



EMPLOYMENT TRIBUNALS

Claimant: Mrs H Coen

Respondent: Manchester Health Academy

HELD AT: Manchester

ON: 13 to 17 February
2017
21 April 2017
9 May 2017
(In Chambers)

BEFORE: Employment Judge Slater
Ms L Atkinson
Mr C Clissold

REPRESENTATION:

Claimant: Ms Wilson Theaker, Counsel
Respondent: Mr J Martin, Solicitor

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The tribunal has no jurisdiction to consider the complaints of detriment on the ground of making protected disclosures, other than the complaints about Mr Cain refusing to hear the claimant's grievance and appeal against dismissal on 9 October 2014 and Ms Johnson refusing to hear the claimant's grievance and appeal against dismissal on 22 October 2014.
2. The complaint of detriment on the ground of making protecting disclosures about Mr Cain refusing to hear the claimant's grievance and appeal against dismissal on 9 October 2014 is well founded.
3. The complaint of unfair dismissal, relying on section 103A Employment Rights Act 1996 is not well founded.
4. The complaint of unlawful deduction from wages is not well founded.

5. There will be a remedy hearing on 18 July 2017 to determine remedy for the successful complaint of detriment on the ground of making protected disclosures.

REASONS

Claims and Issues

1. The claimant claimed unfair dismissal pursuant to Section 103A Employment Rights Act 1996, detriments for making protected disclosures and unlawful deduction from wages in respect of being paid 50% of wages rather than 100% between 22nd and 24th October 2014.

2. The issues were agreed to be as follows at the outset of the case, save that, in closing submissions, the claimant's representative informed us that two of the allegations of detriment were no longer pursued, as indicated in the following list.

Protected Disclosures (Section 43 Employment Rights Act 1996)

3. Did the following amount to protected disclosures?

(a) the claimant's disclosures about financial irregularities raised to Mr Damian Owen, in particular:

- (i) alleged overspending on pizzas (£2000);
- (ii) the request to purchase a camcorder for £375 using funds raised from ticket sales following a school production;
- (iii) processing expenses claims without the correct forms and procedures being followed.

(b) the claimant's disclosures about payments to purported self employed consultants without completing ESI checks.

(c) the claimant's disclosures about potential and/or actual breach of copyright in respect of the respondent's production of Mary Poppins.

(d) the claimant's disclosures about safeguarding and health and safety obligations relating to the respondent's transition summer holiday programme, in particular:

- (i) contractors being engaged without DBS and CRB checks;
- (ii) the need to comply with health and safety requirements for the activities undertaken on the programme, specifically science experiments and the children would be working in close proximity to animals;

- (iii) the adequacy of the respondent's public liability insurance.
- (e) the claimant's disclosures as to orders being processed for items to be purchased with the Lottery grant funds before the funds were received in breach of the grant agreement;
- (f) the claimant's disclosure that the respondent's HR policies did not comply with the ACAS codes of practice and/or HR best practice;
- (g) the claimant's concerns raised to Mr Owen on or about 7th July 2014 that an invoice in excess of £5,000 had been obtained without three quotes being obtained previously in breach of the respondent's finance rules and financial regulations;
- (h) the claimant's concerns about Mr Owen's failure to address her concerns as particularised above and her complaints of bullying behaviour by Mr Owen which was made to the Board of Governors.

For the avoidance of doubt, the above disclosures were made to the respondent's Principal and/or members of the board of governors.

4. Were the claimant's disclosures made in the reasonable belief that the respondent had failed or was likely to fail to comply with a legal obligation to which it was subject and/or that the health and safety of an individual or individuals was or would be at risk (Sections 43B (1)(b) and 43B (1)(d) Employment Rights Act 1996)?

5. Did the claimant reasonably believe that the disclosures were made in the public interest (Section 17 Enterprise and Regulatory Reform Act 2013)?

Detriments for making protected disclosures (Section 47B Employment Rights Act 1996)

6. Was the claimant subjected to the following detriments on the ground that she made protected disclosures?

- (a) being addressed and/or criticised by Mr Owen in an angry and aggressive manner on
 - (i) 5th June 2014 (particulars of claim paragraph 6);
 - (ii) 17th June 2014 (particulars of claim paragraph 10);
 - (iii) 28th August 2014 (particulars of claim paragraph 22);
 - (iv) 12th September 2014 (particulars of claim paragraph 27);
 - (v) 19th September 2014 (particulars of claim paragraph 28)

- (b) being criticised by Mr Owen without justification with the threat that her probationary period would be extended during the meeting on 23rd June 2014 (particulars of claim paragraph 13);
- (c) Mr Owen denying the existence of, and failing to disclose, handwritten notes of the claimant's one month review meeting when requested by the claimant on or about the end of June 2014 (particulars of claim paragraph 15).
- (d) [not pursued]
- (e) on 4th July 2014, extending the claimant's probationary period by six weeks without justification (particulars of claim paragraph 18).
- (f) on 4th July 2014, Mr Owen instructed Ms Tracy Mellor who reported to the claimant to draft the letter confirming the above extension to her probationary period, undermining the claimant's position as Ms Mellor's line manager (particulars of claim paragraph 18).
- (g) on 8th July 2014, Mr Owen unfairly criticised the claimant by email for "dragging out" the tendering of procurement and funding after the claimant informed him that three quotes would be required for an invoice in excess of £5,000 (particulars of claim paragraph 19).
- (h) on 18th July 2014, excluding the claimant from the process leading to the dismissal of a Teaching Assistant (particulars of claim paragraph 20).
- (i) [not pursued]
- (j) on 11th September 2014, Mr Owen openly criticised the claimant during an audit and finance committee board meeting (particulars of claim paragraph 25).
- (k) on 9th October 2014, Mr Cane refused to hear the claimant's grievance and appeal against dismissal (particulars of claim paragraph 35).
- (l) on 22nd October 2014, Ms Johnson refused to hear the claimant's grievance and appeal against dismissal (particulars of claim paragraph 37).

7. Do the above detriments form part of a series of continuing acts by the respondent, the date of the last act being 22nd October 2014?

8. Have the claimant's complaints of detriment been presented within the prescribed time limit, (Section 48(3) Employment Rights Act 1996)?

Unfair Dismissal (Section 103A Employment Rights Act 1996)

9. Can the claimant establish that the sole or principal reason for her dismissal was the protected disclosures?

Unlawful deduction of wages (Section 13 Employment Rights Act 1996)

10. Did the respondent fail to pay 50% of the claimant's wages between 22nd and 24th October 2014 without lawful justification?

Remedy

11. Is the claimant entitled to compensation for unfair dismissal?

12. Is the claimant entitled to compensation because she suffered the above detriments?

13. Is the claimant entitled to the sum of £202.47 in compensation for unpaid wages between 22nd and 24th October 2014?

14. If the claimant is entitled to compensation, should her award be uplifted by up to 25% due to the respondent's failure to follow the ACAS code of practice on disciplinary and grievance procedures? (Section 207A Trade Union and Labour Relations (Consolidation) Act 1992).

The Witnesses

15. We heard evidence for the claimant from the claimant herself and for the respondent from Mr Damian Owen, Principal of the respondent school, Mr David Cain, Chairman of Governors, Ms Samantha Simpson, governor and chair of the finance committee, and Ms Tracy Mellor, Human Resources Officer with the respondent.

16. The most significant witnesses in relation to the factual disputes that we had to determine were the claimant and Mr Owen. We did not consider that there were sufficient grounds for us to prefer generally the evidence of one over the other, where there were conflicts of evidence. The claimant made claims in her witness statement that performance issues raised by Mr Owen were not genuine and were a sham. The claimant accepted in cross examination that there were genuine concerns about her performance. The exaggeration of the claimant's case in this way undermines her credibility as a witness. However, we also have concerns about the explanations Mr Owen gave for the typed version of the notes of the first probationary review meeting and the reverse page of the review form for the meeting on 6 June 2014. These concerns mean we do not feel able to form a view that Mr Owen's evidence is generally more credible than that of the claimant.

17. Where there is a dispute of fact on a matter where it is necessary for our decision to make a finding, we make our finding for the reasons we explain in each case.

Facts

18. The respondent is an Academy school in Wythenshawe, Manchester. The Central Manchester University Hospitals NHS Foundation Trust (the Trust) is the sponsor of the academy. David Cain was at all relevant times, and remains,

Chairman of Governors at the Academy. He is also Chairman of the Academy Trust Board. Samantha Simpson, at relevant times, was employed as the director of operational finance for the Trust. She was, at relevant times, and remains, a Governor of the academy. She sits on the audit committee and chairs the finance committee. She became a Governor in September 2013. Damian Owen became Principal of the Academy in September 2013.

19. When Mr Owen became Principal, Kit Lam was the Director of Finance. Mr Owen tells us that the finance department under Kit Lam was very well run; her work was accurate, on time and her reports were never late. Kit Lam left the Academy in February 2014 to take up another position. The claimant was appointed as Ms Lam's successor. The panel interviewing the claimant included Mr Owen, Mr Cain and Ms Simpson. They agreed that the claimant was the best candidate.

20. The claimant is both a qualified Teacher and a qualified Accountant. She is a Fellow Chartered and Certified Accountant and was awarded a Masters of Business Administration with distinction in July 2011 from Oxford Brooks University. Her past work experience includes working in large and complex public sector organisations including local government, the housing association sector and the health service. She had previously managed and led teams across finance, contracts performance, IT and support services and had worked at board level. The claimant was not challenged on her evidence that she had never been subject to performance concerns in any of her previous roles.

21. A handover took place between Kit Lam and the claimant in the period 3rd to 7th February 2014. The claimant's employment with the academy began on 24th February 2014.

22. The claimant's principal duties as Director of Finance and Corporate Services were to be responsible for the operation and strategic direction and the management and the leadership of all aspects of finance, HR, ICT, payroll, procurement, site and facilities management, administration, student support, community, marketing, business planning, performance reporting, risk management, health and safety and legal and insurance. Her line manager was Mr Owen. The claimant directly line managed six members of staff, including the HR officer, Tracy Mellor, the Business Support manager, Jane Roddy, the Site Manager Bob McCluskie and the Finance Officer. During the claimant's employment, there were changes in the job holder of the Finance Officer role: Emma Higham was Finance Officer until 11th April 2014, then there were interim agency staff members, Colin Appleby from 23rd April 2014 to 16th May 2014 and Katherine Brown from 4th June 2014. Ian Waterhouse was appointed to the permanent position from 28th July 2014.

23. The Department for Education has ultimate responsibility and accountability for the financial framework for academy trusts. The Academies Accounts Direction 2013-2014 applied to the respondent throughout the claimant's period of employment. This is a reference pack for academy trusts to use when preparing their annual reports and financial statements for accounting periods and to support auditors with their audit of the financial statements. The Academy's accounting officer was the Principal, Mr Owen. Section 10.1.8 of the Direction refers to the role of the academy trust accounting officer described in the Academies Financial

Handbook. The Direction records that the handbook states that the essence of the role is a personal responsibility for regularity, propriety and value for money. The accounting officer must provide a statement on regulatory, propriety and compliance in the Academy Trust's annual report and has a responsibility to advise the Education Funding Agency (the agent at the Secretary of State for Education) of instances of non-compliance.

24. Within four weeks of Mr Owen starting in post, the Academy was inspected by OFSTED and judged to have serious concerns. Within eighteen months, a further inspection rated it as good with many outstanding features. That remained the position at the time of the tribunal hearing.

25. Before the claimant took up her post, the dates of governors' meetings, finance and audit committee meetings had been set for the academic year. There had been a finance committee meeting in December 2013 and the next scheduled one was in May 2014.

26. Tracy Mellor is the respondent's Human Resources Officer. She has been employed by the respondent since August 2011 and has worked in human resources for more than sixteen years in both the private and the public sector. On taking up her post, the claimant began Ms Mellor's direct line manager. However, Ms Mellor continued to have one to one meetings with the Principal about various matters. It is clear, from Ms Mellor's oral evidence, which is supported by contemporaneous documents, that from an early stage, Ms Mellor had concerns about the way she was managed by the claimant, feeling that she was being micro managed and not trusted to be able to do her job.

