Case Number: 3300049/2016
3301472/2015

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms K Gibson	**v**	**London Borough of Hounslow (1)** **Crane Park Primary School (2)**

Heard at: Watford

On: 12-21 September and 28-30 September 2016

Before: Employment Judge Henry

Appearances

For the Claimant: Mr T Ogg, Counsel
For the Respondent: Mr D Hodge, Solicitor

JUDGMENT

1. The claimant has not suffered any detriment on grounds that she has made a protected disclosure.

2. The claimant's claim for suffering a detriment on grounds of making protected disclosures are dismissed.

3. On the respondents conceding the claimant's claim for unfair dismissal, the tribunal finds that the claimant was unfairly dismissed when her employment was terminated on 30 September 2015.

4. The issue of remedy will be addressed at a hearing on remedy. Issues going to contributory fault and Polkey reduction are to be determined at that hearing.

REASONS

1. The claimant, by complaints presented to the tribunal on 2 June 2015 - claim number 3301472/2015; and on 11 January 2016 - claim number 3300049/2016, complains of detriment on having made protected disclosures, unfair dismissal, breach of contract on the termination of employment without notice, and holiday pay.

2. The claimant commenced employment with the respondents on 12 November 2012. The effective date of termination was 30 September 2015; the claimant then having been employed for two complete years.

Issues

3. The issues for the tribunal's determination having been set out and recorded in a preliminary hearing case management summary, sent to the parties on 29 March 2016, were further clarified as follows:

Unfair dismissal

3.1 What was the reason for the dismissal?

3.1.1 The respondent asserts that the claimant could not continue to work in the position which she held without contravention (either on her part or that of the respondent) of a duty or restriction imposed by or under an enactment.

3.1.2 Alternatively, that there was some other substantial reason justifying dismissal, namely, the failure of the claimant to notify the respondent of the need to renew her visa.

3.1.3 Alternatively, dismissal by the effluxion of time, being termination on the expiration of a fixed term contract.

3.2 Was there a contravention of any statutory provision by the continued employment of the claimant?

3.3 Was the decision to dismiss the claimant a fair sanction, that is, was it within the reasonable range of responses for a reasonable employer?

3.4 If the dismissal was unfair, did the claimant contribute to the dismissal by culpable conduct?

3.5 Does the respondent prove that if it had adopted a fair procedure the claimant would have been fairly dismissed in any event and/or to what extent and when?

Public interest disclosure

3.6 Did the claimant make disclosures as set out in the additional information dated 23 November 2015, and particulars of claim in the second complaint?

3.7 In any, or all of these, was information disclosed which in the claimant's reasonable belief tended to show one of the following:

3.7.1 That a person has failed, is failing, or is likely to fail to comply with any legal obligation to which they are subject;

3.7.2 That the health or safety of any individual has been, is being or is likely to be endangered;

3.7.3 That information tending to show any matter in respect of the above has been, or is likely to be, deliberately concealed.

3.8 If so, did the claimant reasonably believe that the disclosure was made in the public interest?

3.9 If so, was that disclosure made to:

3.9.1 The employer;

3.9.2 Another person whose conduct the claimant reasonably believed related to the failure;

3.9.3 Another person who had legal responsibility for the failure;

3.9.4 A prescribed person.

3.10 If not, was it made in circumstances where:

3.10.1 It was made other than for personal gain; and

3.10.2 The claimant reasonably believed that the information disclosed and any allegation contained in it were substantially true; and

3.10.3 It was reasonable for her to make the disclosure having regard to the identity of the person to whom it was made, its seriousness, whether it was continuing, the action which had been or might have been expected to have been taken and any procedures authorised by the employer; or where

3.10.4 It was likely that she would be subject to a detriment by the employer; or

3.10.5 That evidence would be concealed by the employer if a disclosure was made to them; or

3.10.6 The employer had failed to respond appropriately to an earlier disclosure.

3.11 Did the disclosure relate to an exceptionally serious failure? If so:

3.11.1 Did she reasonably believe that the information disclosed and any allegation contained in it was substantially true?

3.11.2 Was it made other than for personal gain?

3.11.3 Was it reasonable in all the circumstances to make the disclosure?

Detriment complaints

3.12 If protected disclosures are proved, was the claimant, on the ground of any protected disclosure found, subject to a detriment by the employer or another worker as set out in the additional information dated 23 November 2015, and particulars of claim in the second complaint?

3.13 If the act of detriment was done by another worker:

3.13.1 Can the employer show that it took all reasonable steps to prevent that other worker from doing that thing or acts of that description? or

3.13.2 Can that worker show that she/he had relied on a statement by the employer that the doing of the act did not contravene the act, and that it was reasonable to rely on that statement?

Unfair dismissal

3.14 Was the making of any proven protected disclosure the principal reason for the dismissal?

3.15 Has the claimant produced sufficient evidence to raise the question whether the reason for the dismissal was the protected disclosure?

3.16 Has the respondent proved its reason for the dismissal; namely some other substantial reason, or alternatively a duty or restriction?

3.17 If not, does the tribunal accept the reason put forward by the claimant, or does it decide that there was a different reason for the dismissal?

Breach of contract

3.18 It is not in dispute that the respondent dismissed the claimant without notice.

3.19 Does the respondent prove that it was entitled to dismiss the claimant without notice? The respondent contends that the claimant's employment was for a fixed term which had elapsed.

3.20 To how much notice was the claimant entitled? The claimant claims to be entitled to two months' notice.

Other claims

3.21 The claimant makes a claim for holiday pay in respect of the notice period.

4. For completeness, it is here recorded that at the commencement of the hearing, the claimant withdrew her complaints in respect of; detriment on a threat to her teaching licence, identified by her additional information as

detriment no. 1, and of false allegation of having "inappropriately handled a child" identified by her additional information as detriment no. 2.

5. During the course of the hearing, the respondents conceded the claimant's claim for unfair dismissal, and reserve their position as to contributory conduct and issues going to Polkey, for consideration at a remedy hearing to be held in due course.

Evidence

6. The tribunal heard evidence from the claimant and from the following witnesses on behalf of the respondent:

   Alison Small – head teacher
   Ohifeme Ohiosimuan – human resources manager (schools)
   Louise Butt – senior recruitment officer
   Satbir Sidhu – deputy head teacher
   Bonita Walker – teaching assistant in the SEN unit
   Malgorzata Szczepankowska – teacher
   Reverend Victoria Davidson – chair of governors of Crane Park Primary School

7. The tribunal had before it bundles of documents exhibit R1 and C1. The witnesses' evidence in chief was received by written statements upon which they were then cross-examined.

8. From the documents seen and the evidence heard, the tribunal finds the following material facts.

Material facts

9. The claimant is an American citizen having qualifications in psychology and education. She has worked as an educator and therapist advocating for children and families during her career, prior to engagement with the respondents.

10. The first respondent is the London Borough of Hounslow. The second respondent is a community school maintained by the first respondent.

11. The claimant was employed by the first respondent as a class teacher in the second respondent's school, within their autistic children's education zone (ACE), the second respondent holding a delegated budget in accordance with s.35 of the Education Act 2002 and the Education (Modification of Enactments Relating to Employment) (England) Order 2003.

12. The claimant was recruited and appointed a special education needs teacher (SEN) at Crane Park Primary School on 12 November 2012, having been sponsored under a Tier 2 Migrant Visa; the post having been nationally identified as a skilled job which could not be filled by a settled worker, and which appointment would not displace a suitable settled worker.

13. The claimant's visa was granted for three years to expire on 30 September 2015.

14. The claimant's letter of appointment provides:

> "This is a full time position and will be effective from Monday 12 November 2012. Your contract is fixed term, to run alongside your work visa."

15. The contract of employment further provides:

> "**DATE OF APPOINTMENT:** 12 November 2012
> **FIRST WORKING DAY:** 12 November 2012
> **FINAL DAY OF SERVICE:** 30 September 2015
> **CONTINUOUS SERVICE WITH THIS AUTHORITY FROM:** 12 November 2012
> **REASONS FOR TEMPORARY NATURE OF THIS APPOINTMENT:** Due to Visa expiring…"

16. Crane Park Primary School is located within a "troubled estate" in West London, where most children are from estates of high social deprivation, having many social issues seeping into the school, with a lot of children having protection issues for which there is a high vigilance.

17. The school caters for pupils from nursery to year 6; having some 500 pupils on roll.

18. The school is comprised of a main school with approximately 480 pupils, and a smaller unit of autistic pupils, described as "a school within a school". This smaller school has a head equivalent to the head teacher, who reports to the head teacher of the main school. There were 90 SEN pupils within the main school in addition to 32 pupils within the autistic unit at the material time.

19. The autistic unit (ACE) is split into groups, being: Cosmos class – being years nursery and reception; World class – being years 1 and 2; Universe – being years 3 and 4; and Galaxy being years 5 and 6.

20. On the claimant commencing employment with the respondents, she was the class teacher of Cosmos which had 4 pupils of reception age, being 4-5 year olds. The Cosmos staff complement, consisted of the claimant and 3 teaching assistants which, by the teaching ratio, meant that pupils received one-to-one attention, catering to their individual needs.

21. It is the claimant's evidence that, on joining ACE, she incorporated some of the techniques and research from her training and programmes in the US, which had proved positive and was welcomed by the teaching assistants.

22. The tribunal pauses here, as this evidence is material in its findings that, there was a difference in expectations between the senior leadership of the school and the claimant. This is not to say that there were poor practices of the claimant, which there was not, but that the claimant had clearly defined parameters to her role as a class teacher, which did not coincide with what

this tribunal finds to have been the school's expectation of a teacher, namely to be flexible and accommodating.

23. Having stated this, the tribunal equally does not say that either approach was right or wrong, but merely acknowledges the different perspectives of the relevant parties, which had given rise to confrontations between the senior leadership team being; the head teacher, deputy head teacher; and the ACE leader, which saw the claimant raising a grievance against the then head teacher, Ms Harte, in May 2013, and of the head teacher instructing the claimant that she was not to have direct email contact with her, and that all questions regarding her practice and day-to-day teaching and learning for the children in her class should be directed towards her line manager, and of the claimant accusing her line manager of being used by the head teacher. In this respect, the tribunal notes Ms Loader (ACE leader) recording a meeting of her with the claimant on 11 June 2013, that:

> "… She told me that I was being used by Joan, she was referring to the ongoing emails we have had regarding planning and her requirements as well as some other issues. I responded by saying I was doing my job as her line manager. She said she was being harassed by Joan. I responded by saying that putting planning on the system was an expectation of all teachers not just herself. She said it may be an expectation but that is not required to put planning on the system or to hand it in…
>
> She again said that I was being used and I should not involve myself in the matter. She said that she did not want to have to name me as a defendant in a complaint. I repeated that I was doing my job as her line manager and I asked to leave as I did not want to discuss it further. Her comments about me being used and about the complaint upset me and she will have seen that I was upset. She left the room when I asked her to."

24. This state of affairs is further evident by the following record of a stress risk assessment meeting, on 22 January 2013, with the claimant, the notes of the meeting providing:

> "Marilyn said that as this will be Kimberly's second year she should have a better understanding of what will be expected. Kimberly said that she had been asked to make a decision regarding reception parents evening and that her decision had been overridden. Kimberly feels that this was a personal decision.
> …
>
> Kimberly feels there are problems with the current head teacher, Alison Small, deputy head, her line manager and the early years' coordinator and that this is impacting on her TA's. Kimberly feels this is the crux of the work related stress and that others are not working in a respectful way. Alison asked if Kimberly had raised this issue with the people concerned. Marilyn asked if she had discussed it with her line manager. Kimberly stated that she had not but had raised a grievance with the governing body. Marilyn said it was important to move forward and start again with these relationships. Kimberly said that her line manager needs to acknowledge and stop her behaviour. Marilyn recommended mediation for Kimberly to sit with her line manager to talk through the issues. Marilyn reiterated that Kimberly's concerns are that she is not being treated fairly and respectfully and that this is a high risk factor and recommended Alison contact HR for mediation advice and support.
>
> Role – yes – Kimberly understands her role. Kimberly feels the problem is other people interfering and saying things are her role which are not. Marilyn asked for

> Kimberly's role to be defined and asked for her to be given someone to go to if she feels something is not her role…"

25. It is further noted that, on the then head teacher, Ms Harte, leaving the school, and on the appointment of an interim head teacher, Mr Lucas, the claimant felt supported and had no significant issues, albeit her relationship with Ms Small does not appear to have improved, the claimant identifying confrontation with Ms Small in respect of an incident with Child A, where the claimant felt Ms Small was overly critical of the child's parents and that when in July 2014, Ms Small had made enquiries as to Child A's file, which was missing from the filing cabinet, she had been asked if she, the claimant, had the file. The claimant stating that:

> "It was an odd question and betrayed a worrying sense that I was under suspicion."

26. On 7 February 2014, the claimant sent an email to the head teacher, Mr Lucas, the SEN Co and assistant head teacher, Ms Sidhu, and the ACE leader, Ms Loader, copied to the teaching assistant, Ms Szczepankowska, the subject identified as "parent concerns/meeting for Cosmos student", which was an account of Child B's aggressive behaviour, and of it being directed towards Child A, stating:

> "I spoke with the staff and discussed specific incidents and set a plan to be very structured and consistent with the boundaries, praise and consequences set for the class and that this combined with active ignoring would help to eliminate the behaviour."

27. There was then an account as to "Child A's" reaction to "Child B's" behaviour, the claimant here stating:

> "I have personally noticed this and have a separate plan in place to help (Child A) better process what is happening in class, but just as it developed over weeks, it will take time to address."

28. There then followed an account of "Child A's" mother's feelings on "Child A," announcing that he (child A), no longer liked school, the claimant here providing:

> "She was reassured during our meeting that "Child A" was continuing to make progress but the issues were being addressed."

29. The claimant then addressed the previous behaviour of "Child B", stating that, he had latterly earned more time-outs, further stating:

> "I expected that there would be a surge in consequences as we enforced boundaries and addressed negative peer intentions with (Child A) and others as well. I had hoped to speak with the parents beforehand at the parents' morning, as I knew a series of home reports would be upsetting but Mum did not attend. (Child B) had several difficult days, including Friday when he earned a time-out for repeatedly hitting (Child A) in the head with a toy. The toy was a light ring with ribbons and did not cause any injury but because there is a zero tolerance for hitting (Child B) earned a time-out."

30. And after accounting for a poor reaction in time-out, the claimant further stated:

> "After this report, both parents were very concerned and more motivated to come in for a meeting. They expressed thinking the problem might lay with (Child B's) relationship with me and thought that he no longer responded to my directive. I spoke with Mum by phone Wednesday and the home report seemed to reassure her that the interaction and consequences used were meant to help, but that (Child B's) difficulties were not isolated to one staff or even one setting.
>
> What I have noticed is that while (Child B) has become generally more aggressive, he seems to resent (Child A) because this is the only student more capable than he is and (Child A) does not respond back with aggression. In multiple settings and with both peers and adults, (Child B) will attempt to control and physically dominate situations and the environment, at times intentionally upsetting peers and then returning to his seat while they have tantrums. This intentional type of negative behaviour is something new that we're seeing, as before he was forming positive relationships and responding well to expectations."

31. The claimant thereon set out arrangements to meet the children's parents, further stating:

> "I am hopeful that parents will be receptive to what's happening with their child and help set a plan to address what I believe are conflicting messages between home and school expectations and boundaries, but in the event they request a larger admin meeting, I wanted you all to be familiar with the situation."

32. The letter concluded with the claimant stating:

> "Also, I received a call from (Child A's) mother this morning, again very upset and asking why her son was afraid to some [sic] to school. She and the driver are reporting that he is very upset in the mornings and refused to enter the transport van. She is seeing some of the same behaviour we are seeing, where he is attempting to assume the personality of those around him to lessen conflict and the pressure of worrying about others is causing him to become very anxious and unsettled. Again, I spoke with her about strategies we're using in class and will meet with her separately to practise how to help him at home. He was previously recommended to attend child therapy but there has been no assessment or assignment of services. I am currently following up to see if the case manager that held his last CAF can follow up on this and would recommend he join in-school services if they are implemented.
>
> Let me know if you have any questions, and feel free to read (Child B's) home diary to see the exchange between school and home."

