of relations with team members and with customers. In relation to managers, however, no answer was given. There was also no answer given about honesty, attendance/punctuality, or as to whether the claimant would be re-employed by the school. It was understandable that this was viewed as a negative reference.

343. We unanimously concluded that the reference accurately recorded the genuine views held by Mr Sibson about the claimant. In his view her relations with managers were not good or even satisfactory. She had put a grievance in about her line manager (i.e. him) which had been rejected following an investigation. He would have been able to have said that her relations with managers were poor on that basis but instead chose not to answer at all. No doubt he was aware that failing to answer that question could only be seen in a negative light by a prospective employer, but we were satisfied that this was simply due to his genuine views of the claimant and not influenced to any extent by a protected disclosure.

344. This was particularly unfortunate for the claimant as it appeared that the reference given by her former colleague, Kate Appleby, to Stockport Academy was given in error in that the wrong box had been ticked. Had that reference matched the views Ms Appleby gave in a reference when the claimant joined the school there would have been no problem, and the school would never have been contacted to give a further reference. However, e we concluded that the negative aspects of this reference were not a detriment by reason of a protected disclosure.

Summary

345. For those reasons all the complaints of detriment in and after employment because of a protected disclosure failed and were dismissed. The question of time limits did not arise.

Discussion and Conclusions – Unfair Dismissal

346. The unfair dismissal complaint was brought under section 103A. The test for causation was different. The question was not whether a protected disclosure had any material influence on the decision, but rather whether the disclosure was the reason or principal reason for the decision to dismiss the claimant.

347. The decision to dismiss the claimant was taken by the members of Panel A. Mr Marchant gave evidence in our proceedings about why that decision was taken. After confirming approval for the initial proposal to go to the claimant, he and his colleagues on that panel were provided with the claimant's counter proposal of 11 September at page 971, which began by saying that the Head Teacher and the Chair of Governors should be replaced. Once again, Panel A made a very quick decision to reject these counter proposals and to confirm the decision to dismiss the claimant, which was communicated in the dismissal letter at pages 987-989.

348. We noted how quickly this decision was made by Panel A. The email from Anna Cohen sending the claimant's counter proposal was sent just before 9.00am on 14 September, and required a response by 12 noon the following day. Mr Vickers confirmed his approval to proceed later that same morning (page 974); Mr Marchant did the same (page 976) and Ms Illingworth left it until the early afternoon of 15 September (page 976). Once again there was no evidence of any detailed consideration or scrutiny by the members of Panel A. This is the sort of point that might have some value for the claimant in an “ordinary” unfair dismissal where the fairness of the procedure was at issue. In this case, however, it was relevant only insofar as it suggested that the real reason for the decision of Panel A was not the rationale for the redundancy.

349. The Tribunal concluded unanimously that Panel A approved the proposal to make the claimant’s post redundant because of the merits of the proposal itself, and the lack of merit (as they saw it) in the claimant's counterproposals. Even though it did not take them very long to do that, we were satisfied that they were not influenced in any way by the protected disclosure about registers made on 4 October 2016. Indeed, there was no evidence that the members of Panel A were even aware of that disclosure.

350. The appeal against dismissal made no difference to that finding. It was essentially a review of the decision of Panel A. There was no material from which we could infer that Mr Meakin or his colleagues on Panel B were influenced by any protected disclosure. It was a decision made solely on the merits of the claimant’s appeal against the initial decision and the reason for dismissal remained the same.

351. It is appropriate to record that the case for the claimant was not pursued on the basis of a manipulation of the information before them by Mr Sibson which might have brought it within one of the paragraphs in the **Jhuti** case (see above). However, even had it been put on that basis we would have been satisfied for

reasons set out above that the proposal itself was not by reason of a protected disclosure and therefore this argument would have failed.

352. For those reasons the complaint of automatic unfair dismissal also failed and was dismissed.

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Employment Judge Franey

10 April 2019

WRITTEN REASONS SENT TO THE PARTIES ON

15 April 2019

FOR THE TRIBUNAL OFFICE