27. On 27th February 2014, Ms Mellor sent to the claimant an attendance management policy. Ms Mellor informed the claimant that she had re-written the policy and had run it past solicitors and Mr Owen. She wrote "if you think anything needs to be changed, obviously let me know, but if not, we are now ready to send it to the unions for their input". There is agreement that the claimant and Ms Mellor spoke about the policy following this email but a dispute as to whether, around this time, the claimant gave Ms Mellor a copy of the policy with handwritten comments on it and a photocopy of Warrington Borough Council's "improving attendance policy" highlighting areas which the claimant felt relevant to add to the Academy's policy. The claimant was Governor of a school in the Warrington area. The claimant said she did this, Ms Mellor says that the claimant only said that she wanted to compare the policy to a Warrington Council policy and did not, at that time, give her handwritten comments on the policy Ms Mellor had drafted or a copy of the Warrington Council policy. It is not necessary for us to make a finding as to whether the claimant did or did not provide Ms Mellor with a copy of the Warrington policy in March.

28. On 7th May 2014, Ms Mellor sent a further email to the claimant. She wrote that she had spoken to Mr Owen about the policy and he would like it to go to the Governors on 22nd May. She wrote "both Damian and our solicitors have reviewed the policy. I am therefore going to issue it to the union reps for their comments so we can meet this deadline". The claimant replied the same day writing "do not issue this policy to anyone as I have previously mentioned making a few changes to this

policy and I have not approved a final draft for issue. I will speak to Damian re this in the wider context of HR".

29. On 13th May, by email from St Matthews Primary, the school of which the claimant was a Governor, the claimant was sent a copy of the Warrington Borough Council improving attendance policy. On 14th May, the claimant sent Mr Owen and Ms Mellor a copy of the Warrington Borough Council attendance management policy. The claimant wrote that this had been previously supplied to Ms Mellor in March with her comments. The claimant then made extensive comments on the policy, suggesting that some points would need checking with the Academy's solicitors.

30. On 7th May, the claimant sent an email to Mr Owen expressing concern about the tone of the email from Ms Mellor. She wrote "I mentioned to Tracy there were a few changes I would like to make to this policy having reviewed recently the Warrington BC attendance policy as a school governor". The claimant did not say in this email that she had already provided Ms Mellor with comments on the policy and a copy of the Warrington policy. Ms Mellor challenged the claimant verbally about the assertion that the claimant had given Ms Mellor the Warrington policy in March along with her comments. Ms Mellor told her that she had not and that they had only had a verbal conversation that she had a policy against which she wanted to compare. The claimant said to Ms Mellor that she must have lost what she had given her. The claimant asserts that the policy and her handwritten comments were later found in Ms Mellor's office. Ms Mellor disputes this and says that she searched her office in case the claimant had left the policy and comments there, but did not find anything. Mr Owen was aware that there was a dispute as to whether the claimant had given Ms Mellor a copy of the Warrington policy in March.

31. From the claimant's comments on the draft policy, it is clear that the claimant was keen to ensure that the respondent complied with the requirements of employment law and with good practice in its policy. However, the comments cannot be read as the claimant clearly indicating that the respondent would be, or would likely to be, in breach of any legal provisions or ACAS guidance if the policy was adopted in its unamended form.

32. On 27th March 2014, the claimant had a meeting with HMRC. The claimant was advised at this meeting that the Employment Status Indicator (ESI tool) should be used when they take on an individual so that the academy, as the engager, could determine the correct employment status. This advice was later confirmed in a letter dated 25th April 2014 which also asked specific questions about several individuals engaged by the academy.

33. On 28th March 2014, the claimant had her one month probationary period meeting with Mr Owen. Mr Owen's view of the claimant at this stage was entirely positive. He wrote "Excellent attendance, punctuality, professional approach and contributions to senior team. Excellent delivery of information and strategy linking financial and educational areas". Mr Owen raised no concerns and confirmed in cross examination that he had had no concerns at this stage.

34. On 2nd April 2014, the claimant attended a meeting at the Trust with Samantha Simpson, Mr Owen and Simon Walsh, the Trust's head of procurement. This was the first time Samantha Simpson had met the claimant since her interview. Ms Simpson had invited them to come and meet Mr Walsh and herself to see if there was anything that the Trust could do to support the academy in respect of procurement. We accept Ms Simpson's evidence that the claimant did not create a good impression on her. Ms Simpson's view was that, when you are meeting with busy people, you need to be conscious of the time constraints that people are under. However, the claimant gave her the impression that she thought there was unlimited time available to discuss the issues. Ms Simpson told us she stood up in an attempt to bring the meeting to a close. Ms Simpson did not inform the claimant of her concern. Mr Owen considered that the claimant had been overly verbose but did not view this as a major criticism. He did not speak to the claimant about this, considering it not worthy of pointing out at the time.

35. The first finance committee the claimant was to attend was scheduled for 22nd May 2014. The claimant was aware that papers should normally be sent to the Governors a week in advance. Some papers were emailed on 19th May. On 19th May, the claimant wrote to Samantha Simpson that she was still finishing off some reports and working on the three year plan and would take further papers to discuss on 20th May when a pre-meeting had been arranged with Samantha Simpson during a conference they were attending. Samantha Simpson and the claimant met on 20th May to go through papers for the finance committee. The finance committee met on 22nd May. The claimant put forward a draft three year plan for review and approval. The minutes record that a question was asked as to why the plan had only been presented that day. It appears from this that the plan was tabled at the meeting. The claimant gave an explanation for the delay which related to the claimant having received required information late. It was agreed that, due to time restraints and the fact that there had been no time to review the data prior to the meeting, only the assumptions in the paper would be reviewed. The Governors raised a number of questions. The claimant was not able to answer all of their questions. Ms Simpson stated, for the July finance committee meeting, the Governors would require rationale for all built in assumptions to be listed with the impact on the budget and also how the reserves were to be allocated. The committee requested a high level report on the three year projections for the next meeting to ensure that the EFA deadline had been met.

36. We accept Ms Simpson's evidence that she was not impressed by the claimant's performance at this finance committee. The committee was not happy that the papers were only received on 19th May. The 2013 to 2014 budget was presented but it was not clear whether charges were recurrent or non-recurrent and Ms Simpson asked for this information to be included in future. Concerns were expressed that the Governors were asked to retrospectively review and approve contracts of over £30,000. Ms Simpson would have expected this to have been escalated before the committee meeting so as to avoid them having to be approved retrospectively. The claimant presented a staffing and recruitment/HR update and a number of questions were asked. Not all the information that Ms Simpson considered should have been available was included in the report, e.g. the additional cost to the budget of new posts. The committee made the point that future reports required details of the overall impact on the budget. Whilst Ms Simpson, Mr Cain

and Mr Owen were not impressed by the claimant's performance at this first finance committee, these concerns were not relayed to the claimant at the time. Both Ms Simpson and Mr Cain told us that, as the claimant was new in post, they hoped things would improve. We accept that the claimant was not made aware of the poor impression she had created at this meeting.

37. Around this time, there was an issue about the processing of a sports grant. The school had been awarded a conditional grant from Lottery funds in March 2014. It appears that Mr Morgan, Subject Leader Physical Education, jumped the gun in placing an order for equipment before the grant money was received, so a supplier of equipment sent an invoice dated 22 April 2014. From emails from Mr Morgan, it is clear that he was expecting that the school could purchase the equipment before the grant money was received. In an email dated 21 April 2014, Mr Morgan wrote to the supplier that he had spoken to the Principal and Gaynor and it had been agreed that they could purchase the equipment through the school budget before the monies were sent from the fund. Mr Owen denies telling Mr Morgan that and we did not hear evidence from Mr Morgan. We make no finding as to what Mr Owen said to Mr Morgan. It is clear, however, that Mr Owen did not sign anything to authorise payment until after the grant had been received in July 2014. When the claimant became aware of the attempt to process an order before the grant had been received, she advised Mr Owen of the need to obtain three quotes, since the spend was over £5000, and that the money could not be spent before the grant was received. Mr Owen says he was already aware of this and was not annoyed at her raising this. There was a meeting between the claimant, Mr Owen and Paul Morgan, Head of PE on 16th May 2014 at which the claimant explained the position. The grant was received in July and the order placed and paid for in September 2014. Mr Owen says that his concern was that the grant was not processed efficiently by the claimant. He accepted that she had not been aware of the grant until May but suggested that she could have taken this in hand and processed it more quickly than she did after this.

38. Also around this time, there was an issue about an expenses claim made by a Newly Qualified Teacher, Jade Patterson. Jade Patterson made a claim for business mileage when she went on a course for school purposes. However, her expense claim was refused because she was not insured for business mileage and the insurance certificate presented did not give her Manchester address. In the evening of 19th May 2014, Farha Hussain sent an email to the claimant and Mr Owen, writing that it was now two months since Jade went on a course for school purposes and, on her return, she had filled in the necessary paperwork but the claim did not go through. Ms Hussain wrote that, after filling in further paperwork, Jade was still awaiting a check, she wrote that Jade was on a NQT's wage and pay day was still over a week and half away, she was due to go home to Newcastle on Friday and required the funds to pay for her petrol. The claimant replied that evening to say that she was not in the next day but would look into the matter on her return on Wednesday. She wrote that she had not been presented by Colin (the temporary finance officer) with Jade's expenses claim to date to write a manual cheque and Colin was not at work that week. The claimant explained why she could not sign Jade's original claim for business mileage. She wrote that, after further discussion, Mr Owen had agreed to pay a return standard class rail fare from Manchester to Leeds for the two days of her course and the claimant had requested Jade to

complete an expenses claim form and attach from the train website the cost of the standard class return ticket. Ms Patterson then submitted an expenses claim for the train fare, including a claim for a £20 taxi fare. The claimant queried with Mr Owen whether it had been agreed that the amount for a taxi should be paid. Mr Owen said it should not, since Ms Patterson had not taken a taxi. Mr Owen accepted in cross examination that the claimant had done what she should have done in relation to the expenses claim made by Jade Patterson, although, in his witness statement, he implicitly criticised her in relation to this matter, writing, in relation to Ms Patterson, that they ended up with a very dissatisfied member of staff who could not go home for the weekend. The example of the processing of Ms Patterson's claim followed a statement in Mr Owen's witness statement that "There was also a view among numerous staff that the processing of petty cash and business mileage claims was slow and unnecessarily bureaucratic." The only example given in the witness statement of problems with the processing of expenses claims was that of Ms Patterson's. In oral evidence, Mr Owen referred to a delay in the processing of a claim from Carla Horen but he did not deal with this in his witness statement and the claimant was not asked about this so we make no findings relating to the processing of claims from Ms Horen.

39. On 4th June 2014, Ian Royle sent a complaint to Mr Owen about a delay in paying his wife, Shari Royle, for doing some motivational work at the school. He wrote that he had spoken to the claimant on Monday, who had explained the situation and promised that she would ring either that day or at the latest the following morning to confirm the details that were required and arrange for them to go on the BACS run for the middle of the week. He wrote that the phone call never came and the claimant was now proving extremely elusive. He commented that the delay of the payment was extremely disappointing and unacceptable and concluded "we are both very impressed with your work with the students and are surprised that the ethos and standards that are being imparted to them seem to be totally lacking in your finance department, an irony that I don't think would be lost on some of the contacts within the local and national press". Mr Owen spoke to the claimant about this. The claimant explained to Mr Owen that they needed to do an ESI check before payment could be approved. The claimant agreed in evidence that Mr Owen had accepted that they had to do an ESI check but complained that she found his manner aggressive. After the conversation, the claimant did the ESI check herself and then arranged payment.