33. The claimant relies on this correspondence as her first qualifying disclosure.

34. On 27 June 2014, the claimant sent a further email, addressed to the then head teacher, Mr Lucas; the deputy head, Ms Small; and the assistant head/SENCo Ms Sidhu, copy to the ACE unit leader, under the subject "Formal complaint to be filed".

35. The claimant here gives an account of an incidence between Child B and Child A, and the reaction of Child B when staff sought to "redirect him", advising that both parents had been informed and she had met in person with them, stating:

> "Separately, both parents came to see me in person, with (Child B) parents questioning whether he was being discriminated against because of his disability and (Child A's) Mum very angry that her child was being hurt at school.
>
> Mum is now filing a formal complaint, I assume against the child but possibly the school. She mentioned over the phone cancelling (Child A) attendance on the EY trip to Worthing but today said that she felt forced to pull him out of school altogether because of the safety issue. I explained that it would not be in his best interest and that now that we were more aware of the extent, extra steps had been put in place to ensure nothing would happen to him while he was here. I was unable to see Ali because of observations but rang for Satbir while Mum was here. Satbir asked me to set a 9am appointment for Mum to speak with the head office and that EP would need to be brought in to address (Child B). Mum said she did not feel comfortable leaving him, so took him home early today. But she agreed to send him in on Monday.
>
> I want to be clear that while I believe the situation can be improved (Child B) absolutely has been bullying (Child A). It is not a symptom of his disability and it is not an exaggeration by (Child A) or his mother. (Child B) deliberately tries to hurt, intimidate, control and make (Child A) feel afraid. I was first aware of this when I returned in January and now that we put measures in place to control the larger, more overt things that (Child B) was doing. I sent an email in February when we were seeing a lot of problems and outbursts from (Child B). However, it was not until recently that we became aware of how intentional and secretive (Child B) was at getting to (Child A) without being caught.
>
> I will try to catch Ali today before leaving, but I wanted to update everyone on the situation… "

36. The claimant relies on this correspondence as her second qualifying disclosure.

37. With regard Child A, there followed a number of assessments for which the educational psychologist on 21 July 2014, recorded the claimant's observations, as Child A's teacher, that:

> "Kimberly Gibson said that (Child A) initially found it difficult to adjust to the class; he was defiant and had difficulty regulating his emotions. However, his behaviour and learning skills have improved considerably and he now appears to be functioning academically and socially above the other children in the centre class, and his early learning skills appear to be appropriate for mainstream reception. (Child A) has been included in some mainstream reception lessons for "Read, Write, inc, literacy lessons."

38. The report further identified the parent of Child A's concern, that:

> "Ms O attended the meeting on 15 July with Joy Wilson from Parents in Touch. Ms O is aware that (Child A) has been making good progress at school but is worried that he has stopped wanting to do writing at home and he has also been reluctant to come to school. She said that he is often particularly stressed after school, when he comes home and shouts, and she thinks his anxieties have worsened over the year. At home (Child A) can misinterpret and over-react to some situations. For example, if his parents talk loudly he gets upset and says "stop shouting". Often he wants to be first and has difficulty sharing with his brother although he is beginning to play with him with some activities."

39. The report's summary then provided:

> "At school (Child A) is making good academic progress and his language and social communication skills have developed well over the year. He has strength with non-verbal reasoning and although he has made good progress with language some of his understanding and concepts are still insecure.
>
> He is very aware of the other children but lacks a friendship group at his developmental level in his present centre class.
>
> (Child A's) mother, Ms O, is concerned about (Child A's) growing anxiety which has been shown at home over the past year. He has difficulty coping with change and has been reluctant to come to school. Ms O is concerned that this is due to (Child A's) fear of another child in his class."

40. The report concluded by setting out recommendations for Child A for the following academic year.

41. The tribunal also here notes, the record of the school; Ms Small, Ms Sidhu and the claimant, meeting with the parents of Child A on 21 July 2014, the day before the end of the academic year, that:

> "Ms O was very agitated and felt very anxious that the situation was ongoing. She kept stating that she wanted (Child A) to move to another class so he would not be with (Child B). Ms Small explained that due to the age of the children and the class structure in ACE zone this was not possible. The nature of the statement we reiterated that with a new teacher and with the recommendations that we would put in place for DL – ED Psych we would tightly monitor the situation until October half-term when a review would be put in place to assess the suitability of the placement. Ms O also felt agitated because she wanted Ms Gibson to continue to be (Child A's) teacher. Ms Small explained that this was not possible due to the reason as stated above.
>
> Ms Small stated that she understood Ms O's concern and appreciated that this was a very stressful time but that we were going to be putting new strategies in place and see how the process went forward. It would be reviewed in October by DL – the educational psychologist.
>
> Ms O wanted to see changes to the AR and the new class teacher and classroom.
>
> We arranged a meeting for the following day – last day of term…"

42. In the event, Ms O did not attend the meeting as arranged.

43. In respect of this meeting, it is the claimant's evidence that, after the mother's departure, she addressed some issues which she "had felt uncomfortable with" and that she "felt the mother was being misled", and that she had been asked to "communicate things to (Child A's) mother about events that were, at best misleading and at worst completely false", for which she states that she would not be a part of deceiving a parent about something as important as their child's welfare, and that she would not be unethical, for which the claimant states, Ms Small backtracked saying that she did not ask her to make false statements and for which she states Ms Small "snapped that, it had been alleged that I did not have the legal right to

teach in England", which the claimant maintains was a typical retaliatory response.

44. Ms Small does not deny discussions having taking place, stating that:

> "… the claimant was defending her position and appeared annoyed, whilst I was at the time emphasising the importance of the parent being given full information from all perspectives. I drew an analogy with the claimant's position, in which, I explained that Andy Lucas had informed her that the borough had felt it was unusual for a candidate to be awarded QTS when they had only taught for the amount of time in the US that the claimant had. I explained that without all the knowledge, incorrect assumptions can be made. The claimant did not have QTS so they had made an incorrect assumption. I did not suggest that this did not entitle her to teach in the UK nor was there any threat made implicit or otherwise. I subsequently apologised for causing the anxiety."

45. Ms Small here maintains that the claimant was taking her comments out of context.

46. The new academic year commenced on 4 September 2014, and saw the appointment of Ms Small as the head teacher.

47. On 15 September 2014, the claimant wrote to Ms Small, copy to the ACE unit lead, Ms Cooke, and the new teacher of World class, Ms Szczepankowska, the subject stating: "Cosmos parent raises safety comments".

48. By this correspondence, the claimant accounts for an incident where Child D exposed himself, following which, Child D had not attended school for two days, after the child's mother had been upset on being informed; the claimant here making a connection between the two events. The claimant advised that she could not discuss it in more detail but that it was recorded in the child's home book, further stating:

> "After reading his Mum's writing this morning, I think the office should contact her to discuss a meeting. She raised the issue of (Child D) being or feeling safe at school, and as Bridget has been stressing the aim to protect staff, then I think her comment should be addressed."

49. The claimant's correspondence concluded:

> "I will respond to her home book by letting her know that I have forwarded the matter to the head teacher."

50. The claimant relies on this document as her third qualifying disclosure.

51. On 19 September 2014, the claimant wrote further correspondence to the head teacher, Ms Small, copied to Ms Cooke and Ms Szczepankowska, the subject recorded as "follow up and second documentation for home safety concern – Cosmos".

52. By this correspondence, the claimant made enquiries as to the position following contact and meeting with Child D's mother, and advising that Tara

– the morning teaching assistant – had written a positive and encouraging note home to Child D's mother, further advising:

> "But Mum's reply still points out bruises which she is checking for and implies that even if the injuries are due to clumsiness, staff could be providing more supervision. Out of the seven days (Child D) has attended, Mum has raised and documented safety concerns surrounding her care twice. It is high priority not only for home but for Cosmos staff that she come into school to address this."

53. The claimant relies on this correspondence as her fourth qualifying disclosure.

54. On 24 September 2014, the claimant again wrote to the head teacher, Ms Small, and Ms Szczepankowska, year 1-2 teacher, copy to Ms Cooke – the interim unit lead, and Ms Fairminer, year 3-4 teacher, which correspondence is set out here in full, as it particularises the many issues then existing, to include issues of safety, respective notes of teachers and the stance being taken by the claimant in respect of those issues.

55. The subject of this correspondence was identified as Child A's "safety plan not being followed." The correspondence provided:

> "Hi everyone,
>
> I wanted to follow up on the meeting that was held for (Child A), particularly the agreements made with Mum about class and supervision arrangements and the actual day to day happenings. Mom stated that she was told that every effort was made to keep (Child B) and (Child A) separate, with Chloe identified as a one:one to ensure (Child A) was not being harmed. Whether Mom has understood the arrangements correctly or not, this is definitely not the situation. On several occasions, I have observed the two being not only placed together, but together with one staff member. On yesterday, Bridget was helping in the dining hall and (Child B) and (Child A) were sat shoulder to shoulder at the table, which meant their hands were not visible under the table. Today I observed them playing during lunch and they were running and pulling at a hoop they were tossing in the air, with none of the playground staff taking notice. And afterwards they were assigned to share the same floor pillow in class, with the lights off and no adult having line of sight. I noticed this when one of the Cosmos children ran into World class and I had to enter to retrieve them. When I asked Chloe if she knew they were sharing the pillow, she replied yes, and when I reminded her that they shouldn't be, she did not take any action. It was only when I stated that they should not be on the pillow together and out of sight, that she instructed (Child A) to move.
>
> While I can appreciate others might have a different view of the situation or its severity, the fact remains that this child has very clearly communicated being harmed by the other child and has more than demonstrated that the upset caused him to feel unsafe in school which led to pleas not to be sent to school at all. And while this might be a new school year, with a new teacher, I do not think my obligation to help him and his mother rectify the situation ended 22 July. It was unfortunate that last year saw the school term end without the matter being properly addressed or resolved and although Bridget, Gosia, Toni, Chloe and Bunnie are overseeing his current classroom, the 15 days that he has been in school this year neither negate nor supersede the nine months this problem existed, in which I am the only person who dealt with the problem at the class, parent and management level.

> Regardless of whether staff believes the problem exists or should be handled in this way, I think it important to remember that if the school is going to agree to take certain steps, then everyone should be on board and honour those commitments. Otherwise, we are giving the parent false information and contributing to an already difficult situation.
>
> Ali, I am aware of your preference for my involvement when it comes to (Child A), however Bridget is coming into this at the end of a long and difficult process, and I do not think Gosia is able to address this properly given the barriers and conflicting messages that have been sent. The plan to keep (Child A) safe, while helping his Mom find him a more suitable placement is one that I can support, but I wanted to raise everyone's awareness that this plan is not happening so steps can be taken to correct it, so we are not just speaking empty words…"

56. The claimant relies on this correspondence as her fifth qualifying disclosure.

57. In further correspondence on 24 and 25 September 2014, arrangements were made for a meeting to take place between the head teacher and the claimant, to discuss the issues concerning (Child A) and (Child D) for Friday 26 September 2014, after school at 3.30pm.

58. The tribunal has not received any evidence as to the meeting taking place or otherwise the outcome of such meeting.

59. On 26 September 2014, the claimant wrote to the chair of governors, Ms Blackwell, which correspondence was received by Ms Blackwell on 29 September 2014, the correspondence stating:

> "I am writing regarding my position at Crane Park and the welfare of children under my care. I have attempted to address these issues at the school level but have been unsuccessful. The matter involves both the head teacher, Mrs Small, and the deputy head, Mrs Sidhu, and I no longer believe the school to be a viable option for resolution.
>
> Given the governors' oversight for the school, I made contact 23 July 2014, in an attempt to reach you. Due to the school closing the day before, I contacted parent governor Mrs Mel Brennan at the child centre. She stated that she was unsure whether or not she could share the email address on file but would forward a message for me to be contacted. I did not receive a response from either of you, and unfortunately, the situation has worsened.
>
> I would still prefer to address this matter internally, so am not filing a formal complaint, at this time. However, I would like this letter to serve as a formal notice of the situation and a request to meet with you in person…"

60. A meeting duly took place between Ms Blackwell and the claimant on 3 October 2014, a note of which meeting, as amended by the claimant, is at R1, p62, by which the claimant claims she made a further qualifying disclosure.

61. The notes record that the head teacher had been aware that the meeting was to take place, for which in giving evidence to the tribunal Ms Small stated that the nature of the meeting had not been known, the note recording:

> "Ms Gibson was initially somewhat surprised that I was not aware of her concerns and had not discussed them with Ms Small. I had no wish to pre-judge or pre-empt my meeting with her so had not discussed the meeting with anybody else but had notified the head teacher that it was taking place…"

62. At the meeting, the claimant gave an account of matters from the academic year 2013/14 regarding (Child A) and (Child B) and that meetings had taken place culminating in a "formal" meeting between the mother of (Child A) and the then interim head teacher, Mr Lucas, the LA SEN officer, Mr Devlin, the assistant head teacher and SENCo, Ms Sidhu, and the claimant in July 2014, and that there had been safety plans put in place at class level, but that the problems persisted and the mother had filed, as the claimant believed, a formal complaint which Mr Lucas had addressed. The claimant further advised of her meeting with the head teacher after the meeting with (Child A's) mother on 21 July 2014, as too is it recorded that, the plan that had been put in place, the claimant had thought inappropriate, and that the claimant in the present academic year had not felt the plan had been acted upon, and that she had communicated her concerns to the head teacher, Ms Small, and that the claimant felt there would not be a problem if the school plan was fully implemented, the claimant being informed that:

> "The school leadership is in charge of operational and professional decisions and that governors tend to be involved in strategic decisions."

63. The note thereon records:

> "Following extensive discussions, Ms Gibson stated that she felt K was at continued risk of harm from M which she identified as bullying. She felt this put the child at serious risk of harm and was therefore a safeguarding issue. We did discuss thresholds and what actually constituted a safeguarding issue. She felt that the senior leadership of the school did not see these behaviours as bullying.
>
> Ms Gibson said that Mum has a support worker due to some difficulties of her own and that she now wishes not to have her son in the ACE Zone. She said that she thought Mum was being very patient with the school.
>
> Ms Gibson said that she felt the mother had made a formal complaint but I stated that the governing body had not received any complaint using the agreed complaints system. We discussed that this was a national complaint system and that this policy is available on the school website. I was aware that Ms Gibson has not been working in English schools for long and may not be aware of some systems. There was sometimes in the middle of the conversation when Ms Gibson and myself did not seem to quite understand each other. However, we clarified issues to our mutual satisfaction and proceeded.
>
> Ms Gibson mentioned concerns of other staff but I felt this could not be relevant to this conversation as they needed to raise their own concerns personally."

64. The claimant has here amended the notes to record that the relevance lay in the staff's complaints of feeling targeted and that she was not relaying her perception of this, but rather details of a meeting that had been held that morning with the head teacher in which staff had made those statements directly.

65. The note continued:

> "Ms Gibson commented that she may be perceived as a troublemaker as she had raised so many concerns. I replied that staff had a complete right and responsibility to raise concerns and that if she felt this was an issue perhaps she would wish to refer the matter to her professional association or look at the grievance policy of the school. Ms Gibson told me that she had taken out a grievance against a previous interim head teacher of the school so she knew the process…"

66. The record concluded with Ms Blackwell advising that, she would look into what she thought was a complex issue and get back to the claimant, but that the claimant did not expect her to get back to her. The claimant has qualified tis account, by stating that she was not saying that she did not want or expect a follow-up, but that such contact may not be directly with her but through the head teacher. The claimant was thereon reminded of the seriousness of making a safeguarding complaint and that it was essential that it be investigated further, and that Ms Blackwell would take appropriate advice.

67. The claimant relies on this meeting as her sixth qualifying disclosure.

68. On 7 October 2014, the chair of governors received a complaint from the parent of Child A, written on 29 September 2014, by which the parent raised complaint regarding the treatment of her child suffering bullying by another pupil for at least 18 months, and that despite having meetings with the head teacher, the bullying had not been eliminated, and of her child's reluctance to attend school, and that measures to address the situation of bullying had been unsuccessful and that she was seeking a new school for her child, the correspondence concluding:

> "I also am bringing this to your attention because (Child A) has a new school placement. It will not necessarily solve the problem as the other boy involved may turn their attention to someone new. Luckily my son is verbal and able to inform me of what is going on but there are other pupils in the ACE unit who would be unable to communicate the situation to their parents or teachers."

69. The tribunal pauses at this point, and makes the observation that, by the nature of this correspondence from the mother of Child A, it exhibits the involvement of professional direction having particular knowledge of the student relationships within ACE.

70. On 17 September 2014, the paediatric occupational therapist from the Hounslow and Richmond Community Healthcare NHS Trust, Ms Flanagan, on visiting the respondent's school in respect of a child who was new to the school, and on the child having been referred to occupational therapy, he recorded his observations, that:

> "On 17/9/14 I was in Cosmos class to observe a child (AT) and (JW) was removed from the class as he was distressed and disturbing the rest of the class. On Wednesday 24/9/14 I arrived to again observe (AT) in the class and (JW) had been set up with a desk in the hall next to the entrance to the class. The desk was arranged in such a way as to attempt to pen him in. He was distressed and was biting himself, a behaviour that I

had not witnessed from him in the previous week. He managed to come into the classroom. The class teacher walked over, told him off verbally and then lifted him up, carrying him horizontally out of the room and back to the desk in the hall. He was still biting himself and screaming at the time. I was surprised to observe this, not only did it seem inappropriate and disproportionate to handle the child in this way but also I can't see how being penned in with a desk benefits the child or is meant to address his behaviour. I spoke to the class teacher about the child on 1/10/14 as she was keen for me to assess him. She raised concerns about the home situation as she feels Mum is in denial about his behaviour and the teacher reports that Mum stated he does not behave like this at home. I explained that referral to Health Pathway OT may be more appropriate if she has genuine concerns about the home situation. She replied that that doesn't help the class but I made it clear that the referral is meant to help the child rather than the class…"

71. And in respect of a further child he was observing, with regards the child's "sensory diet", Mr Flanagan observed:

> "… In talking to the class teacher about the contents of the sensory diet sheets, I felt that "not consistently delivered" was possibly "not delivered" as there would otherwise have been more awareness of the contents of the sensory diet sheet. The teacher's attitude was very defensive, which bearing in mind I had not, and was not, accusing her of failing to do anything seemed an unusual and inappropriate response…"

72. Mr Flannagan informed Ms Cooke of this incident on or around 2 October 2014, which he had not been able to do at the material time of the incident owing to Ms Cooke not being in school.

73. A report of these incidents was subsequently furnished to the children's occupational therapy team leader on 7 October 2014, which was then furnished to the head teacher, Ms Small, on 9 October 2014, the head teacher being advised:

> "There are concerns raised about the teacher in Cosmos class and her possible inappropriate handling of a pupil.
>
> Additionally, there are concerns that the teacher has not been implementing an occupational therapy programme for a second child which has caused her to regress.
>
> I have forwarded the email to Lyn Wilson to look into any safeguarding concerns and I am sure she will be contacting you to discuss the way forward, Merle has already alerted your chair of governors."

74. On 7 October 2014, an incident occurred whereby Child A, who was allergic to eggs, had been given cake containing eggs, a report of which is at R1, p580. It would appear that, Ms Szczepankowska had given Child A some cake for which the child had an allergic reaction. In respect hereof, the school protocol for food activities was re-stated by the school, and by which the following exchange of correspondence on 14 October 2014, between the claimant and the head teacher, Ms Small, is noted; the claimant writing to Ms Small:

> "Subject: Risk Assessment Form – Food Activities in Cosmos
> …

Bridget mentioned that there would be a letter sent out about snacks in the class, and it seems that you had given the go ahead to allow food in ACE. But when I told her that I had spoken to you in person yesterday and you had provided a sample of a risk assessment to be completed, she wasn't sure if the go ahead applied to us. In either case, I have completed the form, and if you are satisfied with the coverage, then we will be ready for class food by Wednesday's snack time."

75. Ms Small responded on 15 October, that:

"… Next time you feel you need to respond immediately to an email and it affects ACE please can you ensure that you discuss it with Bridget first and she will then clarify what to do. Thank you.
…

Please can you attach a word version of the risk assessment so that I can do some alterations?

All letters going out to parents need to go through me or in my absence a member of the SLT please? (School policy) I did not see the form previously that the parents signed regarding food allergies and it does not follow our school format.

I will forward you the school one.

Also, please can all risk assessments be kept in the relevant file – data – school admin – risk assessments etc. ACE/EYFS (named and dated).

Please see me if you need to discuss any of this."

76. The claimant thereon responded:

"I realise that tone can sometimes be lost in written communication, but I found this message to be hostile. Perhaps it would be more productive for us to discuss this in person, as it is only a small example of a much larger problem but as a matter of record, I will clarify a few points.
…

The message you sent. It was very clear and explicitly directed staff not to allow food activities in the class that had not been brought to your attention and received your express consent. At that point, continuing to provide the food would have been a direct violation of what you had just stated was school policy and directly related to safeguarding. If this directive affected ACE or led to parent upset, then that was a result of a decision made by you and followed by me.

And because I knew this restriction would affect the children, I included a note in the home book, so that parents could encourage their children to eat in the morning. I did not issue a letter to parents, and so did not need to seek approval from SLT or breach school policy regarding this, as your message has implied. The food allergy letter that was sent to parents was the letter provided by Bridget. During the ACE teachers' meeting she discussed needing the document class allergies and stated that she had a document that we could adapt to cover foods used in our respective rooms and to please have parents sign and return as soon as possible. So, if you were not aware of this format or do not approve, then this is something that should be addressed with the SLT member that approved it rather than direct what feels to me like a patronising attitude.

> As the head teacher, if you have decided to issue a letter regarding snack, then I will ensure it is sent home to parent. But I would hope that it is not a misrepresentation that undermines my relationship with parents by implying that I have done anything wrong when I have simply followed your instructions."

77. During the course of the above events, on 8 October 2014, the head teacher, Ms Small, and the assistant head/SENCo Ms Sidhu, conducted a lesson observation on the claimant. The summary feedback is at R1, p583 and the claimant's comments thereon are at R1, p584-585. The claimant challenges the observations for which the claimant records of the head teacher's comments on the observation feedback summary form:

> "Observer's critique biased by unrelated issues. I do not agree with the grade awarded and believe it should be reconsidered."

78. It is the respondent's case that the claimant was offered the opportunity to re-teach the lesson and that no action was taken against the claimant consequential to that observation, which had the respondent sought to take action could have pursued the matter under the capability procedures but had not done so. The claimant challenges such a course of action being open to the respondent, submitting that she was the best SEN teacher within ACE and that no offer to re-teach the lesson had been made.

79. In respect of the above incidents, it is the claimant's evidence that the lesson observation conducted by the head teacher and assistant head was uncommon, and that the rating received "requires improvement", was considered a poor rating, subjecting the teacher to additional observations above established guidelines and that there were ways of creating pressure on teachers who fell into disfavour by their undergoing additional observations, creating a record of low ratings and that she had been aware of early years teachers receiving low rated lesson observations, which intimidated them into leaving, further stating, "I sensed Ms Small was looking for any excuse to find fault or blame me by this time" and after giving an account as to the event in respect of the birthday cake and the child's allergy that, Ms Gosia, having admitted to the error and that the error had occurred with multiple staff present, "Ms Small seemed to be after information that might implicate me".

80. With respect the issues concerning Child A having been raised by the parent with the chair of governors, a copy of which was given to the head teacher for comment on 6 October 2014, on 9 October 2014, Ms Blackwell wrote to the local authority Head of Service SEN and Disability, Ms Abbott, stating:

> "I have copied you into a letter of complaint that I have received as Crane Chair of Govs concerning a child in the ACE unit. The letter from the parent came two days after I had had a meeting with a teacher in the unit on this matter (Kimberly Gibson). Ms Gibson had requested the meeting with me and has made an allegation that this is a safeguarding issue. I have requested advice from Lyn Wilson but that does seem rather extreme. However, I do not have any knowledge of the children involved but they are only five years old and presumably four when the issues started.
>
> I am meeting with Alison Small (HT since September) on Monday to review the situation.

> I presume that somebody in your section is dealing with the relocation issue and I know the ACE zone is in your remit which is why I have got in touch…"

81. Ms Abbott responded, advising:

> "I was sharing your email to Sonal and, possibly coincidentally, she advised that she had just received (yesterday) an email from the head of the OT service about concerns raised with her by Paul Flanagan, OT, about the conduct of the teacher in Cosmos class. I have included a copy of that email.
>
> I am not sure who the teacher of Cosmos class is and therefore cannot say whether these matters are linked, but in view of the content of the email and the concerns raised, we will have to bring this to the attention of the safeguarding and child protection team. As with the approach you are taking with the case you have referred to below, I would advise that you seek advice from Lyn regarding your responses to this email.
>
> I am happy to be involved in any discussions that you – and Lyn – consider appropriate to ensure that any concerns regarding children and statements at Crane are addressed…"

82. This train of correspondence was equally sent to the local authority head of Safeguarding and Quality Assurance, Mr Hewitt.

83. On 10 October 2014, Ms Blackwell advised the mother of Child A that, she would be investigating her concerns and would revert back to her, offering to meet to discuss the situation.

84. With regards the claimant's meeting with Ms Blackwell, Ms Blackwell furnished notes of their meeting for the claimant's approval, which she approved on 9 October 2014, and on 13 October, Ms Blackwell advised the claimant that she had taken the matter up with the local authority lead officer for child protection in education, Ms Wilson, asking the claimant to provide detailed information of her involvement with the situation and to address what she had meant by "bullying" and by "significant harm" stating:

> "As we need to progress with this issue could I please ask you to send the information to me as soon as possible and at the latest by Thursday (16th) evening?"

85. On 17 October, the claimant furnished further details of her concern, stating:

> "With regards to clarification about the pupil, I first became involved in the situation when I returned to work January 2014. My official return to work was December 2013, but I was only in school for observations. It was 20 December 2013 that class staff shared there had been some problems with one child having a lot of physical tantrums and "fixated" on the pupil in question. This is the word they used and briefly discussed how pupil (M) was having a lot of negative interactions with the pupil (K).
>
> It was also in January 2014 that Mr Lucas arranged a special parents' evening for my class, in which the mother attended a session. She stated that she had been very upset during my absence because her son was having a lot of problems and she suspected it was school related. She stated that she began contacting the school in November saying that something was wrong but she could not get her son to discuss any details. I

explained that since my return, class staff were discussing progress and areas of concern and that we were happy to follow up to see if things were improving.
…

In February, I sent the previously mentioned email to the leadership in place explaining what was happening in class and also raised a concern regarding (M's) anger and needing to properly address the source and make appropriate referral. Our class is located next door to Year 1/2 class, which was taught by the lead teacher, Ms Loader, so she had observed a number of (M's) physical outbursts, as our rooms share a corridor. An annual review was held for (M) in March, led by Ms Sidhu, where she discussed the situation and negative attention directed towards the other child. We focused on this issue and speech delay and possible referrals that could address these, with Ms Sidhu stating a request for the educational psychologist to become involved.

Because overt physical contact had been eliminated, we believed the situation to be improving, although we were still dealing with (K) being afraid (as reported by him) and (M) growling and making aggressive faces at (K). There came a point in time, where one of the TA's stated that she thought (M) was quite hostile in his interactions with (K) and that she had noticed on several occasions (M) moving closer to (K) when he thought it would go undetected by staff and thought the behaviour was intentional. Over the course of several weeks the behaviours became apparent to all staff and (M) was observed being physical with (K), including non-aggressive contact, such as walking by and rubbing (K) who would then become upset or tearful. A new class plan was discussed and put in place, in which a staff was to have line of sight at all times on (M) and he was not to be within arm's length, in an effort to prevent any physical contact.

I followed up with Ms Sidhu, who was coordinating with Ms Loader, about the situation and where we stood on how to move forward with needed assessments and stronger plan. Follow up was made with Dr Lofler, however no intervention occurred. (K) had become quite upset about coming to school and mother was reporting difficulties getting him to attend and that he would beg her not to send him or to come with him.
…

There are a number of incidences over the month involved that can be shared by staff in the class, but as I expressed to Ms Sidhu, I do believe the behaviour to be bullying as it was very deliberate and targeted towards this particular child. I explained that (M) was aware of what he was doing and was intentionally trying to hurt, scare and upset the other child and was so motivated to do so that he would growl at him, when staff prevented him physical access. And with regards to my meaning of significant harm, staff as a whole believed that if not watched, (M) wanted to and could seriously hurt this child physically. I also believe (K) to be at risk of emotional harm, as he has very clearly communicated that he was afraid and being hurt and given the length of the problem and some of his own statements to mother and staff, he is losing trust in the adult responsible for him and their ability to keep him safe…"

86. On Ms Blackwell seeking further clarification and copy documents, the claimant furnished the same on 23 October 2014.

87. On 14 October 2014, Ms Fairhurst from the Hounslow and Richmond Community Healthcare NHS Trust, wrote to Ms Cooke, ACE lead, raising concern in respect of the "teacher in Cosmos class" that; (1) the classroom was not structured; (2) the teacher uses negative language with the children and that the teacher did not give the children time to respond to instructions,

repeating statements, and then putting the child in time-out for not responding quickly enough; (3) that the teacher was teaching by rote encouraging the child to respond without understanding; (4) that the teacher had not been co-operating with therapies but which was improving; (5) that the teacher is very focused on the children's speech even though some children had very limited language and did not understand the need for improving the children's receptive language and social communication skills. Ms Fairhurst concluded, stating:

> "I have seen some recent improvements for example the teacher recently asked me for advice and has allowed me to observe her in class and carry out PECs sessions in class. However, I remain concerned about the education and support that the children are receiving in that classroom.
>
> Please keep this situation confidential as I do not want this to further impact on my working relationship with this teacher and in turn impact on my ability to work with the children."

88. On 20 October 2014, the chair of governors wrote to the local authority head of Service SEN and Disability in respect of the provision of SEN within the respondent's school, advising, "as you are aware, Crane Park is in the process of moving forward after a period of considerable upheaval. Part of this process has resulted in the new head teacher and governing body re-evaluating all aspects of school life," seeking approval to reduce the size of the ACE unit to its pre-2012 size, of two classes, with a total of 16 children. The reasons here for being given as follows:

> "We have several reasons for this request
>
> - It has become apparent that Crane Park will not become as large as had previously been anticipated which has resulted in the number of pupils in the unit creating an imbalance with mainstream pupils. Crane Park already has a high percentage of special needs children in the mainstream classes.
> - The pressures on the leadership of the mainstream school are disproportionate and are hindering the development of the school.
> - The difficulty in recruiting such a number of highly qualified/suitably qualified staff has become near impossible and the governors of Crane Park feel that this is resulting in an unsustainable amount of leadership time involved in this process.
> - The unit is not self-sustainable or anywhere near self-managing and is therefore requiring significant amounts of time from our SENCo and other leaders.
> - There is insufficient support and leadership from the LA which also adds to the increased burden on the school."

89. On 23 October 2014, Ms Blackwell wrote to Ms Wilson, registering her concern as to the time being taken by the appropriate authorities to address the issues being raised, for which Ms Wilson advised:

> "The complexity of the case has meant we have had to think of an appropriate way of enabling us to respond appropriately and rigorously to all the different strands that are presenting. The "usual" practice principles aren't able to be applied at this initial stage – hence the convening of a "complex" strategy meeting to try amongst other things, to determine who would be the appropriate personnel/agency to do what…"

90. It is also here noted, that the claimant's complaint as received by the chair of governors, was also received as a complaint against the head teacher.

91. On 23 October 2014, a review meeting of Child A, was held with the mother of Child A, the head teacher, Ms Small, Ms Wilson from "parents in touch", Ms Lofler, education psychologist, Ms Szczepankowska, class teacher and Ms Cooke, acting lead of centre, notes of which are at R1, p620-621. The meeting concluded with agreement that "they wanted what was best for (Child A)" which may be a new setting and that (Child A's) statement was to be reviewed and decided by the panel, with *"informed advice about the best way forward for him"*.