40. On or around 5th June 2014, the claimant and Mr Owen met and discussed the issue of payment to David Lang, a retired Schools Inspector who provided consultancy on 7th March 2014. The claimant places this discussion as occurring before Mr Owen spoke to her about Ms Royle. Mr Lang emailed an invoice to Mr Owen on 11th April and Mr Owen forwarded this to Hazel Coen by email on 22nd April asking her to process it. A few weeks later, Mr Lang informed Mr Owen that the invoice had not been paid, which Mr Owen found embarrassing. Mr Owen asked the claimant why it had not been paid and she said she had not been able to complete the ESI check; that she had telephoned Mr Lang but he was not in. The claimant completed the ESI check on 5th June and paid Mr Lang the same day.

41. We find that Mr Owen understood the need for ESI checks to be completed before payment could be made to Ms Royle and Mr Lang, but find that he was

unhappy that the claimant had not completed these checks before 5 June. Mr Owen was clearly unhappy at having to get involved in what he considered should have been a relatively straightforward finance matter and embarrassed about the respondent's failure to pay Ms Royle and Mr Lang in a more timely manner. He was no doubt unhappy about being placed in a position of receiving Mr Royle's unpleasant email with its not very veiled threat of going to the press if Ms Royle was not paid soon. We find, on a balance of probabilities, that Mr Owen displayed his frustration and unhappiness at the situation in his conversations with the claimant about Ms Royle and Mr Lang and that this was perceived as aggression by the claimant.

42. In a report to the Audit Committee dated 22nd May 2014, the claimant had advised about the need for employment status check arising from the HMRC employer compliance review. She wrote that checks are required on all individuals supplying invoices to the academy including any School Improvement Partners. She wrote specifically that Mr Lang, recently hired as a School Improvement Partner, would have his employment status checked using the ESI tool before any payments were made

43. On 6th June 2014, the claimant had her three months probation meeting with Mr Owen. Mr Owen said in his witness statement that the three month probation meeting took place on 23rd June. He accepted in cross examination that the three month probation meeting had taken place on 6th June and that the 23rd June meeting was a further meeting. He said that he had mislaid the notes of the 6th June meeting which led to this mistake. He then rediscovered the notes which were disclosed and included in the bundle. The parties agree that the first page of the document (page 456 or 284A of the bundle) is an authentic document, completed on 6th June. In the summary on this page, Mr Owen stated "conduct and attendance excellent. Hazel is working extremely hard, partly due to the training of a new Finance Officer, a review of community leisure structures, HMRC preparation and of course her own induction to the role. Her work is accurate and meticulously prepared". Under the heading of "standards to be monitored or improved over the next review period", notes included "improving process time for orders, contracts and invoices by ensuring deadlines are met and payments prioritised against time scales and enabling independence and development of teams beneath line managers. The steps included scheduling weekly meetings to review progress against working action points. Nothing is written in this section about improvements in relation to provision of budgetary information.

44. Two versions of the reverse page of the review form have been included in the bundle. At page 284B is a document included by the respondent. Mr Owen says this page was never given to the claimant and consisted of notes which he made for himself setting out concerns he had at the end of May. This set out criticisms about budget expenditure having been unrecorded for the past two months across departments (April/May) "meaning (1) budget holders are unaware of remaining budget and (2) overall spends cannot be clear against global budget" and that punctuality had been inconsistent. Mr Owen has not given a satisfactory explanation as to why, if he had these concerns at the time, he did not record these in the document given to the claimant. We note that the summary on page 456 is positive. The comment on page 284B about punctuality being inconsistent is not consistent

with the statement in the summary that attendance is “excellent”. If Mr Owen had the concerns at 6 June about failure to record budget expenditure that Mr Owen records at page 284B, we would have expected that the list of standards to be monitored and improved over the next review period on page 456 would have included matters relating to recording of budget expenditure. Mr Owen has not satisfied us that the document at page 284B was created around the time of 6 June 2014 and expressed concerns that he held at that time.

45. The claimant produced a different version of the reverse page of the form with detailed comments from her. Mr Owen denies that this was provided to him. In the section under the heading about employers concerns was handwritten "N/A". We find, on a balance of probabilities, that the claimant's comments were not provided to Mr Owen at the time of the meeting of 6 June or shortly afterwards.

46. On 10th June 2014, the claimant attended an Executive Leadership Team (ELT) meeting. At the meeting, the claimant raised concerns over areas of potential overspend in the rewards budget and the total spend to date. She referred to money spent on pizzas and a trip to Blackpool. There is a dispute as to whether she also mentioned the trip the previous year up Mount Kilimanjaro. It is not necessary for us to resolve this dispute. The claimant also raised the issue as to whether a copyright licence had been obtained for the production of Mary Poppins, the musical, which was to take place the following week. The claimant was concerned about whether permission had been obtained to stage the performance and also to film it. The claimant was concerned about penalties for being in breach of copyright, especially as the school was charging for tickets and for DVDs of the performance. It was agreed that this matter would be discussed further at the Senior Leadership Meeting the following day. The claimant's concerns about copyright were then discussed at the SLT meeting on 11th June by, amongst others, Damian Owen and the Business Support Manager, Jane Roddy.

47. There is a dispute as to whether Jane Roddy was asked to look into the copyright matter. We find, on the basis of notes of the claimant's 1:1 meetings with Jane Roddy, which we find to be authentic contemporaneous documents, that Jane Roddy was asked to look into the matter. The notes of a 1:1 meeting between the claimant and Ms Roddy on 12 June record that Jane Roddy was to check that copyright had been obtained for the play licence for performances. From the notes of a 1:1 on 17 June, Jane Roddy reported back to the claimant that Jane had discussed copyright with Angela [Henry] and no information had been supplied to date from Angela on copyright purchased. Jane Roddy told the claimant that she had contacted other schools and been informed that they always need to purchase copyright for school plays and this was particularly important if the rights were owned by Disney. Jane Roddy told the claimant that she had pulled details of an order to buy the script from the internet and that this had been approved by Mr Owen in early February 2014 on his Academy credit card.

48. Mr Owen gave evidence that he checked with the member of staff, Angela Henry, who was responsible and was assured that there was no breach of copyright; that Ms Henry told him that they did not pay for the script as it was not the official Disney version; it was an extract of the play, it was not for profit and was for educational purposes. He did not say in evidence that he had told the claimant

about this conversation. Mr Owen said he decided, on cost grounds alone, that filming the production must not go ahead as filming was to cost £750.

49. On a number of occasions, the claimant raised with Mr Owen a concern about the spending of approximately £2000 on take out pizzas for students attending revision sessions in April and May 2014. She was concerned as to whether this spending represented value for money and did not consider that “pupil premium” funds could appropriately be used to pay for the pizzas. The respondent would have to show that the spending was linked to an improvement in outcome if pupil premium funds were used. The claimant said that no one wanted to pay for the pizzas out of their budget. We find that the claimant raised these concerns with Mr Owen starting with the ELT meeting on 10 June and that she raised it again in the meeting on 17 June. This is supported by the claimant’s diary note (page 454) which we accept to be an authentic contemporaneous document. This records for 17 June, amongst other things, “Damian to agree Pizzas for Learning Resources budget not pupil premium.” The claimant does not refer to any other specific dates when the spending on pizzas was discussed but Mr Owen’s evidence is that, on 4 July, they sat down and allocated the spending to departments.

50. On 17th June 2014, the claimant had a meeting with Mr Owen. A number of matters were discussed. The claimant says these included the pizza issue and the copyright issue in relation to the performance and filming of Mary Poppins. Mr Owen gave evidence in cross examination that it was possible the pizza issue was discussed but denied the copyright issue was discussed at this meeting. In particular, he denies saying to the claimant “do not try to pin this on me” in relation to this issue. We find, on a balance of probabilities, supported by the claimant’s diary note for this day, that both the pizza issue and the copyright issue were discussed. We consider it more likely than not that the claimant would have reported the information she had been given by Jane Roddy earlier that day, recorded in the notes of her 1:1 interview with Jane Roddy. This information included that the script had been purchased over the internet using Mr Owen’s Academy credit card in early February. We find, on a balance of probabilities, that Mr Owen said that the performance (which was due to take place that night and the following night) had to go ahead, although it would not be filmed. We find, on a balance of probabilities, that Mr Owen did say “do not try to pin this on me”. We find that Mr Owen behaved in a way which was perceived by the claimant as being angry and aggressive.

51. Mr Owen said that the budget holder reports for learning resources for April and May were not yet available. He said he needed to know immediately what was in the budget. The claimant said that the Sage software needed a lot of manual input. The claimant considered Mr Owen was unfair in setting an earlier deadline for reports than in the past, not acknowledging the staffing difficulties in the Finance department or the difficulties with the IT system access.

52. At the meeting Mr Owen also chased the claimant about raising an invoice to get money from a charity. Funds had been raised by the Trust Charitable Foundation.

53. Mr Owen made a comment to the claimant that she was not working in a local authority now. The claimant understood the implication of this was that the way

things were done in a local authority was wrong; the claimant felt this was a criticism and felt undermined.

54. Mr Owen sent an email to the claimant, following the meeting, asking her to prepare her thoughts on areas outlined in an attached note so that they could examine the concerns he outlined against potential actions to address them. Mr Owen wrote in the attached note "based on our discussion of the role within local authority against the role in a school based setting can you consider primary needs of those working in the Academy in order to meet expectations from me in working towards delivering rapidly improving outcomes, improving student attainment and standards against our areas for improvement. He gave examples considering primary needs of the Principal of knowing what was in the budget, what was committed and what the carry forward was at a moments notice and enabling improvements needed against planning to be implemented to generate corresponding outcomes for students. He asked the claimant to consider what would be the primary needs from her role in the perspective of curriculum leaders, direct reports, governors and general staff. He noted that these primary needs had to be facilitated at short notice and asked how this could be supported in order to deliver the outcomes for students described.

55. On 19th June 2014, the respondent's governing body met; the claimant attended. It was recorded that the attendance management policy had been issued to the governors for review ahead of the meeting, no issues were raised and the Governors approved the policy. The claimant presented the financial figures for the three year budget; it was recorded that this should be an agenda item for the next finance committee meeting.

56. On 20th June 2014, Mr Owen wrote by email to Samantha Simpson expressing concern about the presentation of financial figures at the meeting, commenting that he had not seen these or known about that item. He wrote "I have had a conversation with Hazel this morning as she was worried I might have general concerns over her performance. I found this hard to comprehend since I could have not have been clearer about my concerns. Regardless, they are recorded and so I will move on with the process as required". He asked Ms Simpson to check her diary to arrange for them to meet with the claimant after the final governors meeting. He wrote "we can then discuss with her our concerns/actions around performance from the point of view of probationary period and termination or, if things develop unexpectedly well over the coming weeks, a general review of her start here". A meeting was arranged for 1st August but, as noted below, this did not take place due to the claimant's father being taken ill.

57. Mr Owen asked three of the claimant's direct reports to identify three things that they needed from the claimant. Mr McClusky, the Premises Manager, wrote that he wanted regular meetings on time, to run with current service levels and only look at change once she had gained the history behind it and to understand his job role and trust in his ability. Dominic Cook, ICT and Network, wrote that he wanted regular catch up meetings to allow for quick leadership decision making, thus giving him direction for tasks in hand and to trust his judgment ability and professional expertise. Tracy Mellor wrote that the three things she felt she needed from her line

manager in order for her to be able to do her job effectively were trust, responsiveness and honesty.

58. The claimant and Mr Owen met again for a further probation meeting on 23rd June 2014. There are a number of sets of notes of this meeting included in the bundle, not all of which are identical. The claimant says she was provided with the version which is included at pp 494-497 of the bundle. The claimant took into this meeting a document she had prepared (p.479). Mr Owen did not consider that this provided what he had asked her to do. He considered that it set out what the claimant needed from her direct reports, not what they needed from her to be able to do their job.

59. The claimant did not, at this meeting, say that she thought the concerns being raised by Mr Owen were not genuine and because she had made protected disclosures. The claimant said in evidence that she formed this view later. The claimant accepted in evidence that Mr Owen did raise with her in the meeting the concerns which he recorded in the notes at pp.494-497. However, she considered that the notes of the meeting were misleading and inaccurate in that they did not record the claimant's comments on the matters raised.