92. The tribunal pauses here, and makes reference to correspondence from Ms Wilson of 23 October 2014, in relation to the above events, which is here set out in some detail as it encapsulates the nuances of the situation then existing:

> "I included in my previous emails a couple of emails from the chair of governors that came in after I had spoken to Paul about the dilemma of the head not really being in a position to be asked to investigate the allegations made against Kimberly because of the allegations Kimberly is making against the head.
>
> We also had a chair of governors who was very adamant of the view that, as a volunteer, it wasn't for her to get embroiled in investigating the head teacher.
>
> In addition to the additional information presented by the chair of governors, I have managed yesterday to speak with the EP who is attached to the centre at Crane Park. I am including what she has said to me under the heading "Scenario 4", below.
>
> You may or may not wish to take a view regarding the need for a complex strategy meeting in view of the additional information that has come in this week (?), suffice to say that Kimberly may well accuse the collective (us) of not taking her concerns seriously if we decide not to formally discuss the total situation that has presented (she told the chair of governors that she took a grievance out against one of the previous acting head teachers and said that she "knows what to do". She has, of course, also complained to the chair of governors).
>
> Scenario 4: **(Complaint on the part of (Child A's) mother against the school/centre)**
>
> I can't put my hand on it at the moment, Sally, but somewhere in amongst all the emails that came in to me (possibly in Val Blackwell's communications?) is a letter of complaint from (Child A's) mother. In it she complains of bullying on the part of (Child B) and makes a request to have her child moved from Crane Park to a centre for higher functioning autistic children based at a different Hounslow school.
>
> There is a view that Kimberly is in some respects in collusion with (Child A's) mother against the Crane Park centre placement.

Whether or not the centre at Crane Park Primary is meeting the social and educational needs of (Child A) or (Child B) is for SEN to consider. (I asked SEN if they could hold fire on taking any action until we have sorted out the allegations element to this web.)

Ordinarily, I don't think these allegations would have reached SES's thresholds if they had been made in an unrelated context. It is the interwoven-ness of the allegations and the terminology used by Kimberly that has resulted in the case being passed to SES for consideration via a complex strategy meeting.

Since discussing this complex scenario with Paul and Paul asking you to chair the strategy meeting, I have managed to speak to the EP attached to Crane Park's centre, and she has confirmed that a four year-old child with autism cannot be accused of "bullying" as the child wouldn't have an understanding of what he is doing. She said (Child B) has a fixation on (Child A) and wants to constantly touch him, poke him, etc. The centre put in place a plan to manage the boys' relationship and the two are now physically kept apart in class. Kimberly applied for the post at the centre from the USA and was telephone interviewed. She has just started the second year of a two year contract. The EP says Kimberly has a very rigid behavioural approach to autism, whereas the centre has more of a nurturing approach. There is therefore a clash of methodology and approach between the centre and Kimberly. Additionally, Kimberly apparently has a very strong personality and wants things to be done her way.

I enquired of the EP about her observations of how experienced or otherwise in autism the senior staff of the school (a mainstream primary school with a centre that has been expanded very significantly from how it started out) might be. She advised me that the head of the centre (now gone on maternity leave) is very experienced. The head of the centre has apparently said historically that Kimberly stresses her.

The current head teacher was the substantive deputy head teacher prior to this year. The school – not in the strongest of positions, educationally – speaking – has had two acting head teachers after a fairly long-serving head teacher retired. The last acting head teacher was, according to someone I have spoken to, not particularly interested in the centre in the time he was there, preferring to focus on the mainstream school aspect of the post."

93. With regards further progressing matters, on 29 October 2014, in arranging a complex strategy meeting, Ms Wilson advised:

"… Paul Hewitt (my line manager and Head of Safeguarding and Quality Assurance in Children's Services) has suggested we convene a complex strategy meeting so that we can explore formally in one go all the different strands that are intertwined in this complex situation and allocate respective actions to the relevant personnel/agency accordingly.

Some of the concerns are not the domain of CSC, but the strands are so intertwined, it seems easier to try to unravel them at this meeting and to let CSC/the police determine what, if anything, they think they might need to consider before passing over the "non-allegations procedures" concerns to the other appropriate other agencies.

The chair of the strategy meeting is looking to convene the meeting on Friday 7 November between 9.30 and 11.00 here at the civic centre. You are invited to attend as chair of governors.

Merle/Sonal: once the chair has extrapolated out what, if anything, CSC and/or the police think they might need to formally consider, there are obviously going to be

issues that it will rightfully be appropriate for SEN to consider. With that in mind, a representative from SEN is invited to the strategy meeting.

Ohifeme: there may or may not be HR/employment issues associated with this scenario. You are invited to attend the strategy meeting accordingly.

Dianna: as the educational psychologist attached to the centre, you are being invited to attend the strategy meeting in view of your knowledge, understanding and insight regarding the centre and the children who attend the centre.
…

I apologise that it has taken a while to reach this point in our response. We have had to very carefully consider how we might best make sure all due and appropriate attention is being paid to all the issues that have presented (from various personnel and agencies) in such a way that there will be limited scope for complaint that concerns have been dismissed out of hand or disregarded. At the bottom of all this, of course, is the welfare and safety of pupils.

I can confirm that we will be inviting the head teacher and a representative from occupational health to the meeting…"

94. The purpose of the complex strategy meeting was further clarified, Ms Wilson advising:

"It looks likely that this complex strategy meeting (to look at the safeguarding aspect of the situation) might be followed by a separate meeting at another time to look at any other (broadly SEN/HR?) non-safeguarding matters"

95. The complex strategy meeting was held on 17 November 2014, notes of which are at R1, p653-657. It was identified that the meeting had three strands:

"Consideration of the concerns expressed by centre teacher Kimberly Gibson in regard to pupils (Child A) and (Child B).

- (Connected with the strand above): Consideration of the concerns expressed by Kimberly Gibson that the senior leadership team of the school/centre were failing to recognise and act on safeguarding concerns in the centre.

- Consideration of the concerns expressed by the occupational therapy service in regard to the management and handling of pupil JW by Kimberly Gibson."

96. The outcome of the meeting was that the following action, inter alia, be taken:

"- Paul Flanagan's concern about Kimberly mishandling a pupil to be dealt with via AS in the normal way. The concern will not be progressed via SCS: the method of handling that Kimberly uses is a different method from the method used by the school. LW to feed this back to PF.

- AS advised that SEN have already agreed to amend (Child A's) statement of special educational needs to reflect a change of placement. There is an issue, however, of Kimberly saying (Child A) is a high-functioning autistic child, when he isn't.

- LW to tell Kimberly in writing that, if she has any issues with (Child A) and his parents, Kimberly should tell AS.

- SG said "I had spoken to the CAIT police in advance of this meeting and it had been agreed that no involvement by the police was needed if the strategy meeting agreed inappropriate handling which is now being addressed. There will be no further need to involve CAIT."

97. The claimant was written to by Ms Blackwell in correspondence of 24 November 2014, addressing her concerns, the correspondence providing:

> "…
> In accordance with the strategy procedures for dealing with allegations of abuse made against staff in schools and education settings, it was appropriate that the concerns were brought to the attention of the chair of governors and that I, as chair, took the concerns to the education LADO for the local authority (Lyn Wilson).
>
> I have now received formal communication that confirms that the concerns raised have been given serious consideration via conversations with professionals who have a knowledge and understanding of the centre, of the pupils who attend the centre and/or of the nature of autism, and also via the formal (allegations) strategy meeting process, which has involved consideration of the concerns by qualified children's social care (CSC) staff, including the CSC LADO and, exceptionally, the head of safeguarding and quality assurance.
>
> The outcome of the consideration of the concerns is that the local authority recognises that there are behaviour management issues relating to the relationship and physical interactions between (Child B) and (Child A). The issue of the terms "bullying" and "significant harm" to describe that relationship and interactions, however, are adjudged by the local authority to be outside of the context of social care thresholds of abuse and significant harm.
>
> On discussing the measures the school have put in place, are currently putting in place and are intending to put in place in the very near future, the local authority is satisfied that the school is taking appropriate actions to address and monitor the issues that present…"

98. On 27 November 2014, Ms Blackwell held a meeting with the mother of (Child A) and addressed her concerns, notes of which meeting are at R1 p673.

99. There is no evidence of any further incidents concerning (Child A).

100. Following the complex strategy meeting, it is the claimant's evidence that on the safeguarding complaint revealing the "ad hoc" way of recording in a book, whose location was unfixed and insufficient, staff were told to fill out forms headed "record of incident" and "minutes of telephone conversations/meetings", with paper forms being inputted into an electronic version and saved on the school IT system. The process is not in dispute, albeit, the respondents have qualified the procedure that, whilst the facility was there for the records to be electronically stored, this was not a requirement, as the paper copies were filed and retained. The claimant accepts this to be the procedure, but maintains that it was her practice to generate an electronic copy of her records and by which, she states, when

generating her electronic copy, she was able to see other records on the system and that she had seen a limited number of electronic reports, which she states caused her to believe that reports were not then being generated by other teachers of incidents.

101. The tribunal pauses here, to note a relationship that existed between the claimant and her work colleague, Ms Szczepankowska, the teacher of World class, beyond that of mere work colleagues, whereby they frequently discussed matters of a personal nature.

102. In this regard, it is the claimant's evidence that, in September 2014, in one of her general discussions with Ms Szczepankowska, Ms Szczepankowska had informed her that there had been incidents whereby Child B had kicked and placed his hands around Child C's neck to mimic strangling, whereon discussion had been had as to Child B having shifted his attention to Child C, on Child A having been removed, and that Child C was in more danger because he did not possess the verbal skills of Child A, but also had an affection for Child B, and would not avoid him even if being hurt by Child B. It it is the claimant's further evidence that, she was informed that the head teacher was aware of the incident and that they both, Ms Szczepankowska and the head teacher, had reported it to Child C's parents.

103. The head teacher had not been aware of the incident and Ms Szczepankowska has denied making any such statement to the claimant of Child B mimicking strangling Child C.

104. On 21 January 2015, at the end of the school day, the claimant in discourse with the parent of Child C, raised the issue of Child C being kicked and mock strangled, which came as a surprise to the mother.

105. In respect of this discussion, it is the claimant's evidence to the tribunal, that:

> "I felt side swiped standing there with the mother. (Child C) had been in my class, and I had a good rapport with all the parents. To find myself in that conversation where (Child C's) mother was so agitated, as she put together what had been happening at home and what she was now hearing had been happening at school, I felt like I had somehow failed her. Her child started at Crane Park in my class, and he had moved into World class with the parents being told that I would be involved to help.
>
> (Child C's) mother did not blame me and asked a lot of questions. I felt obliged to answer as truthfully as I could, all the while in the back of my mind trying to process the truth of the situation that adults in my school were deliberately covering up threats and not telling the truth about what they were doing, including Ms Gosia (Szczepankowska)."

106. The claimant's record of the discussion with the parent of Child C, dated 22 January 2015, is at R1 p694-695, and by which note the claimant records:

> "I had intended to complete the official form documenting this discussion, but Ms Small and Ms Sidhu requested a meeting at 10.15am before this could be done…"

107. With regards this referenced meeting with Ms Small and Ms Sidhu, the parents of Child C, first thing in the morning of 22 January, being the following day, sought a meeting with the head teacher raising a complaint as to the treatment of their child, further submitting a letter of complaint, stating:

> "I write this letter in great concern in regards with my son (Child C). It has come to my attention that (Child C) has been subject to physical harm by his fellow student (Child B).
>
> As you all know (Child C) has a speech and language issue and is not able to tell us or explain what happens at school.
>
> (Child C) has been strangled and been kicked, on numerous occasions before.
>
> Please clarify and answer my questions:
>
> 1. Why has this been allowed and no action taken?
> 2. Since when this is happening?
> 3. Why this information was not passed on to us as parents?
>
> This is absolutely not acceptable!!
>
> I am absolutely annoyed on the fact that your institution failed to handle this situation, your teachers have let this happen and try to cover up this situation, I will not tolerate anyone harming my child and this needs to stop with immediate effect.
>
> I am now deeply concerned to the wellbeing of my child (Child C) and feel that his life and safety is jeopardised.
>
> I need an immediate answer to this and want this situation resolved."

108. On a meeting being had with the parents of Child C that morning, it was agreed that there would be a further meeting with the parents later that day at 2.00pm.

109. Following the meeting with the parents of Child A, at 10.10am, Ms Small and the deputy head/SENCo Ms Sidhu, held a meeting with the class teacher of Child C Ms Szczepankowska. Ms Szczepankowska, whilst acknowledging one kicking incident that had been reported to the mother of Child C at the time, denied any incident of Child B strangling Child C. Notes of that meeting are at R1 p1007.

110. At 11am, a meeting was then held with the claimant. The meeting opened with Ms Small explaining that she needed clarification about a discussion the claimant had had with the parent of Child C, and of the parent informing her that the claimant had reported to her, of there having been a kicking and strangling incident of her child, and that the parent "felt understandably very concerned and distressed about the wellbeing and safety of their child". The claimant hereon gave her account of the meeting with the parent of Child C, and of her having been informed by Ms Szczepankowska of the incident of mock strangling by Child B on Child C, and that she had not informed the parent that she had witnessed it. The notes of the meeting then records the following:

> "AS asked KG why she had not followed any school protocol when she was dealing with this situation
> KG responded that she did not feel she had done anything inappropriately.
> The discussion became more heated when AS said to KG that all the school policies clearly state that you need to inform the Headteacher or in her absence the DH, if you feel concerned about any aspect of safeguarding.
> KG raised her voice at AS stating that she had not done anything wrong and that AS was trying to make KG the guilty party.
> AS said that nobody needed to raise their voice and she apologised, explaining she was not suggesting anything just trying to establish exactly (sic) had been said to the parent and what KG had seen and been told and why KG had not informed AS earlier of her concern.
> KG said that she had only raised her voice because AS had.
> SS explained that the school had policies and procedures in place to protect everyone and that the reason that we had these was so that everyone was fully informed about everything and so that children could be kept safe, which was our prime concern.
> AS reiterated that she expected KG to follow protocol at all times regarding any aspect of safeguarding, which particularly meant she was to speak to AS prior to speaking to a parent and that she was confused that KG had not spoken to her previously.
> AS said that this discussion with the parent had meant KG had been 30 minutes late to the staff meeting… the subject of which was the bullying prevention policy.
> AS stated that she felt surprised, especially considering the subject of the meeting, that KG had not said anything about the (Child C) incident to her, during or after the staff meeting.
> …
> KG stated that she felt that it was not necessary for her to have said anything because she thought she was just following up with a parent about a situation that had already been discussed.
> AS explained to KG that she was investigating all aspects of the situation and that she would be speaking to the parent at 2 PM and would possibly be asking KG to speak to the parent. KG explained that she had PPA and so would be available and happy to talk to the parent.
> …"

Notes of this meeting are at R1 p857.

111. At 1.40pm, the headteacher and deputy head/SENCo held a meeting with the claimant and Ms Szczepankowska together, the purpose of which was stated "get clarification about what was said and what has happened regarding (Child B) and (Child C), notes of which meeting are at R1, p860, and from which the tribunal notes this exchange:

> "…AS explained that now the parents felt understandably very concerned and distressed about the wellbeing and safety of their child.

AS read out from notes.

Mrs G said "Miss Gibson said are you aware (Child B) is trying to strangle (Child C) in the classroom?"

At that point, AS asked the class teacher of World class "Gosia, have you seen this happen?" Gosia responds "No" and shook her head and stated that she had seen a kicking incident which she reported and dealt with but not seen any strangling occur in her classroom between (Child B) and (Child C).

At this point Kimberly stated she wanted to make it clear that she had had a discussion at the end of the day and had not arranged a meeting with the parents of (Child C).

Kimberly read out her statement (attached).

AS asked clearly, "Kimberly, at what time and place did you see (Child B) kick (Child C)?

At what time, and place did you see (Child B) put his hands around (Child C's) neck?"

Kimberly responds, "I had not seen these behaviours – I have heard they took place."

AS states, "You have never seen any such incidents, yet you felt it was appropriate to have a discussion outside with a parent concerning all aspects of it.

Kimberly states it was a comment she had heard.

AS asked Kimberly: "Who told you this?" Kimberly replies "Ms Gosia", pointing at Ms Gosia and looking at AS.

AS then asked Gosia – "Did you tell Kimberly this?" Gosia states that she did not and shakes her head.

Kimberly states she has seen (Child B) being aggressive towards children, whilst he was in Cosmos class. However, since (Child A) had left, she had not seen any aggressive behaviour and does not know what happens in World class.

Kimberly then recalls it was the TA (Tara) who had stated that (Child B) had kicked (Child C). KG was asked when this was but KG was not exactly sure.

AS explained she had been informed of one previous incident in December and it had been dealt with.

AS explains that she is needing to end the meeting.

AS tells Kimberly: "Until further notice please do not speak to parents about any serious issues regarding any children without a prior conversation with myself or Satbir.

Kimberly replies that AS cannot direct her to do that and if it was a safeguarding matter she would feel she would have to speak out.

Kimberly asked for the directive in writing. AS states that she will receive it.

AS reiterates the point, "Kimberly, you must always speak to me first please".

> AS ends the meeting by saying to Kimberly, "It was very distressing for the parent to hear – "(Child C) has been strangled" They are understandably very concerned. However there was absolutely no evidence of (Child C) being strangled by (Child B) AS states "Please, please do not speak to parents without having a prior conversation with myself."

112. The follow-up meeting with the parent of (Child C) subsequently took place at 3.30pm that day, notes of which are at R1 p701-705. The father of (Child C) was extremely distressed and concerned. Ms Small endeavoured to placate his concerns and reassure him that his child was safe within the school and that the matter would be investigated at the highest level. In this respect, the tribunal notes the parent's comments that the head teacher's team *"have let her down, big time. You must take strong action, you know what is happening, you have a ticking time bomb here."*

113. Following this meeting, whilst in the school foyer, the parent contacted the police raising his concerns, the police subsequently advising that due to the ages of the children they could not prosecute.

114. Arrangements were further made to have a follow-up meeting with the parent of (Child C) the following week.

115. On 23 January 2015, the claimant was furnished with the child protection policy and further advised:

> "Following our discussion yesterday concerning your conversation on 21 January 2015, with (mother of Child C) I am putting in writing the fact that I am instructing you not to talk to any parents about any concerns that you have regarding serious behaviour, safeguarding or child protection issue. These must be raised with myself or, in my absence, Mrs Sidhu before any conversation with any other stakeholders takes place. This is to facilitate any prior investigation that may be required.
>
> Should any similar incident occur or be brought to my attention it will be subject to an investigative process following school policy…"

116. Ms Small at this juncture, also sought advice from HR in respect of the conflicting statements of the claimant and Ms Szczepankowska, as to the mock strangling. Ms Small equally requested teaching assistants to write up any incidents between (Child B) and any other children they had witnessed or dealt with.

117. Ms Small also contacted the vice chair of governors regarding the father of Child C's complaint, to address their response, advising that she was in contact with HR and the senior primary advisor. A response to the parent of child C was approved and furnished on 3 February 2015, which after advising as to there having only been one incident of Child C being kicked, advised as to the wellbeing and care of Child C in the school, the correspondence then advising:

> "I am endeavouring to thoroughly further investigate the miscommunication that occurred between your wife and a member of the teaching staff."

118. On 26 January 2015, the claimant wrote to Ofsted, the NSPCC and the Children's Commission. The claimant submits that these were further qualifying disclosures being her eighth, ninth and tenth respectively.

119. The tribunal has received no evidence as to the correspondence sent to the NSPCC or the Children's Commission, however Ofsted, on 28 January 2015, forwarded a copy of the claimant's complaint to the local authority, advising the claimant that they could not progress her complaint because her concerns related to matters where another organisation was responsible for the specific issues she raised, namely that, her concerns were about an individual issue that did not raise wider concerns about the school and that she had not followed all the formal complaint processes, further advising that Ofsted did not have legal jurisdiction to investigate the matters of concerns raised about safety of children, which responsibility fell to the police, the NSPCC and the local authority, thereon advising that, they were therefore sharing the claimant's concerns with the local authority to progress the safeguarding concerns as they considered appropriate.

120. The claimant's complaint to Ofsted is set out at R1 p65-70 which correspondence begins, stating:

> "I am writing concerning my position at Crane Park primary school, located in the London Borough of Hounslow. I have growing concerns over the welfare of children in my school and the integrity of the system in place to protect them. I have attempted to address these issues at the school, governors' board and local authority level but have been unsuccessful."

121. And after giving an account of matters as had affected (Child A), stated:

> "At the start of the fall term September 2014, the attitude created was one that the bullying did not exist and many of the staff working in the ACE unit indicated not being aware that a problem existed, much less that they should be monitoring the child's safety or keeping the children separate."

122. The claimant then advised of the matter being addressed with the chair of governors and that the chair of governors did not seem to want to take up the safeguarding complaint, and that as a consequence, she would help the parent through other channels, for which the chair had explained that that was not the case and that the matter was addressed with LADO, but that LADO had not made direct contact with her, the claimant. The claimant then identified that the parent had been told that she (the claimant) would be involved to supporting the new class teacher for (Child A) and in looking for a new placement for (Child A), but that none of this was upheld and that incidents were not being recorded and that she believed there was a deliberate attempt to prevent a recording of the problems.

123. The claimant then catalogued the incidents above referred; regarding the her reporting the incident with Child C being strangled, and the action following, the claimant concluding her correspondence, stating:

> "Ms Small stated that I had nothing but hearsay and that Ms Szczepankowska was denying ever making the statement. I pointed out that I felt all the attention was being

placed on me talking to a parent and none on why a conversation or meeting had not taken place and a teacher denying something easily verifiable through third parties and evidence. I was told that the meeting would begin with the parents and the head office, after which the teachers would be asked to join. At the conclusion of this meeting, I requested to speak with Ms Sidhu in private, either before or after the parent meeting. I was excluded from the parent meeting altogether.

When I spoke to Ms Sidhu she stated that Ms Szczepankowska stated that not only had she never made the comments that there was no concern or problem in the class and that she believed the child was big for his age and things had been misperceived. When asked why Ms Szczepankowska had changed her story, I indicated that I did not know if she had been influenced or had been dishonest in her statement to me about disclosure to the head teacher and mother. I made it clear to Ms Sidhu that I wanted to go on the record that I felt attacked in the day's earlier meetings with Ms Small, and that I believed the anger, combative tone and accusations were in retaliation for me raising a safeguarding issue. Ms Sidhu apologised that I felt that way and said that she did not think Ms Small intended her words to come out as they had. When I questioned if it was appropriate for me to come into work the following day, she stated that it was and that I did a good job but that if I wanted, I could put my concerns of retaliation in an email to her.

I realise that I am raising some very serious issues and do not take filing this lightly. I have worked tiredly through every channel I could find to resolve this situation. However, with a second child now at risk and the class teacher responsible for care denying the existence of a problem, I believe the checks and balances in place to hold the system accountable to be in serious jeopardy. I believe an honest and objective investigation, aimed at the truth and not self-protection, will uncover failings that put the integrity of the education setting and the wellbeing of the pupils in danger. I am shocked that a situation of this magnitude would be allowed to exist and now believe that there are those involved deliberately acting in harmful ways… I am contacting all regulatory agencies identified by NSPCC and the Department for Education and hope to finally find support and a resolution for the children and parents of my school."

124. The correspondence, as stated, was forwarded to the local authority by Ofsted on 28 January 2015.

125. For completeness, the tribunal here records that on 18 January 2015, the parent of (Child A) submitted a complaint to Ofsted on Ofsted's online complaint system, about the school, which was furnished to the local authority and Ms Wilson on 21 January 2015 for action, the parent's complaint providing:

"My child is in an autistic unit and has been bullied and physically hurt in school. I tried repeatedly to deal with the issue with the school and filed formal complaints with two head teachers and the chair of governors.

The bullying lasted for 12 months across his reception and Year 1 class, but I could not get any assistance or protection for my son and finally had to stop sending him to school 8 weeks ago. The school has been very negative towards me and I feel as though they have tried to cover up what has happened to my son and blame me for the situation. I also feel that I have been discriminated against because of my own disability and ethnicity and am outraged that the school has treated my family in such a nasty manner. I have been forced to keep my son home from school because the staff in place were unwilling or unable to carry out their roles and duty to protect. And while keeping my son home removes the physical threat from him, it does not fix a problem that the

school is knowingly allowing children to be harmed and the educational setting to be disrupted…"

126. On 21 January 2015, parent of Child A's complaint was referred to the safeguarding and quality assurance team, where Ms Wilson was tasked to follow up the complaint with the relevant school, being a matter of a complaint regarding how the school managed a bullying concern with the parent's child; Ms Wilson being told that it would be useful *"to see what they've done re the complaint…"*.

127. On 30 January 2015, Ms Wilson attended Crane Park primary school and informed the head teacher that a complaint had been received from Ofsted and requested the file for (Child A). The head teacher was not however shown the contents of the correspondence from Ofsted. However, the head teacher has stated in evidence to the tribunal, that, at that time, she had assumed that the concern was originating from the claimant. Ms Small has further given evidence to the tribunal that at that time she was not concerned by the events, because she was confident that following the complex strategy meeting, she had been assured that they had taken appropriate action as regards (Child A) who she had assumed the issue from Ofsted concerned.

128. On 30 January 2015, a meeting also took place, between the head teacher, Ms Small, Ms Wilson - head of safeguarding, Ms Gill - lead primary advisor and Mr Ohiosimuan - head of HR, by which Mr Ohiosimuan recommended that disciplinary action be taken against the claimant and Ms Szczepankowska in respect of the miscommunication to the parent of (Child C). The claimant and Ms Szczepankowska were duly written to on 4 February 2015, and informed of a disciplinary investigation to be carried out, the allegations against Ms Szczepankowska being that, she "told a lie against your work based colleague", and the allegations against the claimant were that:

"On Wednesday 21/Thursday 22 January, you:

- Met with a parent and relayed information that their child had been strangled and kicked. Information that you later said to be hearsay from another member of staff
- Acted in an unprofessional manner and did not follow school protocol, procedures or policy when dealing with a parent
- Relayed information that has created anxiety and panic for the parents, meaning that the parents no longer have trust in the school's capacity to safeguard their child
- Committed a breach of professional confidentiality in respect of your work based colleague
- Told a lie against your work based colleague
- Conducted yourself in a manner that brings the school into disrepute"

129. The tribunal pauses here, to record an incident arising on 29 January 2015, when the claimant found on a printer, a statement from a colleague, Ms Walker, in respect of the claimant meeting with a parent after school on 28 January 2015, recording the fact of the claimant being seen talking with the parent, the statement providing:

> "At the end of the conversation I heard Ms Gibson tell Mrs (parent of Child C) that they would have a meeting next week with Ms Gibson, Ms Szczepankowska, Ms Small, Ms Sidhu."

130. In respect of this encounter, the claimant had produced a record which is at R1, p728 dated 29 January 2015, by which the claimant accounts for her being approached by the parent of Child C, and of her informing the parent that she had been instructed not to answer parents' questions and to refer them to the head teacher or deputy head, which was declined, the parent advising that they could wait until their next meeting, which had been requested with the head teacher, and at which the presence of the claimant and Ms Szczepankowska had also been requested.

131. On 30 January 2015, at 7:52am, the claimant emailed Ms Sidhu, to filed a grievance against Ms Walker stating:

> "I do not know if this statement was solicited by Ms Small or Ms Cooke in reference to Ms Small's email regarding initiating an investigation against me. In the event this is the case, and there is a conflict of interest, I have chosen to first file this grievance at the deputy head level.
>
> I understand that the first step in the process is to attempt to resolve the grievance through an arranged discussion, in hopes of eliminating the need to initiate the formal process. I am willing to participate in this step, however if this cannot be arranged by this Monday 2 February, I would like the designated time limits to apply from the date of my filing.
>
> I will submit this grievance, with my signature, this morning upon my arrival."

132. Later that morning at 8:30 am, the claimant met with Mrs Sidhu, further addressing the incident, which on the claimant stated she wanted to take matters further, Mrs Sidhu suggested she speak to Mrs small.

133. The claimant met with the head teacher, Ms Small, at 9.30am, and informed her that she wished to raise a formal grievance against "another member of staff" which on the claimant being asked if she was aware of the process, the claimant advised she was, and gave an account of her finding the statement on the photocopier machine referring to her in a negative light, the note of the meeting recording:

> "She had gone to the photocopier to pick up some work and had found an item there. On closer inspection it had materialised to be a photocopy of a statement that referred to Ms Gibson in a negative light (see attached note).
>
> Ms Gibson felt that this was a clear example that staff were against her and attempting to target her and [sic] unpleasant way…"

134. The claimant was thereon asked to provide a written account, and advised by Ms Small that she would undertake a fact finding investigation.

135. The tribunal has received no evidence of a fact finding investigation taking place into this matter.

136. Ms Walker's evidence to the tribunal is that, she had not been specifically informed to record any incident between the claimant and parents, but that there had been general instructions from meetings, about staff talking with parents beyond pleasantries. In this respect, the tribunal notes instruction of the head teacher, Ms Small, on 30 January 2015, to all staff that:

> "Meetings with parents – I would like to request that all meetings with parents are now conducted with yourself and a member of the WSLT (*Wider Senior Leadership Team*)
>
> This is to ensure that you are supported at all times and that school policies are followed through."

137. In giving consideration to these events, the tribunal finds it material, that the address of Ms Walker's statement was "to whom it may concern", which, had she been operating on instructions, one would expect the statement to have been addressed to that person. This is not the case here.

138. The tribunal also here notes the following, from a record of the meeting between the claimant and Ms Sidhu at 8:30am on 30 January 2015, as above referred, that:

> "...
> Mrs Sidhu listened and explained to Miss Gibson that since the incident regarding the (Child C) family, all staff were asked to be vigilant and record all incidents with parents.
> Mrs Sidhu reassured Miss Gibson that it was not a malicious account but on the lines of safeguarding.
> …"

139. The tribunal accepts the evidence of Ms Walker that there had been general instruction to staff not to talk to parents and that when she had raised her observations, there had not been direct instructions to that effect concerning the claimant.

140. With regard these events, it has also been submitted that, on 26 January 2015, at the school weekly senior leadership team meeting, proposals were put forward by the head teacher that she intended to have a senior member of staff attend meetings between parents and staff. The tribunal accepts this evidence, which was then detailed by the above referred email of 30 January.

141. Also on 30 January 2015, the claimant in holding a meeting with the parent of (Child K), whether this meeting was an impromptu or pre-arranged meeting, the tribunal has not been informed, on Ms Cooke seeing the claimant together with the parent, she joined the meeting. The claimant objected to Ms Cooke's presence for which the head teacher was called. The head teacher, who was at that time in her meeting with Ms Wilson, Ms

Gill, Mr Ohiosimuan, as above referred, left the meeting and attended the meeting of the claimant. In attending on the claimant, Ms Small advised the claimant of what was to be the new policy of having a senior member of staff present for meetings with parents. The claimant was not happy with this, and for which the meeting was abandoned.

142. The meeting was subsequently re-arranged and in which the head teacher then sat in.

143. The tribunal further pauses here to address matters relating to telephone calls, it being the claimant's claim that in the week beginning 2 February 2015, she had been required by Ms Small, Ms Sidhu and Ms Cooke, to make any telephone calls from the front office of the school, at a time when all other staff were strongly encouraged not to take calls in the front office, the claimant submitting that this was an attempt by the respondents to monitor her conversations with parents and/or intimidate her to prevent her from disclosing information relating to health and safety of pupils.

144. The material facts pertaining hereto are that in a meeting on 5 September 2014, at an ACE teachers' meeting, all staff had been told not to use mobile telephones during school hours. On the claimant subsequently being seen to have her mobile phone at her desk, she was then spoken to regarding the use of phones whilst teaching; the claimant being informed that there was access to two outside lines via the main office, which staff had full access to and could easily be contacted on. The claimant does not challenge the respondents as to her mobile phone, but maintains that the instructions given were only to her.

145. On the evidence presented to the tribunal, the tribunal prefers the evidence of the respondents, that matters relating to the school and teaching should be through official channels, and that the receipt of calls to personal mobile phones was unprofessional for staff, and that it was in this context that the claimant was spoken to.

146. With respect the letter to the claimant regarding a disciplinary investigation, on 10 February 2015, solicitors on behalf of the claimant wrote to the local authority and the chair of governors, advising that there was a conflict of interest arising in Ms Small and Ms Sidhu, and that they were not to carry out the investigation; solicitors advancing that, action was being taken against the claimant in retaliation of the claimant raising safeguarding issues and having made a protected public interest disclosure, requesting that, the respondents; *"cease and desist all further harassment of the claimant",* provide all documentary evidence of any investigation in regard to the safeguarding complaints, dismiss the disciplinary investigation, or appoint an independent investigator and to stop further acts of detriment.

147. The chair of governors, Ms Blackwell, responded advising solicitors that the school was closed for half-term holiday to 20 February 2015, and that a response would be furnished within a two week time-frame.