60. In the notes which the claimant accepts she was subsequently given by Mr Owen, concerns raised included financial reports for governors being untimely, monthly budget returns not being available for April or May for any department, no information being forthcoming to departments, meaning they had no picture of their budget or their remaining allocations, direct reports feeling that they were not trusted to work independently and that their work and decisions are overly questioned leading to slow processing of their work, their de-motivation and reduced confidence in their ability to perform their roles, slow processing of petty cash and mileage giving staff sense of undue bureaucracy. There was also concern about key invoices and contracts not having been paid efficiently leading to complaints from those providing services. Mr Owen expressed concern about direct involvement in the work of other areas to the detriment of sound financial management and the organisation and its priorities, stating that a strategic overview rather than a direct operational involvement would help. Examples included policy approvals, the finance officer recruitment process, filming the academy production and PE grant for sports equipment. The criticism about involvement in the PE grant for sports equipment contrasts with the criticism Mr Owen made in these proceedings of the claimant not getting the grant quickly. Mr Owen wrote that a shadowing opportunity would be provided at an organisation using the same role to share good practice and to examine how the role facilitates the effective use of direct reports and key academy personnel. Mr Owen subsequently arranged that the claimant could attend Chorlton High School for this purpose.

61. Mr Owen sent notes of the meeting to the claimant after the meeting. The claimant wrote to Mr Owen on 4 July, writing that she would send him a written response to the notes by 7 July. Mr Owen replied that there was no need for a written response. The claimant has produced notes of this meeting which she says she typed from written notes made in the meeting which were then destroyed. The claimant did not send her notes to Mr Owen. The Word properties of the claimant's

notes show that they were created between July and August 2014 and modified in August 2015.

62. In the meeting on 23 June, the claimant asked Mr Owen for a copy of the notes from the first probationary meeting. Mr Owen provided a typed version on 4 July, rather than the original handwritten version. His explanation to the tribunal was that he typed this from memory because he could not find the handwritten one and Ms Mellor found the handwritten one later. However, Mr Owen did not tell the claimant that he had not been able to find the original notes and was, instead, supplying a version typed from memory some time after. There are differences between the original version and the recreated typed version. The recreated version is still positive about the claimant although not quite as fulsome in its praise as the original.

63. On 24th June 2014, Mr Owen, wrote by email to Samantha Simpson, attaching documents from his meeting with the claimant the previous day. He wrote "I feel she did not grasp the very basics of my concerns yesterday and it took a long time to get them across". Samantha Simpson replied the same day. She wrote that she had met with David [Cain] that morning and that he had referred to the length of time Mr Owen spent the previous day working through these issues with the claimant, he wrote "which is not sustainable for you or the academy and should not be expected at this level, even in the short term".

64. On 3rd July 2014, the claimant met Samantha Simpson in relation to preparation for the next finance committee meeting which was due to take place on 17th July. Samantha Simpson was critical about a numerical error in the claimant's report, which Samantha Simpson corrected. There was some mention at this meeting about the need for ESI checks. There is a dispute as to whether Samantha Simpson said this was a sensitive issue, mentioning David Cain in this context. The claimant did not make any allegations to Samantha Simpson that Mr Owen was picking on her because she had raised concerns.

65. Also on 3 July 2014, the claimant sent an email to Mr Owen expressing concern that it had reportedly been agreed by Angela Henry's line manager that the cash takings from Mary Poppins should be given directly to Angela Henry to purchase a camcorder and makeup for students. The claimant wrote that this was in breach of the Academy's financial regulations. She also noted that four functional camcorders had been found in a cupboard. In the email, the claimant also referred to the potential copyright issue with Mary Poppins and that she had found out the script had been purchased from the internet. Mr Owen replied the same day, thanking the claimant and writing that he would pick up with those involved and clarify re propriety. Mr Owens did not seek to correct what the claimant had written about the Mary Poppins' script having been purchased from the internet, rather than being free, as Mr Owens said in evidence he had been told it was by Angela Henry.

66. On 4 July 2014, the claimant and Mr Owen had a discussion about the renewal of a contract for Careers Solutions Advisor, who had been providing a careers service to the respondent. In email correspondence, the claimant had been insisting on the need to obtain three quotes in line with financial regulations as the contract was over £10,000. Mr Owen considered that this was a situation where a

waiver could be obtained from the governors. The claimant did not consider that the exceptional circumstances existed in which a waiver could be sought. The claimant confirmed her view in a subsequent email on 7 July. Mr Owen replied the following day, writing "If these are the people we already use and we are happy with their service we should check the financial arrangement is sound and get it through. We cannot afford to waste time getting the service in place any longer."

67. At a meeting on 4th July, Mr Owen informed the claimant that her probationary period was being extended until Friday 24th October 2014. He wrote to the claimant confirming the extension of the probationary period on 7th July and summarised concerns which he had raised over the claimant's performance in her role. He wrote:

"Concerns are around:

- The relationship between the work in the role and that of key colleagues in delivering the vision of the academy & facilitating improved outcomes for students.
- The line management of Direct Reports and staff working to your role in impacting positively, leading them effectively and facilitating their effective & efficient working practices.
- The timeliness and immediate availability of key financial information at Governor, Principal, Curriculum Lead, Direct report and general staff level.
- The prompt payment of key contracts and invoices moving forward.

"It is important that you have a clear understanding of what is expected of you. If you are unclear about anything, it is important that you speak to me as soon as possible".

He wrote that, if the claimant's performance did not address the above concerns within the extended probationary period, then they reserved the right to terminate her employment.

68. Ms Mellor prepared the initial draft of the letter to the claimant dated 7th July 2014 in which Mr Owen informed the claimant that her probationary period was being extended.

69. On 17th July 2014, the claimant met with Samantha Simpson prior to the finance committee meeting.

70. At the finance committee meeting, the claimant was informed that future reports required explanation for the recurrent and non-recurrent variations and an explanation as to how the capital spend was made up. The Chair of Governors stated that this information was required to enable the financial position to be fully but simply explained to all the governors. The governors also requested that a succinct report be produced to provide clear reasons for the reserve allocations. The claimant said she regarded these points as "action points" rather than any criticism of her. We accept the evidence of Ms Simpson and Mr Cain that they had concerns about the claimant's performance at this meeting.

71. On 18 July 2014, Mr Owen dismissed a Teaching Assistant. Ms Mellor assisted him in the process. The claimant was not involved. We find that Mr Owen dealt with this, without involving the claimant, because he had the power of dismissal. He used Ms Mellor to assist him since she was the respondent's HR officer. We do not consider the fact that the claimant was Ms Mellor's line manager to be sufficient reason for suggesting that the claimant should have been involved with the dismissal. Mr Owen saw no reason to involve the claimant and did not do so. Mr Owen said in evidence that he has the absolute right to dismiss staff and does not have to tell anyone. Mr Owen also said in evidence that he considered that the less people knew, the better it was for the dignity of the person being dismissed. We consider this to be an afterthought on Mr Owen's part, rather than a reason why he did not involve the claimant.

72. On or around 25 July 2014, Mr Owen put a meeting in the diary for the claimant to meet with him and Samantha Simpson on 1st August. An email exchange of 23 June between Mr Owen and Ms Simpson shows that Mr Owen was already trying to arrange this meeting for 1 August by that time. By email dated 30 July 2014, the claimant asked for clarification about the purpose of the meeting, so that she could prepare. Mr Owen replied that it was to discuss and review progress in the areas he had concerns over. He wrote that Samantha Simpson would join them from a financial perspective so that they were clear about expectations from the point of view of her committee.

73. Towards the end of July 2014, the Academy held transition days for year 6 children due to join the school in September. The organiser was Carla Horan. The claimant emailed Ms Horan on 24 July, asking whether they could discuss building into the programme over the next two weeks the national library Summer Reading challenge. Ms Horan replied that she had enough to do and had organised enough already for transition. She wrote that she would be happy to look at introducing it the following year but would not be able to do it herself the following week. The claimant replied, persisting with the suggestion. Carla Horan wrote again, expressing annoyance. She wrote:

"Hazel, I have worked so hard on this transition and I feel like you are doing everything possible to make it really difficult and quite honestly from these emails I am upset and I have had enough. Please just let me do my job. If you feel I am not doing a good job (which you are making me feel like) then feel free to take over and run transition and I will happily just work as staff!"

Ms Coran wrote that she would like a meeting with SLT as soon as possible as she was not happy at all.

74. The email exchanges were brought to the attention of Mr Owen. He wrote to the claimant expressing unhappiness that she had quoted him, clarifying that the meeting he held was about library initiatives and not the two week transition programme. He wrote that he had made no mention that those children should be involved in library arrangements during that time. He was also made aware of a suggestion that trips which were part of the transition programme should be opened up to other children. He wrote to the claimant that the trips were specifically for children on the transition programme and not for local children in search of summer activities.

He wrote: "The programme needs to go ahead as Carla has arranged without further interference."

75. It is clear from contemporaneous emails that the claimant carried out ESI checks on contractors booked for transition events at short notice so they could be paid as self-employed. The claimant also got involved in ensuring that contractors had valid enhanced CRBs or that, where this could not be obtained, that a risk assessment was carried out and contractors without current CRBs were to be accompanied at all times by Academy staff.

76. The claimant alleges that, on 29th July 2014, she handed a summary of her concerns on the transition programme to Mr Owen. The claimant's evidence is that she did not say anything to Mr Owen about this and there was no discussion about its contents. Mr Owen denies that he received this document. The claimant says she prepared the document at home. She thought she gave it to him rather than emailing it because the server was down. The Word properties for the document show that it was created on 26 July 2014 (a Saturday) at 9.20 a.m. and last modified on 29 July 2014 (a Tuesday) at 6.22 a.m. Concerns raised in the five page document include ESI checks on contractors, valid enhanced CRBs not being in place and public liability insurance certificates from contractors not having been obtained by the organisers of the transition programme. In relation to the public liability insurance issue, the claimant wrote that, after she discussed her concerns with Julie Hawkins, contractors were appropriately trained and appropriate safeguards and insurance were in place; the claimant and Ms Hawkins obtained final certificates for suppliers booked by Carla Horan "to ensure health and safety compliance e.g. science experiments/dangerous animals – tarantulas etc. shown to children, so that children were not placed at risk." Contemporaneous emails support that these were concerns of the claimant in the days leading up to the memo being prepared. Given this, and the evidence of the Word properties that the document was prepared immediately prior to the time the claimant says she gave it to Mr Owen, we find, on a balance of probabilities, that the claimant did give the memo to Mr Owen. It would be surprising if the claimant went to the trouble of preparing such a detailed note, including modifying it at 6.22 a.m. on 29 July, and then did not give it to Mr Owen.

77. On 30th July 2014, the claimant sent David Cain and Mr Owen a lengthy note about healthy eating and Manchester Fayre.

78. On 31st July 2014, Mr Owen sent the claimant an outline for their discussions the next day. He wrote that Samantha Simpson would be coming along "to assist in clarifying any financial details and from the perspective of a Governor and to offer insight into areas related to finance". Mr Owen appended the summary document "Primary needs SDFR" and asked the claimant to consider for each how those key needs were coming along and what improvements there had been in facilitating their work. The claimant accepted in cross examination that there were some concerns at this time about her performance although, in her witness statement, the claimant states that performance issues were not genuine and were a sham manufactured in response to her raising concerns.

79. The scheduled meeting between the claimant, Mr Owen and Ms Simpson did not take place on 1st August. The claimant texted both Mr McCluskey and Mr Owen

soon after 8am on 1st August to inform them that her father, who had been taken to hospital the previous week due to chest pains, had had more pains overnight and she needed to be with him, so would not be able to come in that day. Mr Owen and Ms Simpson have not alleged that the reason for the claimant's absence was not genuine. However, Mr Owen gave evidence that they felt very let down and Ms Simpson was critical about the claimant's failure to attend the meeting writing that she was "very unimpressed" that the claimant did not attend the meeting. Immediately after this absence the claimant was then on holiday. The claimant accepted that she did not take the initiative to re-arrange the meeting with Mr Owen and Ms Simpson. However, we would have expected the respondent to have made the arrangements for a re-scheduled meeting. Mr Owen emailed Ms Simpson on 8 September to say that he had rearranged the meeting which should have taken place on 1 August for 12 September. He asked Ms Simpson if she would like to join them if she was available. Otherwise, he wrote "I can move things on to the necessary point." He also wrote that he would have some feedback from Ms Simpson by then from occurrences in the governors' finance and audit committees the previous evening.