148. On 9 March 2015, the local authority furnished a response to solicitors, on behalf of the school, advising that all their (the solicitor's) allegations had been denied, that they (the school and LA) were unable at that time to furnish documents regarding the safeguarding investigation, and that the disciplinary investigation would proceed and would be conducted by the head teacher, Ms Small.

149. For completeness, the tribunal here records that the parents of (Child A) not being satisfied with the investigation into their complaint and its outcome, pursued their complaint to stage 4 of the Crane Park complaints policy, which was acknowledged on 12 February 2015.

150. On 10 March 2015, the claimant was signed off unfit for work because of work-related stress, effective from 3 March to 7 April 2015.

151. On 8 April 2015, the claimant was written to, being asked whether she would be returning to work on 13 April 2015, on her sick certificate having expired. By correspondence of 9 April, the claimant advised that:

> "My previous certificate ended 7th April. As there are no developments with work or health appointments, the doctor has extended the date through 11 May….."

152. The claimant thereon attached her sick certificate, concluding her correspondence, stating:

> "I hope progress can be made before that time, to support a smooth return."

153. On 14 April 2015, the claimant was invited to a disciplinary investigation meeting for 22 April at 1.30pm, in respect of the alleged acts of misconduct as above referred, and furnished with; notes of the meeting with herself and Ms Szczepankowska, statements from staff and minutes of meetings with the father of (Child C). The claimant was also invited to attend a first formal interview at 2.30pm, the same day, under the management of absence policy; the purpose of the meeting being stated to:

> "Review your absence, give you the opportunity to discuss the reasons, to establish the improvement in attendance that is necessary and consider any support you may need in achieving this. We have made a referral to our occupational health team at the London Borough of Hounslow and they will be in touch to arrange an appointment soon."

154. On 15 April 2015, Ms Szczepankowska was invited to attend a disciplinary investigation meeting for 1pm, on 22 April, in respect of the allegation of misconduct against her, being furnished with the relevant documents similar to those sent to the claimant.

155. On 21 April 2015, Ms Small wrote to the claimant enquiring whether she would be attending the meetings the following day, as they had not received any communication from her.

156. The claimant did not attend the meetings on 22 April 2015. Following a short delay to the start of the meetings to give an opportunity for the claimant's late arrival, on the claimant not attending, a decision was taken in her

absence to proceed to a disciplinary hearing on the premise that, the claimant would then have the opportunity to present her case to a different panel. It is here noted that no efforts were made to contact the claimant on the day.

157. The claimant does not appear to have been informed of the outcome of this meeting until September 2015.

158. On 11 May 2015, the claimant furnished a further sick certificate signing her off until 8 June 2015, accompanied by a letter from her GP which stated that, she had been engaged with the surgery because of mental health symptoms, triggered by events at her workplace, further stating:

> "…She remains concerned about her working environment and the fact that the triggers for her ill health are still present (hence a return to work would currently seem to be likely to result in a deterioration in her health and she has been recommended to continue to be signed off).
>
> She has consistently reported a desire to engage with occupational health and human resources in order to try and clarify what support strategies have been put in place to help reduce her workplace anxiety. However, she reports having not been able to have such a meeting. If this were done she would be able to liaise with her doctors and therapist in order to plan a return to work date should this be appropriate.
>
> I would therefore advocate this be done in order to maintain her psychological wellbeing as well as the fact that it would facilitate her return to work at the soonest possible opportunity."

159. On 12 May 2015, the claimant contacted the local authority occupational health, advising that she had been signed off from work since March 2015 and that the school had not afforded any assistance or discussions to help her to return to work, seeking to arrange an appointment with them. There is no record of the claimant receiving a reply to.

160. On the 2 June 2015, the claimant presented a complaint to the tribunal under claim no. 3301472/2015.

161. On 8 June 2015, the claimant was again signed off with work-related stress until 5 July 2015.

162. On 24 June 2015, the claimant was written to by Ms Small, being advised that due to her long term absence, she was being referred to the local authority occupational health team.

163. By email dated 26 June, the claimant was furnished with notice of an appointment with occupational health for 2 July 2015.

164. On 26 June 2015, the claimant was signed fit to return to work.

165. On 29 June 2015, Ms Small, made enquiries of Ms Butt, senior recruitment officer, as to whether the claimant had asked for an extension to her visa, the correspondence providing:

> "… I do not want her to continue at Crane Park and so would not be supporting an extension to the visa but I am wanting to clarify if she has been in contact with the borough in order to start proceedings to extend it in any way."

166. The tribunal has not received an explanation for this correspondence, Ms Small stating, it was linked to without prejudice correspondence.

167. It was Ms Butt's advice that, having spoken to HR, they had not heard from the claimant.

168. On 3 July 2015, Ms Small was furnished with a report from occupational health in respect of the claimant. The report provided, that:

> "Ms Gibson informs me that she has been off on sick absence leave due to perceived work-related stress which she attributes to a hostile environment as her perception."

169. It was occupational health's recommendation that the claimant was fit to return to work on a phased return basis over three weeks, further advising that:

> "… management consider carrying out an individual stress risk assessment (ISRA) in an attempt to establish what Ms Gibson perceives the issues for her are; and for management to consider whether they see these issues as something that they will be able to address by putting in place reasonable controlled measures by way of accommodation. I would recommend that management ask Ms Gibson to articulate her concerns using the attached template … to document her concerns, then meet with management to discuss. More information can be found on the HSE's website: …
>
> - I advise that management arrange a meeting with Ms Gibson to discuss a return to work plan
>
> - For Ms Gibson and management to have regular weekly meetings to assess how her rehabilitation back into the workplace is working
>
> …"

170. A return to work meeting was scheduled for 20 July 2015, however the claimant's representative was unable to attend before the end of the school's summer term. The return to work meeting was re-arranged for 3 September 2015.

171. On the claimant, desirous for a meeting to take place before the end of the summer term, a return to work meeting, with the agreement of the claimant, was held in the absence of representation for her. The return to work meeting was held on 20 July 2015, amended notes of which are at R1 p820A.

172. The meeting addressed the occupational health report and the claimant's return taking place once a stress risk assessment had been completed, and

that the claimant would return to work on a phased return basis, based on the situation existing at that time.

173. The meeting further discussed changes that had occurred during her absence, which, on the claimant's disciplinary and grievance issues being raised, the claimant advised that such matters should be channelled through her solicitors, whereon it was clarified that the particulars of the disciplinary case was not being discussed, but that they were enquiring as to a means of furnishing the claimant with relevant information.

174. There was further discussion as to changes in the ACE unit to commence in the new term from September 2015, for which it was identified that there may be a different structure for the provision of autistic spectrum disorders, and that the claimant's job may be affected, but that she would be accommodated until her contract expired, albeit, not in the same role. There was then had discussion as to the exact role the claimant would have, for which it was stated it would be linked to the stress risk assessment.

175. On the claimant making enquiries as to receiving notice of termination, she was advised of what the normal practice would be, following which there were discussions as to what would happen to the unit and possible options, which could include the status quo remaining, redeployment or otherwise redundancy, it being explained that, whatever the case was to be, she would be consulted and written to, emphasis being placed on the fact that the return to work meeting was not the appropriate forum for such discussions.

176. It was agreed that the meeting as had been scheduled for 3 September 2015, would subsequently take place when the claimant's union representative was available, whereon the meeting would address the stress risk assessment and the claimant's phased return to work.

177. The claimant was further advised that, as her level of sickness absence had triggered the managing absence procedure, a first formal meeting would follow, and it was agreed with the claimant that it was probably best to do that on 3 September. On the claimant thereon advising that she felt it was a disciplinary meeting, it was explained that it was not connected to the disciplinary process and was supportive in nature and not punitive.

178. The meeting concluded with the claimant being reminded that she had agreed that the stress risk assessment would take place in September, and the phased return plan would be discussed after the stress risk assessment was completed.

179. Following the meeting, the claimant confirmed arrangements for 3 September 2015 return to work meeting, and of the absence management meeting, advising that she would not be dealing with school matters over the summer holiday.

180. On 29 July 2015, Ms Small acknowledged the claimant not addressing any work related issues over the summer holiday and furnished the claimant with the minutes of the meeting for her to address any points arising.

181. Equally of that date, the claimant was sent an invite to attend a first formal interview meeting in accordance with the management of absence policy to be held on 3 September 2015, and notice to attend a disciplinary hearing for 15 September 2015, the correspondence stating:

> "Following the investigation I have recently undertaken in relation to the allegations… and in view of your confirmation of your contact details (at the return to work meeting held on 20 July 2015) and you now being signed fit to return to work, you are now required to attend a disciplinary hearing…"

182. The claimant was also furnished with documents that had not been received in April, being the management report for disciplinary investigation, and all accompanying documents. It is the claimant's evidence that she did not then receive these documents until she returned to the school on 3 September 2015.

183. On the claimant returning to school on 3 September 2015, a return to work meeting was held at which the stress risk assessment was undertaken, and a phased return to work schedule (plan) set. The claimant here maintains that this is the moment at which she learnt of the disciplinary hearing investigation outcome from 24 April 2015.

184. It is the claimant's evidence that, at this time, she felt "under-fire", in that; a return to work process was underway, she had then heard of the disciplinary hearing coming up, and was aware that her visa was to end at the end of the month.

185. In respect of the claimant's visa, it is here recorded that after the return to work meeting on 20 July 2015, the claimant had obtained advice as to her visa status from an immigration specialist, which on the claimant having had concerns regarding redundancy, she was advised of renewing her visa by an FLR(O) application, should the respondent fail to return her to work or process her visa renewal.

186. On 4 September 2015, the claimant submitted an FLR(O) application. The claimant's evidence to the tribunal is that, she had observed that the school were still planning a disciplinary hearing with a threat of termination and amongst other matters, she still believed they were planning to punish her for whistle blowing, by finding a means of pushing her out of her role, and that she accordingly thought it pointless to ask about the renewal of her visa.

187. With regard to visa renewals, it is the respondent's practice (the local authority who are responsible for the process) that they would normally make an application to the UK Border Agency on behalf of the school and the London Borough of Hounslow, for a Certificate of Sponsorship (Restricted or Unrestricted) in the name of the individual, under "tier 2 general". This is an online application process. It was Ms Butt's evidence, - the senior recruitment officer and the responsible officer for visa applications - that, when visas came up for renewal, the employee or the school, would make the initial contact, but that she would only deal with the school. It is Ms Butt's further evidence that, an employee would not be able to extend an

existing "tier 2" visa without the relevant documentation from the school in support, without which, her expectation was that an application would be rejected.

188. The UK Visa and Immigration Guidance in respect of visas for "tier 2" point based systems are at bundle B/C1 and extension applications are at C1, document 1, page 56; C1, document 2, page 74, page 82, - 84, 86 and 91 and at UK Visa and Immigration Operational Guidance page C1 (xii) (xiii) (xviii) and (xiv).

189. On the claimant having applied for leave to remain outside of the immigration rules, on form FLR(O), on 19 November 2015 the claimant's application was refused with no right of appeal; the Home Office issuing an amended refusal notice on 9 December 2015.

190. The Home Office records, record that, the claimant submitted her form FLR(O) in time, for leave to remain outside of the immigration rules, which as a consequence the claimant's leave was extended by virtue of s.3(c) of the immigration rules, until her application was decided, which application was refused on 19 November 2015, and is the date formally recorded as the claimant then no longer having the right to remain within the United Kingdom.

191. On 31 December 2015, the claimant submitted a pre-action protocol letter, which was subsequently refused on 5 January 2016. The claimant left the United Kingdom on 12 January 2016.

192. The claimant began her phased return to work on 8 September 2015.

193. On 9 September 2015, solicitors on behalf of the claimant, in respect of the disciplinary hearing arranged for the 15 September 2015, advised that the claimant was unable to attend as she was not able to be accompanied. The solicitors also objected to the process; on the disciplinary investigation having been conducted by Ms Small, and of the disciplinary panel consisting of personnel that had been involved in the events leading to the allegations against the claimant, for which they requested a three person panel.

194. It is the claimant's evidence that, she had sought members of the school staff to accompany her to the hearing but that they indicated being afraid of retaliation if they attended. In this respect, Ms Small had asked the claimant for particulars of persons she had wished to accompany her which the claimant refused to give.

195. The scheduled disciplinary hearing for 15 September 2015, was re-arranged for 25 September 2015. It is the claimant's evidence that, this was a date she had not identified as a suitable date and for which she had subsequently written to the respondent informing them that they were not following their own policy forcing her *"into a retaliatory disciplinary hearing unrepresented"* and that the hearing was not one that she would acknowledge as legitimate or attend. The tribunal has not seen this correspondence.

196. On 11 September 2015, Ms Butt sent all headteachers, as was her practice, an update for schools relating to sponsorships of teaching staff who required visas for the right to work in the UK.

197. On 12 September 2015, Ms Small replied to Ms Butt advising of the claimant being a member of staff an, having a contract linked to her visa ending on 30 September 2015, which she, Ms Small, did not need renewing, further enquiring whether the local authority or school needed to inform immigration that the visa was ending or whether it was a natural process. Ms Small concluded her letter asking:

> "I know I have asked you this before but is there any indication now that she has applied to stay?"

198. Ms Butt in reply, advised that the local authority had received no contact from the claimant to make an application to stay or otherwise extend her visa, which she could not do without the local authority's permission, further advising that time was short, to the end of September, and that it was "*Very unlikely to get it processed in this time."*

199. With regards notifying immigration, it was identified that it was a simple process of reporting online once the claimant's employment had come to an end, after 30 September 2015.

200. On 15 September 2015, Ms Small again sought advice from Ms Butt to clarify whether, should the claimant make an application for an extension to her visa, she would get it, noting that the context in which the visa was originally granted, being a shortage of ASD/SEND teachers, no longer applied.

201. Ms Small was advised that, the only way an extension would be granted was with the school's permission, because the extension was dependent on the school and local authority certifying the claimant was still required in post and without which, her application could not proceed. Ms Small was further advised of the requirement of advertising and applying for a restricted certificate, but that as the claimant was already in post, this would not be necessary, but only if the school said she was required.

202. On 15 September 2015, the claimant wrote to the respondents clarifying her visa status, advising that it had been extended and that she was then allowed to continue working, stating:

> "This means that, once the remaining weeks have been agreed that bring me to 100% I will be completing the phased return, with plans to resume full-time teaching. Given the school's ongoing discipline process against me and the existence of the position, I assumed this was the reason no discussion was held or notice was given regarding the contract coming to an end. As a full-time teacher, my position was hired as a permanent member of staff and was only restricted based on UK Immigration rules for the right to work. The terms for contract termination are no longer valid, thus it would naturally continue…"

203. The claimant thereon set out that as a consequence, on being employed beyond 30 September 2015, and the visa restrictions no longer applicable, she fully intended to participate in the internal disciplinary process and appeal process, and advised of her right to notice to terminate her employment, further identifying that this matter was separate from her legal case and talks in settlement to include a mutually agreed termination, which were running in tandem. The details of which are not however material to the issues for this tribunal's determination. The claimant concluded, stating that, she was seeking her solicitor's availability for the proposed 25 September hearing.

204. In respect of this correspondence, Ms Small wrote to the claimant advising that her appointment and termination were linked to her visa, which expired on 30 September 2015, stating:

> "I acknowledge receipt of your letter dated 15 September 2015 where you state that your visa has been extended. Please can you bring it in tomorrow morning so that the school has the opportunity to clarify your employment?
>
> I would like to thank you for your work at the school and wish you all the best for the future."

205. Ms Small also sought further clarification from Ms Butt, regarding the claimant's visa status. Ms Butt subsequently advised that she had recently spoken directly to the UK Border Agency who had confirmed that, without a valid certificate of sponsorship from the respondent or letter confirming the claimant's continuation in employment, she would not have been able to renew, and that the only possible way for her to renew her visa was by another route. Ms Small was advised to clarify with the claimant on what basis she had been granted an extension, which she duly did.

206. On 16 September 2016, the claimant advised the respondent that, on having received instruction from the Home Office Visa Immigration Division, in providing verification to her employer for her continued right to work, she was informed that no letter is issued, but that the employer should contact the Home Office Prevention of Illegal Working Department, and furnished a phone number to call. The claimant further advised that it was an employer initiated system and not for the employee. The claimant also furnished copies of her passport and work visa as were due to expire on 30 September 2015.

207. On 16 September 2015, the claimant also sought a "whole group meeting" with the respondent to address "recent concerns about my continuing contract, along with issues related to the discipline matter and work conditions that could potentially necessitate additional legal action" and further issues arising on her return to work and on her receiving communication that the ACE deputy head was questioning whether to speak to her, which the claimant believed may have arisen on confusion arising from her then current legal claim.

208. On 18 September 2015, the claimant was advised and reminded that her employment was due to expire on 30 September 2015, in line with her

expiring sponsored visa under "Tier 2 (General)" and that primary teaching posts were no longer considered to be shortage posts by UK Visa and Immigration, and as such, there were restrictions now placed on sponsorship for non-shortage positions.

209. It is Ms Small's evidence that at this time, the claimant's return to work plan was considerably altered on it becoming apparent that the claimant had not taken any steps to renew her visa under "Tier 2" (general) visa sponsorship scheme, via the respondent, and that the scheduled work plan was as a consequence not followed in the subsequent weeks.

210. It is advanced by the claimant that, in respect of her return to work plan not being followed, she had the distinct impression that she was being required to occupy her time in non-teaching tasks, as they had no intention of letting her teach again, and has taken the tribunal to correspondence in respect of Class i-Pods in the following, that:

211. On 15 September 2015, all staff were written to concerning i-Pods and cameras having been redistributed, checking that the staff had the correctly named item for their respective class, it being noted that on classes having been re-jigged, some staff had borrowed i-Pods and cameras from other classes, which on the claimant making enquiries as to time for her to sign out an i-Pod for the Cosmos class, she was advised by Ms Milliar that i-Pods were no longer signed out but were assigned to classrooms and was advised to check with whoever had been covering for her as all i-Pods had been distributed. The claimant was thereon asked to check with Ms Cooke, as Ms Milliar had hers, (Ms Cooke's) and therefore she did not know whose Ms Cooke had.

212. The claimant accordingly wrote to Ms Cooke, stating:

> "I was asking Carolyn about getting the iPod for Cosmos, and she said that it was already out and might have gotten swapped with yours. Can you check and let me know?"

213. Ms Cooke, as a result, made enquiries of Ms Loader and Ms Small, asking:

> "Please advise how or if I should respond to Kimberly's email"

214. Ms Small in response, advised:

> "Please do not respond for now. I will get back to you."

215. The tribunal has received no further evidence hereon, as to what then transpired, and the claimant has not stated that she did not then receive information regarding the i-Pad for Cosmos, merely drawing in aid this correspondence of Ms Small, to her contention.

216. On 21 September 2015, Ms Small replied to the claimant's correspondence of 16 September, advising of the internal disciplinary process being separate to the claimant's tribunal claim, and that the disciplinary hearing as scheduled for 25 September 2015 would continue, and that there was no

provision for her to be legally represented there-at. It was also noted that they, the claimant and Ms Small, had not had an opportunity to review the return to work schedule, for which the 22 September 2015 was proposed to review the work schedule for the forthcoming week.

217. The disciplinary hearing was duly held on 25 September 2015. The claimant did not attend. The hearing was held in the claimant's absence; the management case being presented by the head teacher. The outcome of the disciplinary hearing letter is at R1 p923-925. The disciplinary panel upheld the allegations against the claimant, except for the allegation that she "*told a lie against your work based colleague"* which was not upheld on the panel finding that there was no evidence to support the allegation. The claimant was issued with a final written warning.

218. It was the panel's finding that the claimant's:

> "actions and lack of regard for school procedures placed the school in a vulnerable position and caused unnecessary anxiety and fear for the parents of the children involved. This could have been avoided by handling the matter in a professional way and alerting a member of SLT to your concerns. Your conduct is also a breach of the professional standards required by teachers:
>
> > "Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach"
> > "Having regard to the need to safeguard pupils' wellbeing in accordance with statutory provisions"
> > (Teachers' Standards, 2011 updated in 2013)
>
> **The panel's view is that a final written warning should be issued**.
>
> The panel wants you to understand the seriousness of this penalty. This final written warning means that any further misconduct may result in disciplinary action being taken against you which may lead to your dismissal from employment with the school and London Borough of Hounslow. The final written warning will be placed on your personal file and will remain live for two years. It is expected that in future you will follow school procedures and protocol and that an incident of this nature will not be repeated."

219. The claimant was given the right of appeal which she availed herself of by correspondence of 14 October 2015.

220. For completeness, it is here recorded that on 11 September 2015, Ms Szczepankowska was advised that further to the investigation into the allegations against her, in respect of "telling a lie against a work colleague", no further action would be taken in accordance with the school's disciplinary procedure.

221. On the claimant not having attended the disciplinary hearing and not received its outcome, on 29 September 2015, the claimant made enquiries of Ms Small whether there was anything in writing from the disciplinary hearing, as she had been informed that the disciplinary hearing would take place without her. Ms Small advised that the decision would not come through the school as she was not part of the process.

222. The claimant's employment was terminated on 30 September 2015, on the "tier 2" sponsored visa expiring without apparent renewal.

223. On 30 September 2015, following the claimant's final assembly, having been presented with flowers and a leaving card, Ms Small before the claimant left the school, gave the claimant the disciplinary hearing outcome letter. It was Ms Small's evidence, that, on a member of the disciplinary panel who was to have attended the school to issue the claimant with the letter, not attending, she thereon, as the claimant had made enquires of her, provided the claimant with a copy of the outcome letter.

224. On 30 September 2015, solicitors on behalf of the claimant wrote to the local authority advising that, despite the claimant's visa, it was not a condition of the employment contract, which accordingly entitled the claimant to a minimum of two months' notice on termination which had not been given, seeking pay in lieu thereof.

225. On 7 October 2015, the claimant's solicitors were written to in respect of their letter of 30 September, being advised of the expiration of the claimant's visa, and upon which her contract of employment was dependent, and that as the claimant had not approached the school regarding the continuation of the sponsorship and the school did not know if she had applied for the right to work under another immigration category, and that when requested for evidence of her right to work, the claimant had been unable to show any documentation evidencing such a right after 30 September 2015, and that had she been able to show that she had the right to work post 30 September 2015, her employment would have continued, concluding that, the authority's continuing to employ the claimant would have been unlawful and that notice was waived on the specific event coming to an end; being the ending of her right to work in the UK.

226. On the claimant having appealed the decision of the disciplinary panel, as above referred, the appeal was acknowledged on 14 October 2015, and on 22 October 2015, enquiries were made of the claimant's availability to attend an appeal hearing and whether she continued to reside in the UK on the expiration of her work permit as of 30 September 2015, for which the claimant was offered as an alternative to an appearance in person, the panel considering her grounds of appeal as submitted in writing. The claimant was thereon asked for a statement and any relevant information on which she would then rely.

227. By correspondence of 3 November 2015, the claimant raised issue as to timeframes for an appeal and that there had been a delay of two weeks since the presentation of her letter of appeal and correspondence of 22 October 2015, which after raising issue as to the respondents' concern for her presence in the UK, the claimant asked for the appeal to be addressed in writing.

228. In parallel to the above, on 20 October 2015, the chair of the disciplinary committee wrote to the claimant regarding her grievance advising that as

she had not attended the disciplinary hearing on 25 September, they had not been in a position to consider her grievance, further advising that as she was no longer an employee she could choose to have her grievance heard under the modified procedure for employees who had left the school.

229. The tribunal pauses here, as it is not aware of any discussions having been had with the claimant following her submitting her grievance, prior hereto, outside of the brief discussion raised at the meeting on 20 July 2015.

230. Having stated this however, with regards the grievance being considered at the time of the disciplinary hearing, the tribunal notes Ms Small's management report for disciplinary investigation, in July 2015, that:

> "Ms Gibson also raised a grievance over her finding of one of the statements issued by a staff member, in relation to the management investigation. Although it has been explained to Ms Gibson that key witnesses had been requested to provide statements, Ms Gibson still expresses concern that her grievance has not been fully looked into. I therefore recommend that Ms Gibson's grievance is also heard by the same independent panel, as this is related to the disciplinary issue."

231. For completeness, it is also here noted that the claimant had equally not raised any issue of her grievance not being addressed following its submission.

232. By correspondence of 1 December 2015, the claimant challenged the hearing of the grievance being part of the disciplinary process, submitting that her grievance was not entwined with the disciplinary proceedings and that by flaws exhibited in Ms Walker's statement, and in respect of the relevant circumstances, her grievance should be upheld, and that she looked forward to the panel finding to that effect.

233. By further correspondence of the 1 December 2015, the claimant also furnished written grounds of appeal for consideration. (R1 p952-958)

234. On 11 December 2015, the claimant chased up her appeal, advising that she had been informed that, "*It is the policy of the school's governing body to ensure that appeal hearings are held as quickly as possible"* and that on her requesting that her appeal be dealt with in writing, she had been informed that an independent appeals panel was being constituted, and that once that panel had been confirmed she would be informed of the panel members and the date for hearing, and that having sent her grounds of appeal by letter of 1 December 2015, she had not received an acknowledgement.

235. The claimant's correspondence was acknowledged by Ms Small on 12 December 2015, and on 22 December, Ms Small further wrote apologising for the delay as to a date for the appeal hearing, advising of difficulties in arranging times of the volunteer governing body, undertaking to give the claimant an exact date for hearing by the start of the January term.

236. The claimant subsequently made enquiries as to the nature of the hearing in circumstances where the matters were to be address on paper.

237. On 9 January 2016, the claimant was advised of the appeal hearing to be heard on 13 January 2016.

238. On 11 January 2016, solicitors on behalf of the claimant raised concerns of there being a hearing, where only one side would attend and present their case, whilst the other side's case was only set down in paper, seeking their attendance at the hearing on the claimant not then being in the country. The solicitors were responded to by the local authority's HR department advising of the school's policy, which did not permit representation away from a trade union representative or workplace colleague.

239. Solicitors thereon raised question as to the claimant's disciplinary appeal and grievance being heard at the same time in front of the same independent panel, advancing that they were distinct processes, further requesting their attendance, which was again refused.

240. The disciplinary hearing was duly heard on 13 January 2016, which also considered the claimant's grievance, notes of which are at R1 p980-984.

241. The claimant's appeal was unsuccessful, the panel finding, that:

> "… the "school protocol, procedure or policy" which you did not follow is clearly laid out in the school safeguarding policy which states that "any member of staff, volunteer or visitor to the school who receives a disclosure of abuse, an allegation or suspects that abuse may have occurred **must** report it immediately to the designated safeguarding lead or in their absence, the deputy designated safeguarding lead." The panel find that you had ample opportunity to relay your concerns from September 2014, when you state you were made aware of the alleged incident, prior to the conversation which initiated these hearings and did not take the opportunity to report your suspicions or concerns. You therefore acted in an unprofessional manner and did not follow school protocol procedures or policy when dealing with a parent…
> …
> The panel considered whether in fact the Final Written Warning was disproportionate. It felt that since you remain convinced that you did not in fact make any errors, in spite of strong evidence to the contrary, we cannot be guaranteed that you will not repeat these actions and thus create another avoidable safeguarding incident…"

The appeal decision letter upholding the claimant's written warning is at R1 p985-998.

242. An outcome to the claimant's grievance was furnished by correspondence of 19 January 2016, finding that the grievance was not justified, providing:

> "…
> In considering the information put forward by you I do not see that the context of the written statement by Ms Walker was done in bad faith or created a detriment to you. You have also not outlined what you deemed to be false in the statement. I also do not see your grievance to be in line with the definition or requirements of the grievance and fair treatment policy. Also, your complaint is not indicative of, nor does it suggest that there was an occurrence of harassment, bullying or discrimination by the virtue of Ms Walker's written statement.
> …"

243. The claimant presented her second complaint to the tribunal; claim number 3300049/2016, on 11 January 2016.

Submissions

244. The tribunal received written submissions on behalf of the parties which were further augmented by the parties orally addressing the tribunal thereon. The submissions have been fully considered.

The Law

245. The law relevant to the protection of public interest disclosures can be found at s43A to s43H, s47B, s48 and s.103A of the Employment Rights Act 1996.

246. In order to fall within the statutory definition of a protected disclosure, for the purposes of s43A, there must be a disclosure of information. There is a distinction between "information" and an allegation for the purposes of the Act, see Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38. EAT per Mrs Justice Slade,

> "20. That the Employment Rights Act recognises a distinction between 'information' and an 'allegation' is illustrated by the reference to both of these terms in section 43F. Although that section does not apply directly in the context of this case nonetheless it is included in the section of the Act with which we are concerned. It is instructive that those two terms are treated differently and can therefore be regarded as having been intended to have different meanings……."
>
> ……..
>
> 24. Further, the ordinary meaning of giving 'information' is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating 'information' would be 'The wards have not been cleaned for the past two weeks. Yesterday sharps were left lying around'. Contrasted with that would be a statement that 'You are not complying with health and safety requirements' in our view this would be an allegation not information."
>
> 25. In the employment context, an employee may be dissatisfied, … with the way he is being treated. He or his solicitor may complain to the employer that if they are not going to be treated better they will resign and claim constructive dismissal. Assume that the employer, having received that outline of the employee's position from him or from his solicitor, then dismisses the employee. In our judgment, that dismissal does not follow from any disclosure of information. It follows a statement of the employee's position. In our judgment that situation would not fall within the scope of the Employment Rights Act section 43"
>
> …..
>
> **Disclosure**
>
> 27……The natural meaning of the word disclosure is to reveal something to someone who does not know it already. However section 43L(3) provides that 'disclosure' for the purpose of section 43 has effect so that 'bringing information to a

> person's attention' albeit that he is already aware of it is a disclosure of that information. There would be no need for the extended definition of 'disclosure' if it were intended by the legislator that 'disclosure' should mean no more than 'communication'…"

247. On there being a disclosure, it is necessary for the protection to attach that, the employee holds the reasonable belief in that which is disclosed, which is a subjective requirement, ie what the employee in question believed rather than what anyone else might or might not believe in the same circumstance. This is not, however, a test solely of subjectivity, which had this been the case the requirement would be for the employee to show that they genuinely believed that the disclosure tended to show one of the events set out at s43B(1)(a)-(f). Instead, s.43B(1) requires a "reasonable" belief which introduces an objective element into the relevant test, being some substantial basis for the holding of that belief. It is to be noted that, having a reasonable belief does not mean that it must necessarily be true and accurate, it is only necessary that the disclosure "tends to show" that the relevant failure has occurred, is occurring or is likely to occur. Accordingly, if the employee is wrong but reasonably mistaken in the belief held, this can still amount to a protected disclosure, see Darnton v University of Surrey [2003] ICR 615, as approved by the Court of Appeal in Babula v Waltham Forest College [2007] ICR 1026. The determination of the factual accuracy of the employee's allegation is of relevance in helping to determine whether the belief was reasonably held, showing or tending to show the relevant failure sought to be disclosed.

248. Once a qualifying disclosure has been found for the purposes of section 43B to H, the tribunal, having regard to section 47B, will be concerned to determine whether the acts of which the claimant maintains to be a detriment were done on the grounds that, she had made a protected disclosure. In this respect, the tribunal is aided by authority of Fecitt and Others and Public Concern at Work v NHS Manchester [2012] IRLR 64 CA per Lord Justice Elias, at paragraph 45, that:

> "In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle blower. If Parliament had intended the test for the standard of proof in section 47B to be the same as for unfair dismissal, it could have used precisely the same language but it did not do so."

And per Lord Justice Davis, at paragraph 65

> "… the test to be applied under section 47B was not simply an objective 'but for' test: there was required an enquiry into the reasons why the Employer acted as it did …"

249. With regards to detriment, the tribunal is assisted in its task, in authority from Shamoon v the Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL, per Lord Hope, that:

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

250. Turning to dismissal, by s.103A of the Employment Rights Act 1996, it is an automatic unfair dismissal, where the reason for the dismissal (or principal reason) is that the employee made a protected disclosure, namely, the principal reason operating on the employer's mind at the time of making the decision as to dismissal and more than a subsidiary reason to the principal reason, and where there are multiple protected disclosures, the tribunal's task is to determine whether taken as a whole, the disclosures were the principal reason for the dismissal, see El-Megrisi v Azad University (IR) in Oxford [2009] UKEAT 0448/08/0505.

Conclusions

251. It is here recorded that the respondents have conceded that the claimant was unfairly dismissed pursuant to s.98 of the Employment Rights Act 1996 when her employment was terminated on 30 September 2014, on the premise that her visa had expired and she was then not entitled to continue to be employed as a Special Education Needs teacher without contravention of a duty or restriction imposed by statute.