80. One of the members of staff who worked in the community facility, Victoria Owen, left her employment at the end of the summer term. The claimant was responsible for appointing a replacement. Towards the end of August, when Ms Mellor, who normally works term time only, returned to work, Mr Owen asked Ms Mellor what arrangements had been put in place to replace Victoria Owen. Ms Mellor did not know so Mr Owen asked the claimant to come into a meeting. In front of Ms Mellor, Mr Owen asked what had been done and said he understood that she had done nothing to progress the situation and was relying on the remaining staff to cover. Ms Mellor gave evidence that she felt uncomfortable at this meeting and that Mr Owen was unhappy that nothing had been done to recruit a replacement. Ms Mellor said that Mr Owen was not aggressive but it was a "direct" conversation. Ms Mellor accepted that it was probably embarrassing for the claimant to be addressed by Mr Owen as he did in front of her direct report, Ms Mellor.

81. On 5th September 2014, Tracy Mellor sent an email to Mr Owen complaining about the way the claimant was dealing with her. She forwarded emails between herself and the claimant about Teaching Assistants and working time. She wrote to Mr Owen "sorry to moan but I have to point out how frustrating it is not to be trusted with my advice - see emails below. I am not sure what she asked our solicitors but his advice is exactly what I told her. Kit and I also had an arrangement that if any advice on employment law was to be sought I would do it rather than individual managers doing this themselves. This ensures consistency and aids my development as well".

82. On 11th September 2014, there were audit and finance committee meetings. Ms Simpson considered that the claimant performed better at the finance committee than at previous meetings but this was improvement on particularly poor performance to get to a basic standard. The claimant had not sent the papers for the meetings a week in advance, as had previously been requested. The claimant sent these on 9th September. The claimant had sent to Mr Owen a complaints and praise policy on 4th September. At the audit committee meeting, the notes record in relation to the policy "the principal advised that he had not seen/reviewed the policy

prior to it being issued to the governors. The policy is very long. The committee chair confirmed that it had been agreed earlier in the year that policies should not be issued to governors without first being reviewed by the Principal. The review of the policy was deferred to allow for it to be reviewed by the Principal". The same was written in relation to the safer recruitment policy. Mr Owen had not told the claimant before the meeting what he intended to say in relation to the policies. We accept that the claimant was upset by these comments made in front of the governors which she regarded as critical of her.

83. After the meeting, the claimant had a conversation with David Cain on the staircase when she was returning his briefcase to him. There is a dispute about the length of the conversation, Mr Cain saying it was very short and the claimant saying it was longer and more detailed. Mr Cain accepts that the claimant said she had concerns about Damian Owen and that she felt he was not supportive of her and that she felt bullied. He gave evidence that he did not take her allegation seriously. He was aware that the Principal was handling issues to do with the claimant's performance. Mr Cain gave evidence that he said to the claimant that he knew there were ongoing issues to do with her performance and that, if her concerns related to financial matters, then she should speak to Samantha Simpson about this.

84. Mr Owen gave evidence that he had decided, before 12 September 2014, that he was not going to confirm the claimant's contract at the end of her extended probationary period. He gave evidence that he wanted to discuss his concerns in detail and knew this would take a long time, so decided to discuss his concerns at two meetings a week apart. We do not find this evidence credible. If Mr Owen had already made the decision to terminate the claimant's employment, it seems extraordinary that Mr Owen engaged in two lengthy discussions about his concerns over such a period. It would be much more likely that he would inform the claimant that he was not intending to confirm her contract and give her reasons why, orally and/or in writing, rather than engaging in lengthy discussion in two meetings and arranging a further meeting before informing her of his decision. It seems more likely that Mr Owen had not made up his mind when he had the meetings on 12 and 19 September and wanted to hear what the claimant had to say, even if he thought the most likely outcome was that he would terminate her employment.

85. There was a meeting between the claimant and Mr Owen on 12th September 2014. The claimant accepted that Mr Owen had sent her, in advance of the meeting, the documents at pp165-168 of the bundle and that they discussed the matters set out in the agenda. The meeting was nearly two hours long. Mr Owen subsequently sent the claimant, on 17th September, notes from this meeting. The claimant prepared a note of the meeting but never gave this to Mr Owen. The notes made by Mr Owen do not include the claimant's response given at the meeting to the concerns raised by Mr Owen. Matters recorded as having been discussed included the resignation of Victoria Owen, information about Metrolink developments not being timely enough to ensure safeguarding of students, policies having been passed to the clerk giving Mr Owen only one evening to read them, which was insufficient time, and that policies needed to be agreed by the Principal prior to submission, and that monthly report budgets were not completed for June and July until 29th August. The notes record that the claimant suggested that not enough support had been given and that the claimant was to tell Mr Owen what other

support was needed to resolve the problems. It was recorded that they also discussed the claimant feeling that sometimes she had been asked abruptly not to interfere. The claimant accepted in evidence that Mr Owen was raising serious concerns but felt that he was not prepared to listen to her explanations. We find that the claimant found Mr Owen to be aggressive at this meeting. The claimant alleges that Mr Owen said words to the effect that the claimant did not deserve any praise, that he was not there to pander to the claimant, he was only interested in things that drive the organisation forward, not what the claimant needed and that the claimant was well paid for what she did and he expected her to go above and beyond. Mr Owen denies this. We find, on a balance of probabilities, that Mr Owen did make the alleged remarks. They are consistent with views expressed at other times by Mr Owen about his expectations for the holder of the claimant's role, particularly given their level of remuneration. The claimant made this allegation as early as her letter of appeal dated 30 September 2014.

86. In the absence of a permanent replacement for Victoria Owen, employee Ben Stringfellow had been working extra shifts. He worked continuously for twenty days. On 19th September, Jane Roddy sent an email to Tracy Mellor expressing concern about Ben Stringfellow being ill and writing that he had worked continuously for twenty days and thought it would be at least another ten days until he could have a day off. Tracy Mellor forwarded this email to Damian Owen. She wrote that this was a breach of the Working Time Regulations and that the claimant had asked her to send her an opt out form for 48 hours a week but she hadn't been aware that the claimant was expecting Ben Stringfellow to work continuously without a day off.

87. Mr Owen had a meeting with the claimant on 19th September. This was a continuation of the meeting on 12 September and was another lengthy meeting. The claimant was upset by the end of the meeting. Mr Owen discussed concerns about how the claimant was managing her direct reports. He recorded that, although the claimant was now having regular meetings with her direct reports, they were often running in to a second hour, taking away from the crucial work the key staff had to do. Mr Owen expressed the view that the interview of Ben Stringfellow for a post for which he was the only applicant and had been performing, was unnecessary long and placed an undue burden on him, being one hour forty five minutes long. Mr Owen expressed concern that there had been no strategy for recruitment to replace Vicky Owen and that Ben Stringfellow had been working every day and was unwell. Mr Owen concluded "through these examples there is an underlying concern around prioritising work load and facilitating the (independent and effective) work of colleagues, which remains a concern from our June meeting. Whilst a meticulous approach is right and proper, delays in processing actions, lengthy discussion and recording, an unwillingness to allow independent work and time management issues are slowing down the performance of key members of the organisation and taking from their confidence in their own decisions. There exist numerous additional instances of this pattern (e.g. additional unnecessary solicitors checks, overriding the advice of the Premises Manager on library development which this advice was sound, questioning the running of summer clubs when this had been arranged very well) which have the same effect. This results in an adverse effect on their morale". Mr Owen and the claimant arranged to meet again the following Monday. There is a dispute as to whether Mr Owen said to the claimant that this was to communicate his decision about the claimant's contract of employment or discuss further concerns.

We find that the claimant told Mr Owen that she would speak to the governors. Mr Owen accepts that the claimant said she was to speak to someone and the claimant did go on to contact Mr Cain and Ms Simpson so we consider it more likely than not that the claimant said she was to contact governors.

88. Following the meeting, Mr Owen forwarded to the claimant Jane Roddy's email about Ben Stringfellow. He wrote "my point in our meeting about inadequate arrangements for staffing at the leisure centre are borne out below". He wrote that he understood that working continuously for three weeks with no break was a breach of the Working Time Regulations. Mr Owen sent a further email informing the claimant that, having checked her diary, he had booked a meeting for 1pm on Monday 22nd September.

89. Following the raising of concerns about Ben Stringfellow, the claimant herself covered a shift at the Leisure Centre on 21st September.

90. On 22nd September the claimant did not attend the arranged meeting with Mr Owen, informing him that her daughter was ill.

91. On 22nd September, at Mr Owen's request, Tracy Mellor prepared a draft letter terminating the claimant's employment. It is clear from this that Mr Owen had, by 22 September, made the decision to dismiss the claimant. The meeting which should have taken place on 22nd September was re-arranged for 23rd September. However, the claimant did not attend this, informing Mr Owen that she had become ill.

92. The respondent suggests that the claimant and her daughter were not genuinely ill and the claimant was seeking to thwart the process. We have no evidence on the basis of which we feel able to make a finding that the claimant and her daughter were not genuinely ill.

93. Mr Owen wrote to the claimant by email on 23rd September, terminating her employment. The email was sent at 12.33 on 23rd September. Mr Owen asked that the claimant work until an effective handover had taken place.

94. On 20th September 2014, the claimant had emailed Samantha Simpson writing that she had mentioned issues to David Cain and he had referred the claimant to her. She asked to arrange a meeting as soon as possible to discuss Owen's behaviour towards her. Samantha Simpson replied on 22nd September, writing that she would meet with the claimant to discuss the financial position of the Academy and her delivery of objectives in this regard "however it would not be appropriate for you and I to discuss Damian and his behaviour towards you".

95. In the very early hours of 23rd September 2014, before she had received notice of termination, the claimant emailed David Cain. She asked for clarification as to what she should do, given her concerns over Mr Owen's behaviour and dignity at work towards her after raising a number of financial concerns. She wrote that she would like to raise her concerns informally in the first instance. She wrote that she also had concerns over Mr Owen's extension of her probationary period and the accuracy of his minutes of meetings which made no mention of her responses or

explanations provided and were incorrect. Mr Cain replied to the claimant at 8:01 on 23rd September, copying in Samantha Simpson and Mr Owen. He wrote that he would take advice on the matter and respond further.

96. The claimant remained off work ill. By a letter dated 25th September 2014, Mr Owen noted that, due to the claimant's illness, she had been unable to attend for work to facilitate an effective handover of her role. He wrote that, as her return to work seemed unlikely, he had taken the decision to place her on garden leave for the remainder of her notice period.

97. On 30th September 2014, the claimant wrote to Mr Cain as the Chair of Governors, appealing against the termination of her employment and submitting a grievance. Mr Cain replied on 7th October 2014. He wrote that Mr Owen had kept himself and the governors fully informed over his concerns regarding the claimant's performance and that his concerns were shared by Mr Cain and the other governors. He wrote that they fully supported and understood the decision to extend the claimant's probationary period and then to give her notice of termination because of her failure to meet the required standards. He wrote that the claimant was within her probationary period and the Principal was entitled to act in the manner in which he did, she had no legal right of appeal "and given that I am entirely satisfied that your employment was terminated for reasons to do with performance, I do not believe that holding an appeal hearing would serve any useful purpose, and therefore, I must decline your request for an appeal hearing". In relation to the grievance he wrote "it appears to me that this has only been raised because of the decision taken to terminate your employment. Whilst it is correct that you did indicate informally that you had concerns over the Principal's treatment of yourself in the fortnight before the termination of your employment was confirmed, I am inclined to believe that you only did this as you knew that the termination of your employment was likely, as the Principal had met with you on 12th September and 19th September when his concerns were discussed in detail. Therefore, I take the view that your attempt to raise a grievance is vexatious and accordingly, I cannot agree to your request". In relation to the claimant's allegation that her dismissal arose in response to her making protected disclosures, he wrote "I do not believe that these issues played any part whatsoever in the decision to terminate your employment, and indeed, I do not believe that the issues were even viewed as significant from the Principal's perspective".

98. Mr Cain acted on information from the Principal in responding to the claimant; he did not speak to the claimant or investigate further before providing his response. He gave evidence that he considered some of the claimant's allegations to be spurious, vexatious and nonsensical. He considered the whole process vexatious. He understood the complaints to be untrue.

99. Mr Cain ended his letter to the claimant, writing that, if the claimant brought a claim for unfair dismissal, this would be vigorously defended. He also wrote "I must also point out that you have made a number of highly personal comments about the Principal which he regards as defamatory. I would, therefore, caution you to moderate your language when referring to the Principal, as if you fail to do so he may be forced to take action against you".

100. The claimant wrote to Margo Johnson, Human Resources Governor, on 16th October 2014. She asked for an opportunity to discuss her letter of 30th September and the concerns she outlined in her letter to Ms Johnson formally with an independent panel from the Board of Governors with the Academy's complaint./grievance procedures. Margo Johnson replied on 20th October 2014, writing that she had reviewed Mr Cain's response and the claimant's contract of employment which clearly stated that the grievance procedure did not form part of the claimant's contract of employment. She wrote "therefore, the Academy is not obliged to hear your grievance, and given that your employment has ended, I do not believe that it would be appropriate to do so". She also wrote "I am aware that you were employed on a probationary contract and that during the course of your employment you were provided with feedback on your performance and therefore given an opportunity to improve. I am also aware that your contract states that your employment could be terminated at any time during the probationary period, and therefore, I am satisfied that due process has been followed".

101. In the period 22nd to 24th October 2014, the claimant received 50% of her usual rate of pay. The claimant queried her final salary payment. Tracy Mellor replied to her on 3rd November 2014. She wrote "with regards to your absence, as you have submitted doctors notes to the Academy which declare you as unfit to attend work, your absence during your notice period has been classified as sickness absence and has therefore been paid in accordance with your contractual sick pay entitlement". The claimant had submitted sick notes. Tracy Mellor had sought advice from the Academy Solicitors and had been advised that the sick pay provisions took precedence over garden leave. Without notification to the claimant, Ms Mellor informed payroll that the claimant was on sick leave. Payroll paid the claimant in accordance with what they understood the sick pay provisions to require: full pay until the claimant had been paid sick pay at full pay for a month in a twelve month period and then half pay.

102. The claimant's contract of employment provided, during the first year of service, for sick pay of one month's full pay and (after completing 4 months) 2 months half pay. Clause 11.3 provided that entitlement was "calculated by deducting from the employee's entitlement any period or the aggregated periods of paid absence during the twelve months immediately preceding the first day of absence."

103. The claimant has not challenged the respondent's calculation of the number of sick days she had taken.

104. The claimant notified ACAS of a potential claim on 26 November 2014. The ACAS certificate was issued on 18 December 2014. The claimant presented her claim to the tribunal on 16 January 2015.

Submissions

105. The representative spoke to detailed written submissions.

Law

106. Section 103A ERA provides: “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.”

107. Where, as here, the claimant has insufficient service to claim “ordinary” unfair dismissal, the burden lies on her to prove that the reason or principal reason for her dismissal was that she made a protected disclosure.

108. Section 47B(1) ERA provides: “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.”

109. What constitutes a protected disclosure is defined by sections 43A to 43H ERA. Section 43A provides: “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.”

110. The relevant parts of section 43B for this case are as follows:

“(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 –

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

(d) that the health or safety of any individual has been, is being or is likely to be endangered,.....”

111. It is agreed in this case that the disclosure was made to the claimant’s employer, so section 43C is relevant.

112. In *Babula v Waltham Forest College* [2007] ICR 1026, the Court of Appeal held that an employee who informed the police and other enforcement agencies that he believed that an act of racial hatred had been committed could rely on the protection of the whistleblowing provisions to argue that his dismissal was automatically unfair, even though his belief was mistaken. The Court held that a belief may be reasonably held and yet be wrong.

113. Section 48(2) ERA provides that in relation to a complaint including a complaint that the worker had been subjected to a detriment in contravention of section 47B “On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.”

114. Section 47B ERA will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer’s

treatment of the person making the protected disclosure: *NHS Manchester v Fecitt [2011] EWCA Civ 1190*.

115. A complaint of detriment for making a protected disclosure must be presented before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or within such further period as the tribunal considers reasonable in a case where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months: s.48(3) ERA.

116. Section 13(1) ERA provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.

Conclusions

Protected disclosures

117. We consider first whether the claimant made protected disclosures as defined in ERA.

118. In relation to all the alleged protected disclosures, we consider that the claimant was genuine in raising the concerns which she did. The claimant was clearly concerned to ensure that the respondent complied with all relevant legal obligations and to ensure the health and safety of pupils and others. This included a concern to ensure that the respondent acted in all its financial dealings with regularity, propriety and value for money, as required by the Academies Accounts Direction. We conclude that the claimant reasonably believed that the requirements of the Academies Accounts Directive amounted to a legal obligation to which the respondent was subject. We conclude that the claimant had a reasonable belief that the disclosures made by her were in the public interest. All the disclosures were made to her employer, either being made to Mr Owen or to the respondent's governors.

The claimant's disclosures about financial irregularities raised to Mr Damien Owen, in particular:

- i Alleged overspending on pizzas (£2000);*
- ii The request to purchase a camcorder for £375 using funds raised from ticket sales following a school production;*
- iii Processing expenses' claims without the correct forms and procedures being followed.*

119. We have found that the claimant raised the issue about the spending on pizzas during revision classes on a number of occasions with Mr Owen, including at meetings on 10 and 17 June 2014. There is no evidence that the claimant raised this issue later than 4 July 2014, when Mr Owen says that they sat down and allocated the spending to appropriate departmental budgets. We have found that the claimant raised concerns about value for money and the propriety of what she understood to be a proposal that the money should come out of the pupil premium. She was concerned that the respondent would not be able to show that the spending improved outcomes, as required for spending of pupil premium. We conclude that the claimant made a disclosure of information, being that around £2000 had been spent on pizzas and that the spending could not come out of the pupil premium budget. The disclosure was made to Mr Owen. The claimant was alleging a breach of a legal obligation, being the value for money requirements in the Academies Accounts Direction. We also conclude that the claimant was alleging that the respondent was likely to fail to comply with its legal obligation of propriety in the Direction if pupil premium was used to pay for the pizzas since the respondent was unlikely to be able to demonstrate that the spending on pizzas had raised attainment standards in pupils coming from a deprived background. We conclude that the claimant had a reasonable belief that the disclosure she was making tended to show these breaches or potential breaches of legal obligations. As noted above, we have concluded that the claimant had a reasonable belief that her disclosures were in the public interest. We conclude, therefore, that the claimant made protected disclosures in relation to the spending on pizzas.

120. On 3 July 2014, the claimant sent an email to Mr Owen expressing concern that it had reportedly been agreed by Angela Henry's line manager that the cash takings from Mary Poppins should be given directly to Angela Henry to purchase a camcorder and makeup for students. The claimant wrote that this was in breach of the Academy's financial regulations. We conclude that this was a disclosure of information. The disclosure was made to Mr Owen. The claimant was alleging a breach or likely breach of a legal obligation, being the requirements of regularity and propriety in relation to the handling of money in accordance with the Academies Accounts Direction. We conclude that the claimant had a reasonable belief that the disclosure she was making tended to show a breach or potential breach of a legal obligation. As noted above, we have concluded that the claimant had a reasonable belief that her disclosures were in the public interest. We conclude, therefore, that the claimant made a protected disclosure in relation to the disclosure of information about the request to purchase a camcorder using funds raised from ticket sales following a school production.

121. The alleged disclosure about processing expenses' claims without the correct forms and procedures being followed appears to relate to the expenses claims submitted by Jade Patterson. Jade Patterson made a claim for business mileage when she went on a course for school purposes which was refused because she was not insured for business mileage and the insurance certificate presented did not give her Manchester address. Mr Owen then agreed to pay a return standard class rail fare from Manchester to Leeds for the two days of her course. Ms Patterson then submitted an expenses claim for the train fare, including a claim for a £20 taxi fare. The claimant queried with Mr Owen whether it had been agreed that the amount for a taxi should be paid. Mr Owen said it should not, since Ms Patterson had not taken

a taxi. At its highest, this matter indicates that claim forms were submitted which did not satisfy the respondent's procedures. The claimant is not alleging that expense claims have been processed without the correct forms and procedures being used. We conclude that there was no disclosure of information tending to show a breach of a legal obligation in relation to processing expenses' claims without the correct forms and procedures being followed.

The claimant's disclosures about payments to purported self-employed consultants without completing ESI checks

122. The claimant informed Mr Owen that ESI checks needed to be made on individuals supplying services to the respondent before they could be paid, including Ms Royle and Mr Lang. Payment to such individuals without an ESI check having indicated that the individual was self employed could lead to the respondent being liable to pay tax which should have been deducted if the individual was not genuinely self employed. The claimant understood from the advice from HMRC that there was a requirement to do an ESI check. We have found that, when the claimant informed Mr Owen of the need to carry out ESI checks, he agreed that these needed to be done. The claimant was simply giving advice as to what needed to be done. We conclude that the claimant was not disclosing information tending to show that the respondent had failed, was failing, or was likely to fail to comply with any legal obligation in relation to the carrying out of ESI checks. We, therefore, conclude that the claimant did not make any protected disclosures in relation to ESI checks.

The claimant's disclosures about potential and/or actual breach of copyright in respect of the respondent's production of Mary Poppins

123. We found that, on 10 June 2014, at an ELT meeting at which Mr Owen was present, the claimant raised the issue as to whether a copyright licence had been obtained for the production of Mary Poppins, the musical, which was to take place the following week. The claimant was concerned about whether permission had been obtained to stage the performance and also to film it. The claimant was concerned about penalties for being in breach of copyright, especially as the school was charging for tickets and for DVDs of the performance. We found that the claimant raised the copyright issue in relation to the performance and filming of Mary Poppins again with Mr Owen in a meeting on 17 June 2014, having been informed that a copyright licence had not been obtained and understanding that one was required. We conclude that the claimant was making a disclosure of information which in her reasonable belief tended to show that the respondent was likely to fail to comply with a legal obligation to which the respondent was subject i.e. by performing the play and filming it without a copyright licence having been obtained, in circumstances where the claimant reasonably believed such a licence was required. The claimant reasonably believed this disclosure to be in the public interest; she wished to avoid litigation and liability for damages arising from breach of copyright. We conclude that the claimant made protected disclosures in relation to the copyright issue.

The claimant's disclosures about safeguarding and health and safety obligations relating to the respondent's transition summer holiday programme, in particular:

- i Contractors being engaged without DBS and CRB checks;*
- ii The need to comply with health and safety requirements for the activities undertaken on the programme, specifically science experiments and the children would be working in close proximity to animals;*
- iii The adequacy of the respondent's public liability insurance.*

We found that the claimant gave to Mr Owen on 29 July 2014 a five page memo about matters relating to the respondent's transition summer holiday programme. This included concerns about valid DBS/CRB checks not being in place and public liability insurance certificates from contractors not having been obtained by the organisers of the transition programme. Health and safety matters were raised in the context of public liability insurance. We conclude that the claimant was disclosing information in this memo tending to show that those organising the transition summer holiday programme had failed or were likely to fail to comply with a legal obligation to ensure that DBS/CRB checks had been carried out where required and public liability insurance was in place and that the health or safety of children on the programme had been likely to be endangered by these necessary steps not having been taken until the claimant intervened. The disclosure was to the employer. The claimant reasonably believed this disclosure to be in the public interest. We conclude that the claimant made protected disclosures in relation to the matters relating to the summer holiday transition programme.