252. On a consideration of the claimant making Disclosures, the tribunal finds as follows:

252.1 Disclosure 1 - 7 February 2014
The tribunal finds that this correspondence was a statement of circumstance and of action having been taken, which did not disclose information raising an issue of safety. The tribunal finds that this was not a qualifying disclosure.

252.2 Disclosure 2 - 27 June 2014
The tribunal finds that this correspondence was a statement of circumstance and of action being taken which then raised circumstance of the safely of Child A, and was sufficient to amount to a qualifying disclosure.

252.3 Disclosure 3 - 15 September 2014
The tribunal finds that this correspondence provides an account of an incident, asking the head teacher to follow it up. There is no evidence of a disclosure of information here being made. The tribunal finds that this was not a qualifying disclosure.

252.4 Disclosure 4 - 19 September 2014
The tribunal finds that the claimant by this correspondence was advising of matters raised by the mother of Child D, advising that the mother come to school to address her concerns. The claimant is

not thereby raising a concern of health and safety but is making a statement of events and suggested action to address the mother's concern. The claimant does not acknowledge there to be a concern in respect of any children; her references to concern are directed to the implications for the home and for staff in Cosmos, not related to any of the provisions coming within s47B(1) of the ERA 1996.

252.5 Disclosure 5 - 24 September 2014
The tribunal is satisfied that this was a qualifying disclosure; the claimant here identifying that a safety plan having been put in place, it was not then being followed, setting out relevant incidents going to safety.

252.6 Disclosure 6 - 3 October 2014
The tribunal is satisfied that this was a qualifying disclosure on the claimant again setting out that plans having put in place were not being followed, continuing to put Child A at risk of harm from Child B.

252.7 Disclosure 7
On the claimant making the disclosure to the mother of Child C, it has been submitted that pursuant to s.43C(b) read in conjunction with s.43A Employment Rights Act 1996 ("ERA"), that a qualifying disclosure is a protected disclosure if the worker reasonably believes that the relevant failure relates solely or mainly to *"any other matter for which a person other than his employer has legal responsibility"* and the disclosure is made to that person, that the mother of Child C having legal responsibility for Child C's safety and wellbeing, (see s.1 and s.3 of the Children's Act 1989), that what is therefore required is that the mother of Child C had a legal responsibility for her son's health and safety and that the claimant's disclosure related solely or mainly to her son's health and safety amounting to a qualifying disclosure, in that the claimant had the reasonable belief that the mother of Child C had legal responsibility for her son's health and safety.

252.8 By s.43A, for there to be a protected disclosure, there must be a qualifying disclosure which is made by the worker to a person in accordance with s.43C-43H, which by s.43C provides for the disclosure to the employer or other responsible person. It is not here submitted that the disclosure was made to the employer but to a responsible person. In considering who such responsible person is, it is defined by s.43C(b) that, where the worker reasonably believes that the relevant failure relates solely or mainly to:

(1) the conduct of a person other than his employer; or
(2) any other matter for which a person other than his employer has legal responsibility to that other person.

This however is not the case in this instance. The matter of which the claimant complains are the actions of the school in not

complying with the plan, or otherwise the teacher not complying with the plan. In this instance, the person with legal responsibility for those persons is either the employer of the teacher or otherwise the governing body in respect of the school. It is not the parent of the child. In these circumstances, the claimant has not made her disclosure to a responsible person. The tribunal finds that this was not a qualifying disclosure.

252.9 On the claimant submitting in the alternative that, a disclosure was here made with reference s.43G(2)(a) ERA, on the claimant satisfying s.43G(1), by s.43G(2) the tribunal finds that the claimant having made her disclosure to the chair of governors, being a qualifying disclosure, and on that disclosure having been actioned in the setting up of the complex strategy meeting, of which the claimant was aware, and on there being no evidence that action was then being taken against the claimant for having made such a disclosure as at 21 January 2015, there did not then exist any evidence from which the claimant could reasonably have believed that she would be subject to a detriment had she made the disclosure to her employer, having done so.

252.10 The tribunal accordingly, does not find circumstance for which the claimant could make the disclosure pursuant to s.43G and is accordingly not a protected disclosure.

252.11 Disclosure 8, 9 & 10
With regard the disclosure of 26 January 2015, to Ofsted, it is not in dispute that this was a qualifying disclosure pursuant to s.43F, ERA. Equally, on the disclosures to the NSPCC and the Children's Commissioner being in similar terms, these disclosures would equally be protected disclosures, however, on there being no evidence of the respondent being informed of the disclosures to the NSPCC or otherwise the Children's Commission, the tribunal does not pursue those disclosures further.

252.12 Disclosure 11
With regard the claimant's grievance being a disclosure on 30 January 2015, on the grievance being self-serving that a false statement had been made against her, it does not address any issue coming within s.43B(1) so as to amount to a qualifying disclosure.

252.13 Disclosure 12 - 10 February 2015
The claimant's solicitor's letter, of 10 February 2015, in putting forward the claimant's claims that she had made qualifying disclosures, raising child safety failures and being made the target of discriminatory and unfair treatment as retaliation, was not imparting information as to matters coming within s.43B(1) as amounting to a qualifying disclosure as set out by Mrs Justice Slade in Cavendish Munro Professional Risks Management v Geduld

[2010] IRLR 38, were here too, that the solicitor's letter amounted to allegations but not the communication of information.

253. The tribunal accordingly finds that the qualifying disclosures above identified were sufficient to amount to protected disclosures pursuant to s.43C and s.43F of Employment Rights Act 1996.

254. Having found as above, the tribunal now addresses the acts of detriment of which the claimant complains, arising on her having made the protected disclosures, as set out by the additional disclosures document, paragraphs 72-96, dated 23 November at R1 p49-53, and the Particulars of Claim dated 25 November 2015, at R1 p115 and 116, paragraphs 6-21.

255. <u>22 January 2015 Meeting</u>

255.1 It is not in dispute that the meeting took place on 22 January 2015, between Ms Small and the claimant with Ms Sidhu present. It is equally not in dispute that the meeting was heated at which there was raised voices by both Ms Small and the claimant and for which Ms Sidhu raised her arms, albeit not in the manner advanced by the claimant. It is however clear that this meeting occurred as a result of the parents of Child C raising concerns of which Ms Small had not been aware of, in circumstances where she should have been, and in circumstances where when raised with the claimant, the claimant failed to accept the importance of that information being presented to the management for the school to investigate and address appropriately; the actions of the claimant having compromised the school.

255.2 The tribunal does not find the detriment complained of, to have been predicated on the claimant having made a disclosure but on the reaction of the claimant, on enquiries being made of her.

255.3 With regards the directions given to the claimant for the meeting later that day, the tribunal finds that this equally was on the basis of the claimant's reaction to the issues being raised and not because she had made a disclosure.

255.4 On the facts as found, the tribunal does not find that there was aggressive behaviour on the part of Ms Small otherwise than of there being raised voices, which was the position in respect of both the claimant and Ms Small which were the product of the tense meeting therein being had, which although the disclosure to the parent of Child C (albeit not a qualifying disclosure) had been the catalyst for the meeting, what ensued in the meeting was dictated by how the meeting progressed which was not based on the claimant having made the disclosure.

255.5 The claimant has suffered the detriment alleged because she had made a protected disclosure.

256. Threat of disciplinary action

256.1 On the tribunal's finding that the conversation between the claimant and the parent of Child C was not a protected disclosure, the tribunal has nevertheless for completeness considered whether the acts complained of Ms Small, had been predicated on the claimant having made the statement to the parent of Child C.

256.2 The basis upon which Ms Small wrote her correspondence to the claimant on 23 January 2015, was clearly premised on the stance taken by the claimant in the meeting of 21 January, where Ms Small, having asked the claimant not to speak to parents about serious issues regarding any children without any prior conversation with herself or Ms Sidhu, the claimant stated that Ms Small could not direct her to do that, asking for the directive to be put in writing for which Ms Small stated she would. It is on the basis of these discussions that the correspondence was written which was not premised on any discussions having been had by the claimant with the parent of Child C.

257. Recording parent interactions

257.1 The tribunal has found no evidence to substantiate the claimant's allegation in this regard. Instructions were given to all staff holding meetings with parents and not confined to the claimant. The tribunal re-states its finding at paragraph 139-140 above.

258. Telephone calls

258.1 As above stated at paragraphs 143-145, the tribunal does not find that the claimant was singled out in respect of making or receiving telephone calls through the school office. The tribunal has further found no evidence to support the claimant's allegation that her calls were no longer being put through to the ACE zone, there being no instances recorded or presented to the tribunal of calls no longer being put through to ACE zone, the claimant's claim being premised on the implication flowing from the requirement for calls to come through the official school channels.

258.2 On the tribunal satisfied that the instruction given to the claimant was premised on her mobile phone being seen on her desk, the tribunal finds that the instructions were then not predicated on the claimant having made a protected disclosure but on circumstance following instructions having been given to all staff within ACE in the September 2014.

259. Disciplinary investigation

259.1 The instigation of a disciplinary investigation into the claimant's conduct, was premised on the claimant's actions in respect of the parent of Child C, which was not a protected disclosure. Despite

this, it is clear from the facts that action taken was the consequence of misinformation being given to a parent, the circumstance for which was not clear. Action was then being taken against the two members of staff involved, there being no suggestion of the other member of staff having made a protected disclosure where the investigation was sought to get to the bottom of the matter and establish the truths of the incident.

259.2 On these facts, there is no evidence of action being taken against the claimant on the ground that, she had made a protected disclosure.

260. Investigation hearing and decision to go to disciplinary hearing

260.1 It is not in dispute that the claimant by correspondence of 14 April 2015, had been invited to the investigation meeting for 22 April 2015 by recorded letter. It is also not in dispute that the respondents had not sought to make contract with the claimant through her solicitors, as too is it not in dispute that an **email was sent to the claimant on 21 April 2015 seeking clarification as to whether the claimant would be attending the meeting**. In these circumstances, there is no evidence to support the claimant's contention that the respondents deliberately failed to make "*further contact with the claimant for the purpose of enabling the claimant to participate in the investigation*", correspondence having been sent to the claimant in this respect, where there was then no record of the claimant not having received that correspondence, such that it would then have been reasonable for the respondents to believe that the correspondence as sent by recorded delivery, had been received.

260.2 In these circumstances, there was nothing then available to the respondents to otherwise question further action needed to be taken in respect of securing the claimant's attendance so as to warrant their contacting the claimant's solicitors. There is equally no reason at the material time, for the respondent to believe that the claimant would not be attending the meeting as arranged; the failure of the claimant to respond to correspondence is not indicative of a negative.

260.3 On the claimant having failed to attend the investigatory meeting, and on Ms Small determining that the matter proceed to disciplinary hearing whereby the claimant "*would have the opportunity to present her case to an independent panel,"* the tribunal cannot say that a reasonable employer would not have taken such action in the circumstances, which circumstance this tribunal can find no connection to the claimant having made protected disclosures; the decision being taken on circumstance of the claimant's absence for a meeting, of which notice had been given of its purpose to determine whether the matter was to proceed to a disciplinary hearing. The tribunal finds that it was the particular circumstance

then existing that gave rise to the decision to forward the matter to disciplinary hearing.

261. Grievances

261.1 The tribunal has found no evidence of any deliberate act of the respondents not to address the claimant's grievance of 30 January 2015, but to the contrary, it had been the respondents' intention to address the claimant's grievance as is evidenced by Ms Small's management report for disciplinary investigation, evincing the informing the claimant of progress thereon, and for which the claimant had raised further concerns, for which it was then recommended that the claimant's grievance also be heard by the same independent panel hearing the disciplinary issues extant against the claimant. The tribunal finds no substance to the claimant's claim in this respect.

262. Return to work meeting

262.1 At the return to work meeting on 20 July 2015, the claimant was here informed of a factual state of affairs being pursued by the respondent, and of the possible consequence thereof. There is no evidence of the claimant however being placed in a position of being redundant, it having been made clear that that situation had not yet arisen, and of which the claimant would be informed, should that subsequently become the case.

262.2 In these circumstances, the tribunal can find no evidence to support the claimant's allegation of there being plans prepared to make her redundant.

263. Failure to follow return to work plan

263.1 It is not in dispute that the return to work plan was not followed, as was readily observed by Ms Small's evidence to the tribunal, that the return to work plan was considerably altered on it becoming apparent that the claimant had not taken any steps to renew her visa under the Tier 2 point based system, calling into question whether the claimant had status to remain teaching after 30 September 2015.

263.2 On the facts presented to the tribunal, it is there evidence that a principal concern of Ms Small at the material time was the claimant's immigration status and her continued role as a teacher. The tribunal accepts Ms Small's evidence that as a consequence, emphasis was placed on the claimant's role enduring until the expiration of her visa, the management of which did not then promote the claimant's work plan into class contact, which would then have to change, on the advice she had received, that on the expiration of her visa her employment would terminate.

263.3 In giving consideration to the circumstances then unfolding, the tribunal is conscious that there was by this time a degree of antipathy towards the claimant, and has considered to what extent such antipathy was related to the claimant having made protected disclosures. In this respect, the tribunal having given consideration to all the circumstances in this case, find that the antipathy as existing towards the claimant had not been predicated on her having made protected disclosures, but on the difficulty in managing her, which difficulty had been evident significantly before the claimant had made any protected disclosures and before Ms Small became head teacher, which circumstance this tribunal finds had not been enhanced by any disclosures thereafter made, but on the difficulties encountered with the claimant in managing circumstance following the disclosures.

263.4 The tribunal does not find the detriment complained of by the claimant to have been predicated on the ground that the claimant had made protected disclosures.

264. Deliberate failure to take steps to renew visa

264.1 The tribunal finds, as above stated, that there had been existing antipathy between the claimant and Ms Small, which antipathy was not based on grounds that the claimant had made protected disclosures, but on Ms Small's difficulty in managing the claimant as a member of staff; a state of affairs which had existed prior to the claimant having made any protected disclosure.

264.2 It was for difficulties of managing the claimant that Ms Small had not sought to take positive steps to support the claimant's immigration status under the Tier 2 visa point scheme for her to remain teaching in the United Kingdom.

264.3 The tribunal does not find the detriment complained of by the claimant to have been predicated on the ground that she had made protected disclosures

265. Written warning

265.1 It has been presented to the tribunal that, when on 30 September 2015 the claimant was issued with the outcome letter of the disciplinary hearing, issuing a final written warning, this had been done by Ms Small as an act of detriment to cause the claimant distress. On the evidence presented to the tribunal, the claimant was furnished with this correspondence having sought information from the head teacher as to an outcome from the disciplinary hearing, which on a member of the disciplinary panel not then having attended the school to furnish the claimant with the correspondence she (Ms Small) thereon provided a copy to the claimant. The tribunal does not find any malice in the actions of the head teacher otherwise than seeking to apprise the claimant of that

which she had been seeking. However, the tribunal does find that the furnishing of the letter at the particular point in time, was very insensitive. Despite this, there is no evidence on which to find that this action was predicated on any grounds of the claimant having made a protected disclosure.

265.2 With reference the particular detriment claimed, that of being issued a final written warning, save for the act of being issued with the warning, the claimant has been unable to take the tribunal to any material facts to cause issue to be raised that, on the ground that the claimant had made protected disclosures, this had influenced the panel's decision. There is no evidence of the panel members being aware or otherwise involved, with any of the disclosures made by the claimant, save for the allegations the subject of the disciplinary.

265.3 In these circumstances, the tribunal finds no evidence to support the claimant's contention that the issuing of the final written warning was influenced by, or otherwise on grounds of, her having made protected disclosures.

266. The tribunal accordingly finds that the claimant has not suffered any detriment on grounds that she has made a protected disclosure. The claimant's claim for suffering a detriment on grounds of making protected disclosures are dismissed.

267. On the respondents conceding the claimant's claim for unfair dismissal, the tribunal accordingly finds that the claimant was unfairly dismissed when her employment was terminated on 30 September 2015.

268. The issue of remedy will be addressed at a hearing on remedy. It is here recorded that issues going to contributory fault and Polkey reduction are to be determined at the remedy hearing.

_____
Employment Judge Henry

Date: 7/4/2017

Sent to the parties on: .....

.....
For the Tribunal Office