The claimant's disclosures as to orders being processed for items to be purchased with Lottery grant funds before the funds were received in breach of the grant agreement.

124. The school had been awarded a conditional grant from Lottery funds in March 2014. Mr Morgan, Subject Leader Physical Education, jumped the gun in placing an order for equipment before the grant money was received; he was expecting that the school could purchase the equipment before the grant money was received. When the claimant became aware of the attempt to process an order before the grant had been received, she advised Mr Owen of the need to obtain three quotes, since the spend was over £5000, and that the money could not be spent before the grant was received. There was a meeting between the claimant, Mr Owen and Paul Morgan, Head of PE, on 16th May 2014 at which the claimant explained the position. We conclude that this was a disclosure of information to the employer, tending to show a likely breach by the respondent of its legal obligations in relation to the conditions of grant funding and the requirements of the Academies Accounts Directive. The claimant reasonably believed the disclosure to be in the public interest. We conclude that the claimant made protected disclosures in relation to this matter.

The claimant's disclosure that the respondent's HR policies did not comply with the ACAS Codes of Practice and/or HR best practice

125. This relates to the claimant's comments on the draft attendance management policy. It is clear from the claimant's comments that the claimant was keen to ensure that the respondent complied with the requirements of employment law and with good practice in its policy. However, the comments cannot be read as the claimant clearly indicating that the respondent would be, or would likely to be, in breach of any legal provisions or ACAS guidance if the policy was adopted in its unamended form. We conclude, therefore, that this was not a disclosure of information tending to show a breach or likely breach of a legal obligation. We conclude that the claimant was not making a protected disclosure by reason of any of her comments on the draft policy.

The claimant's concerns raised to Mr Owen on or about 7 July 2014 that an invoice in excess of £5000 had been obtained without three quotes being obtained previously in breach of the respondent's finance rules and financial regulations.

126. This relates to a discussion on 4 July 2014 between the claimant and Mr Owen about the renewal of a contract for Careers Solutions Advisor, who had been providing a careers service to the respondent. In email correspondence, the claimant had been insisting on the need to obtain three quotes in line with financial regulations as the contract was over £10,000. Mr Owen considered that this was a situation where a waiver could be obtained from the governors. The claimant did not consider that the exceptional circumstances existed in which a waiver could be sought. The claimant confirmed her view in a subsequent email on 7 July. We conclude that the claimant was giving advice to Mr Owen; she was not disclosing any information tending to show a breach or likely breach of a legal obligation. We conclude that the claimant was not making a protected disclosure in the conversation or emails relating to this matter.

The claimant's concerns about Mr Owen's failure to address her concerns as particularised above and her complaints of bullying behaviour by Mr Owen which was made to the board of governors.

127. This relates to the claimant's conversation with Mr Cain on 11 September 2014 and her emails to Ms Simpson and Mr Cain dated 20 September and 23 September 2013 respectively. In the conversation on 11 September 2014, the claimant told Mr Cain that she had concerns about Damian Owen and that she felt he was not supportive of her and that she felt bullied. In the email to Samantha Simpson, the claimant wrote that she had mentioned issues to David Cain and he had referred the claimant to her. She asked to arrange a meeting as soon as possible to discuss Owen's behaviour towards her. In the email to Mr Cain, the claimant asked for clarification as to what she should do, given her concerns over Mr Owen's behaviour and dignity at work towards her after raising a number of financial concerns. She wrote that she would like to raise her concerns informally in the first instance. She wrote that she also had concerns over Mr Owen's extension of her probationary period and the accuracy of his minutes of meetings which made no mention of her responses or explanations provided and were incorrect. We conclude that the claimant was disclosing information to Mr Cain in the conversation on 11 September 2014 and email of 23 September 2014 about Mr Owen allegedly bullying

her after she raised financial concerns. We conclude that this was information tending to show that the respondent, through Mr Owen, was acting in breach of its legal obligations towards the claimant, one of its employees. The claimant had a reasonable belief that the information tended to show such a breach and that the disclosure was made in the public interest i.e. that an employer should not penalise an employee for raising concerns about financial matters. The email to Ms Simpson did not contain any disclosure of information tending to show a breach of a legal obligation. A disclosure to a governor is a disclosure to the employer. We conclude that the claimant made protected disclosures to Mr Cain but not to Ms Simpson.

Detriments for making protected disclosures (section 47B ERA)

128. We consider each of the alleged detriments and whether the claimant was subjected to the detriment on the ground that she made protected disclosures. We deal with the time limit issue after addressing the merits of the complaints.

Being addressed and/or criticised by Mr Owen in an angry and aggressive manner on 5 June 2014.

129. This relates to the conversations about ESIs for Ms Royle and Mr Lang. We have concluded that the claimant did not make any protected disclosures in relation to ESI checks. It is clear that Mr Owen's behaviour was due to irritation at the claimant not having got on with carrying out the necessary checks so payment was delayed, causing an embarrassing and uncomfortable situation for Mr Owen. We conclude that the claimant was not subjected to a detriment on the ground of making a protected disclosure in relation to this matter.

Being addressed and/or criticised by Mr Owen in an angry and aggressive manner on 17 June 2014.

130. By this date, the claimant had made protected disclosures in relation to the expenditure on pizzas, the Mary Poppins copyright issue in relation to performance of the musical and the proposed filming of this and the Lottery grant for PE equipment. We found that, in a meeting on 17 June 2014, Mr Owen did say to the claimant, in relation to the copyright issue "do not try to pin this on me". We found that Mr Owen's conduct was such that he was perceived by the claimant as being angry and aggressive. We also found that Mr Owen made a comment to the claimant that she was not working in a local authority now. The claimant understood the implication of this was that the way things were done in a local authority was wrong; the claimant felt this was a criticism and felt undermined. We conclude that the claimant suffered a detriment by reason of Mr Owen's conduct at the meeting on 17 June 2014. The respondent has not satisfied us that Mr Owen's conduct was not done on the ground that the claimant had made protected disclosures. If the tribunal had jurisdiction, having regard to the relevant time limit, we would have found this complaint to be well founded. For the reasons we give later, in dealing with time limits, we conclude that the tribunal does not have jurisdiction to consider this complaint.

Being addressed and/or criticised by Mr Owen in an angry and aggressive manner on 28 August 2014.

131. This relates to Mr Owen's criticisms of the claimant about not having recruited sooner to replace Victoria Owen and covering for the vacancy by arranging for existing staff to work excessive periods of consecutive days. Mr Owen criticised the claimant in front of her direct report, Ms Mellor. This was an unpleasant and humiliating experience and we conclude that the claimant was subjected to a detriment by this treatment. By this date, the claimant had made protected disclosures in relation to the expenditure on pizzas, the Mary Poppins copyright issue in relation to performance of the musical and the proposed filming of this and the Lottery grant for PE equipment and also the summer transition programme. The respondent has satisfied us that Mr Owen's conduct was not because of the protected disclosures but due to his unhappiness at what he considered to be the claimant's failings in not having recruited for a replacement for Victoria Owen and the arrangements for cover. We conclude that this complaint is not well founded.

Being addressed and/or criticised by Mr Owen in an angry and aggressive manner on 12 September 2014.

132. This related to a meeting where Mr Owen raised serious concerns about the claimant's work. We found that the claimant found Mr Owen to be aggressive at this meeting. We found that Mr Owen said words to the effect that the claimant did not deserve any praise, that he was not there to pander to the claimant, he was only interested in things that drive the organisation forward, not what the claimant needed and that the claimant was well paid for what she did and he expected her to go above and beyond. We conclude that the claimant was subjected to a detriment by Mr Owen's conduct at this meeting. By this date, the claimant had made protected disclosures in relation to the expenditure on pizzas, the Mary Poppins copyright issue in relation to performance of the musical and the proposed filming of this and the Lottery grant for PE equipment and also the summer transition programme. The latest of these protected disclosures had been approximately six weeks prior to this meeting. The respondent has satisfied us that Mr Owen's conduct was because of genuine concerns on his part about the claimant's performance. By this stage, if the protected disclosures had any influence on the way Mr Owen conducted himself, this was minor or trivial. We conclude that this complaint is not well founded.

Being addressed and/or criticised by Mr Owen in an angry and aggressive manner on 19 September 2014.

133. This relates to a continuation of the meeting begun on 12 September in which Mr Owen addressed further concerns about the claimant's performance. Mr Owen discussed concerns about how the claimant was managing her direct reports. As in relation to Mr Owen's conduct on 12 September 2014, the respondent has satisfied us that Mr Owen's conduct was because of genuine concerns on his part about the claimant's performance. By this stage, if the protected disclosures had any influence on the way Mr Owen conducted himself, this was minor or trivial. We conclude that this complaint is not well founded.

Being criticised by Mr Owen without justification with the threat that her probationary period would be extended during the meeting on 23 June 2014.

134. We conclude that the claimant was not criticised without justification. Although the claimant may have had explanations and mitigating circumstances in relation to at least some of the matters raised, it is clear that there were grounds for raising many, if not all, of the concerns which he did. Concerns raised included financial reports for governors being untimely, monthly budget returns not being available for April or May for any department, no information being forthcoming to departments, meaning they had no picture of their budget or their remaining allocations, direct reports feeling that they were not trusted to work independently and that their work and decisions are overly questioned leading to slow processing of their work, their de-motivation and reduced confidence in their ability to perform their roles, slow processing of petty cash and mileage giving staff sense of undue bureaucracy. There was also concern about key invoices and contracts not having been paid efficiently leading to complaints from those providing services. Mr Owen expressed concern about direct involvement in the work of other areas to the detriment of sound financial management and the organisation and its priorities, stating that a strategic overview rather than a direct operational involvement would help. The respondent has satisfied us that Mr Owen's conduct was because of genuine concerns on his part about the claimant's performance. By this stage, if the protected disclosures had any influence on the way Mr Owen conducted himself, this was minor or trivial. If Mr Owen had been influenced to a material degree by the protected disclosures, it seems strange that he would extend the claimant's probationary period rather than dismiss her during, or at the end of, the original probationary period. We conclude that this complaint is not well founded.

Mr Owen denying the existence of, and failing to disclose, handwritten notes of the Claimant's one month review meeting when requested by the claimant on or about the end of June 2014.

135. Mr Owen did not provide the handwritten notes to the claimant at this time, although they were disclosed in the course of these proceedings, Mr Owen saying that he had not been able to find the notes at the time but Ms Mellor subsequently found them. We conclude that the claimant did not suffer any detriment by reason of this matter. Whilst the reconstructed typed note was not quite as fulsome in its praise of the claimant as the original handwritten note, it was still positive and did not provide a basis for any subsequent adverse treatment of the claimant. We conclude that this complaint is not well founded.

On 4 July 2014, extending the claimant's probationary period by six weeks without justification.

136. We conclude that the extension of the claimant's probationary period was not without justification. The respondent has satisfied us that Mr Owen's conduct was because of genuine concerns on his part about the claimant's performance. By this stage, if the protected disclosures had any influence on the way Mr Owen conducted himself, this was minor or trivial. If Mr Owen had been influenced to a material degree by the protected disclosures, it seems strange that he would extend the

claimant's probationary period rather than dismiss her during, or at the end of, the original probationary period. We conclude that this complaint is not well founded.

On 4 July 2014, Mr Owen instructed Ms Tracy Mellor, who reported to the claimant, to draft the letter confirming the above extension to her probationary period, undermining the claimant's position as Ms Mellor's line manager.

137. We conclude that the claimant suffered a detriment by reason of this matter; this was humiliating to the claimant. The respondent has satisfied us that Mr Owen did not get Ms Mellor to draft the letter because the claimant had made protected disclosures. He asked Ms Mellor to do this because she was the HR officer. This was thoughtless of Mr Owen but he did not behave as he did because the claimant had made protected disclosures. This complaint is not well founded.

On 8 July 2014, Mr Owen unfairly criticised the claimant by email for "dragging out" the tendering or procurement and funding after the claimant informed him that three quotes would be required for an invoice in excess of £5000.

138. This relates to an email sent after a discussion on 4 July 2014 about the renewal of a contract for Careers Solutions Advisor, who had been providing a careers service to the respondent and subsequent emails. The claimant had been insisting on the need to obtain three quotes in line with financial regulations as the contract was over £10,000. Mr Owen considered that this was a situation where a waiver could be obtained from the governors. The claimant did not consider that the exceptional circumstances existed in which a waiver could be sought. The claimant confirmed her view in a subsequent email on 7 July. Mr Owen replied the following day, writing "If these are the people we already use and we are happy with their service we should check the financial arrangement is sound and get it through. We cannot afford to waste time getting the service in place any longer." Mr Owen's email of 8 July was curt but we are doubtful that the claimant suffered any detriment as a result of this. Even if she did, the respondent has satisfied us that Mr Owen did not write as he did because the claimant had made protected disclosures. We found that the claimant did not make protected disclosures when she was giving her advice in relation to this matter. The respondent has satisfied us that other protected disclosures did not have a material influence on Mr Owen's conduct. Mr Owen took the view that they could obtain a waiver from the governors. Time was getting short and Mr Owen was concerned to get the service in place for the start of the new school year in September. We conclude that this complaint is not well founded.

On 18 July 2014, excluding the claimant from the process leading to the dismissal of a Teaching Assistant.

139. Mr Owen had power to dismiss the Teaching Assistant. He had assistance from Ms Mellor, the HR officer, in managing the process. We did not consider the fact that the claimant was Ms Mellor's line manager to be sufficient reason for suggesting that the claimant should have been involved with the dismissal. Mr Owen saw no reason to involve the claimant and did not do so. We conclude that the claimant did not suffer any detriment by reason of not being involved in this process. Even if she did, the respondent has satisfied us that the protected disclosures made

by the claimant had no material influence on Mr Owen acting as he did. We conclude that this complaint is not well founded.

On 11 September 2014, Mr Owen openly criticised the claimant during an audit and finance committee board meeting.

140. The claimant had prepared policies which she had given to Mr Owen shortly before papers were sent out to the governors. At the audit committee meeting, the notes record in relation to the complaints and praise policy "the principal advised that he had not seen/reviewed the policy prior to it being issued to the governors. The policy is very long. The committee chair confirmed that it had been agreed earlier in the year that policies should not be issued to governors without first being reviewed by the Principal. The review of the policy was deferred to allow for it to be reviewed by the Principal". The same was written in relation to the safer recruitment policy. Mr Owen had not told the claimant before the meeting what he intended to say in relation to the policies. We accepted that the claimant was upset by these comments made in front of the governors which she regarded as critical of her. We conclude that the claimant suffered a detriment by reason of Mr Owen's conduct. The respondent has satisfied us that the protected disclosures were not a material influence on the way Mr Owen behaved. He behaved as he did because the claimant had not given him the policies in sufficient time to review them before they were sent to the governors. We conclude that this complaint is not well founded.

On 9 October 2014, Mr Cain refused to hear the claimant's grievance and appeal against dismissal.

141. We have concluded for reasons given above that the claimant made protected disclosures to Mr Cain in her conversation with him on 11 September and subsequent email of 23 September about alleged bullying by Mr Owen after the claimant had raised financial concerns. Mr Cain replied, refusing to hear the grievance and appeal against dismissal. He wrote that the claimant was within her probationary period and the Principal was entitled to act in the manner in which he did, she had no legal right of appeal "and given that I am entirely satisfied that your employment was terminated for reasons to do with performance, I do not believe that holding an appeal hearing would serve any useful purpose, and therefore, I must decline your request for an appeal hearing". In relation to the grievance he wrote "it appears to me that this has only been raised because of the decision taken to terminate your employment. Whilst it is correct that you did indicate informally that you had concerns over the Principal's treatment of yourself in the fortnight before the termination of your employment was confirmed, I am inclined to believe that you only did this as you knew that the termination of your employment was likely, as the Principal had met with you on 12th September and 19th September when his concerns were discussed in detail. Therefore, I take the view that your attempt to raise a grievance is vexatious and accordingly, I cannot agree to your request". In relation to the claimant's allegation that her dismissal arose in response to her making protected disclosures, Mr Cain wrote "I do not believe that these issues played any part whatsoever in the decision to terminate your employment, and indeed, I do not believe that the issues were even viewed as significant from the Principal's perspective".

142. Mr Cain acted on information from the Principal in responding to the claimant; he did not speak to the claimant or investigate further before providing his response. He gave evidence that he considered some of the claimant's allegations to be spurious, vexatious and nonsensical. He considered the whole process vexatious. He understood the complaints to be untrue.

143. Mr Cain ended his letter to the claimant, writing that, if the claimant brought a claim for unfair dismissal, this would be vigorously defended. He also wrote "I must also point out that you have made a number of highly personal comments about the Principal which he regards as defamatory. I would, therefore, caution you to moderate your language when referring to the Principal, as if you fail to do so he may be forced to take action against you".

144. We conclude that the claimant suffered a detriment by not being allowed to put her case to the governors. The respondent has not satisfied us that the protected disclosures did not have more than a minor or trivial influence on Mr Cain's response to the claimant's request. Mr Cain did not just refuse the requests on the basis that the claimant had no legal right to an appeal or because the respondent was not obliged to deal with a grievance because the claimant was no longer employed. He rejected the allegations against Mr Owen, describing them as vexatious, on the basis of information from Mr Owen, without any investigation. He went even further, threatening the claimant with legal action for defamation against Mr Owen. The complaint was presented in time. We conclude that the complaint is well founded.

On 22 October 2014, Ms Johnson refused to hear the claimant's grievance and appeal against dismissal.

145. The claimant suffered a detriment by not having an opportunity to put her case. However, the respondent has satisfied us, by the contents of Ms Johnson's letter, that the protected disclosures had no material influence on her decision. Ms Johnson wrote that she had reviewed Mr Cain's response and the claimant's contract of employment which clearly stated that the grievance procedure did not form part of the claimant's contract of employment. She wrote "therefore, the Academy is not obliged to hear your grievance, and given that your employment has ended, I do not believe that it would be appropriate to do so". She also wrote "I am aware that you were employed on a probationary contract and that during the course of your employment you were provided with feedback on your performance and therefore given an opportunity to improve. I am also aware that your contract states that your employment could be terminated at any time during the probationary period, and therefore, I am satisfied that due process has been followed". We conclude that the complaint is not well founded.

Time limit issues in relation to the detriment claims

146. A complaint of detriment for making a protected disclosure must be presented before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or within such further period as the tribunal considers reasonable in a case where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that

period of three months: s.48(3) ERA. The three month period is extended, where appropriate, to take account of the early conciliation provisions.

147. The claimant argues that the alleged detriments form part of a series of continuing acts by the respondent, the last being the refusal by Ms Johnson to hear the claimant's grievance and appeal against dismissal on 22 October 2014.

148. The claimant notified ACAS of a potential claim on 26 November 2014. The ACAS certificate was issued on 18 December 2014. The claimant presented her claim to the tribunal on 16 January 2015.

149. Taking account of the early conciliation period, the only complaints of detriment that were presented in time, unless they form part of a series of continuing acts, ending with one within the time limit, are the complaints about Mr Cain and Ms Johnson refusing to hear the claimant's grievance and appeal against dismissal.

150. We have found only two of the alleged detriments for making protected disclosures to be well founded on their merits: the complaint in relation to the claimant being addressed and/or criticised by Mr Owen in an angry and aggressive manner on 17 June 2014; and on 9 October 2014, Mr Cain refused to hear the claimant's grievance and appeal against dismissal.

151. The complaint against Mr Cain is brought within time. The complaint about Mr Owen's conduct on 17 June 2014 is presented out of time unless it forms part of a series of similar acts or failures. We conclude that Mr Owen's conduct on 17 June 2014 does not form part of a series of similar acts, ending with the conduct of Mr Cain on 9 October 2014. They are a period of months apart, carried out by different people and the conduct complained of is quite different. We have concluded that the other acts complained of were not detriments for making protected disclosures so the conduct complained of in relation to these complaints cannot form part of a series of similar acts or failures.

152. The tribunal heard no evidence on the basis of which it could reach the conclusion that it was not reasonably practicable to present the complaints which were presented outside the normal time limit within that time limit.

153. The tribunal, therefore, has no jurisdiction to consider the complaints of detriment other than the complaints about Mr Cain and Ms Johnson. The complaints in respect of which the tribunal has no jurisdiction would have failed on the merits, other than the complaint about Mr Owen's conduct on 17 June 2014, for the reasons we have given.

Unfair dismissal

154. The claimant did not have sufficient service to claim "ordinary" unfair dismissal. The only issue for us to decide in relation to the complaint of unfair dismissal is whether the sole or principal reason for her dismissal is that she made one or more protected disclosures. The burden of proof is on the claimant to satisfy us that the reason or principal reason for her dismissal was the protected disclosures.

155. It is clear to us from the evidence that Mr Owen had genuine concerns about the claimant's performance over a substantial period before her dismissal. We found that, by 22nd September, Mr Owen had made the decision to dismiss the claimant, since, on this date, at Mr Owen's request, Tracy Mellor prepared a draft letter terminating the claimant's employment. Mr Owen was not alone in having concerns about the claimant's performance. From her own observations, Ms Simpson had serious concerns about the claimant's performance in terms of producing information in a timely fashion for governors and the quality of the information produced. There is no evidence to suggest that Ms Simpson's view was formed in any way because of protected disclosures made by the claimant.

156. The majority of the protected disclosures were some time before Mr Owen took the decision to dismiss the claimant. Had Mr Owen wished to dismiss the claimant because of these earlier disclosures, it is likely that he would have done so at a much earlier stage, rather than extending the claimant's probationary period and only dismissing her after two lengthy meetings in which he addressed the problems which he perceived with the claimant's performance. The disclosure by email to Mr Cain on 23 September 2014 came after we found that Mr Owen had made the decision to dismiss. Only the disclosure to Mr Cain in the conversation on 11 September 2014 came relatively soon before the claimant's dismissal. We do not know whether Mr Cain informed Mr Owen of this conversation but they were in frequent contact, so it is not unlikely that Mr Cain did. However, Mr Owen had arranged the meeting of 12 September with the claimant, the first of what became two meetings going through concerns about the claimant's performance in detail, before the claimant's disclosure to Mr Cain on 11 September 2014. The relative proximity of the disclosure to Mr Cain on 11 September to the dismissal is not sufficient to persuade us that the disclosure was the sole or principal reason for the claimant's dismissal.

157. The claimant has not discharged the burden of proof on her. She has not satisfied us that the reason or principal reason for her dismissal was because she made protected disclosures. We, therefore, conclude that the complaint of unfair dismissal, relying on section 103A ERA is not well founded.

Unlawful deduction from wages

158. The claimant claims that the respondent made an unlawful deduction from wages when it reduced her pay to half pay in the period 22-24 October 2014.

159. The reduction in pay was made because payroll paid the claimant in accordance with what they understood the sick pay provisions to require: full pay until the claimant had been paid sick pay at full pay for a month in a twelve month period and then half pay, which would have continued for two months had the claimant remained employed. The claimant has not challenged the calculation of sick days taken by her, if the days in the period 22-24 October are correctly counted as sick days.

160. The claimant argues that, because she had been placed on garden leave before she submitted sick notes, which covered a period including 22-24 October

2014, and the respondent had not notified her, prior to the deduction, that they had placed her on sick leave, the respondent was not entitled to reduce her pay to half pay.

161. We disagree with the claimant's argument. The claimant's contractual entitlement to pay when sick was full pay for a month and then half pay for two months, had she remained employed for at least that long. We do not consider that having been placed on garden leave i.e. not being required to work during the notice period, affects that position. The claimant was paid what she was entitled to be paid. We conclude that the complaint of unlawful deduction from wages is not well founded.

Employment Judge Slater

Date: 25 May 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

.6 June 2017

FOR THE TRIBUNAL OFFICE