EMPLOYMENT TRIBUNALS

Claimant: **Mr P Abrahams**

Respondent: **Burton & South Derbyshire College**

Heard at: **Nottingham**

On: **9th, 12th, 13th, 14th, 15th, 19th, and 20th, 21st, 22nd and 23rd June 2017**
6th, 7th, 8th, 9th and 13th November 2017
14th, 15th and 20th November 2017 (in Chambers)

Before: **Employment Judge Heap**
Members: **Mr. A Beveridge**
Mr. P Pabla

Representation
Claimant: **In person**
Respondent: **Mr. J Bromige - Counsel**

RESERVED JUDGMENT

1. The Claimant's complaints of detriment contrary to Section 47B Employment Rights Act 1996 fail and are all dismissed.

2. The Claimant's complaint of automatically unfair dismissal contrary to Section 103A Employment Rights Act 1996 fail and is dismissed.

3. The Claimant's complaints of direct discrimination on the protected characteristic of race fail and are all dismissed.

REASONS

BACKGROUND & THE ISSUES

1. This is a claim brought by Mr. Philip Abrahams (hereinafter referred to as "The Claimant") against his now former employer, Burton & South Derbyshire College (hereinafter referred to as "The Respondent" or "The Respondent College") presented by way of a Claim Form received by the Employment Tribunal on 20th April 2016. The claim is one of automatically unfair dismissal contrary to Section 103A Employment Rights Act 1996; detriment contrary to Section 47B of that Act and of direct discrimination relying on the protected

characteristic of race. All claims are resisted by the Respondent.

2. Following submission of the ET3 Response Form, the matter came before Employment Judge Solomons for a Preliminary hearing on 17th June 2016. He Ordered the Claimant to provide further information about the claims that he was bringing.

3. The matter thereafter came before Employment Judge Camp for a Preliminary hearing on 25th August 2016 (see pages 150 – 159 of the hearing bundle). Employment Judge Camp set out at length the basis of the claim being pursued by the Claimant. That included identification of the three protected disclosures on which the Claimant relied for the purposes of his "Whistleblowing" claims (under both Section 47B and Section 103A Employment Rights Act 1996). Those were as follows:

(a) a conversation of 12th December 2014 between himself and a Mr. Ian Vanes-Jones regarding an alleged incident involving a colleague, David Brough (see paragraph 1(iv)(a) of the Order);
(b) a conversation with Angela O'Neill of Human Resources on 29th January 2015 (see paragraph 1(iv)(b) of the Order); and
(c) A statement of experiences document dated 30th January 2015 (see paragraph 1(iv)(c) of the Order).

4. Employment Judge Camp also identified with the Claimant the alleged detriments complained of and in this regard he identified 35 separate allegations of detriment alongside a complaint of automatically unfair dismissal. The majority of the complaints of detriment, some 33 allegations, were also pursued as complaints of direct race discrimination. The Claimant identifies himself as a black African Caribbean male and contends that white members of staff would not have been treated in the manner of which he complains with regard to those direct discrimination claims.

5. As we shall come to, the Claimant's case in relation to those matters has somewhat evolved during the course of the hearing in respect of any comparators upon whom he relies. However, as we understand the position to be in the final analysis, the Claimant relies on a number of actual comparators who are identified further below and/or hypothetical comparators in respect of his direct race discrimination complaints.

6. Having identified those matters and set them out comprehensively, at paragraph 3 of his Order Employment Judge Camp made it clear that if the Claimant was making any further complaints, or if he believed the analysis provided by the Judge was incorrect, then he was to notify the Respondent and the Tribunal in writing by no later than 3rd October 2016. The Claimant was also Ordered to provide additional information as to the basis of the whistleblowing claims and, particularly, the basis on which he asserted that the treatment complained of had been motivated by the fact that he had made what he contended to be protected disclosures.

7. The Claimant replied to those Orders by way of a document setting out his case on 1st October 2016. The Claimant set out some amendments to paragraph 2 of Employment Judge Camp's Order and also sought to raise a further six allegations of detriment/direct discrimination. The Claimant confirmed within that

document that, save as for those matters, all other claims were withdrawn and those matters constituted the only complaints which he wished to advance.

8. Following that and the provision of the additional information referred to in Employment Judge Camp's Order and the Respondent's Amended ET3 Response being submitted, the matter came before Employment Judge Hutchinson for a further Preliminary hearing for the purposes of case management. That hearing had in fact been due to be the first day of the final hearing of this matter, but it had been converted to a Preliminary hearing by Employment Judge Camp with the remainder of the time listed being vacated.

7. There were a number of issues that Employment Judge Hutchinson was tasked with determining at that second Preliminary hearing and these were as follows:

- Whether the Claimant should be permitted to amend his claim to include any complaints not expressly referred to in the Claim Form;
- Whether the Claimant was at all material times a disabled person within the meaning of Section 6 Equality Act 2010;[1] and
- Whether the Claimant's claim or any part of it had no reasonable prospect of success and should be struck out under Rule 37 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 or whether a deposit should be ordered under Rule 39 of those Regulations.

8. Employment Judge Hutchinson dealt with the disability point swiftly on the basis that the Claimant accepted that he was not intending to pursue a complaint of disability discrimination. We therefore say no more about that issue. Employment Judge Hutchinson permitted the Claimant leave to amend his claim with regard to pursuing a complaint of direct race discrimination (in addition to "Whistleblowing" detriment) in respect of the delay in deciding his appeal[2]. The Claimant was, however, refused leave by Employment Judge Hutchinson to introduce a further six complaints of detriment and/or direct race discrimination. The Respondent's applications for a strike out of the claim and/or for a Deposit Order to be made were also refused by Employment Judge Hutchinson.

9. It was against that backdrop that the matter came before this Tribunal to determine the 36 allegations of whistleblowing detriment, the complaint of automatically unfair dismissal and the 35 complaints of direct discrimination on the protected characteristic of race.

10. At the outset of the hearing and so as to assist the parties, but particularly the Claimant given that he appeared as a litigant in person, we set out a list of the issues that the Tribunal would need to determine in relation to this claim. We do not rehearse those matters here as a copy of that agreed List of Issues is appended to this Reserved Judgment.

11. The contents of that List of Issues was discussed with the parties and, indeed, the Claimant made some amendment to the same in respect of additions to the specific part of Section 43B Employment Rights Act 1996 that he contended was engaged in respect of the alleged protected disclosures upon

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[1] The Claimant's further information had intimated a claim for discrimination on the protected characteristic of disability but this was not in fact taken forward by the Claimant.
[2] Allegation 34 as recorded in Employment Judge Camp's Order at page 155 of the hearing bundle.

which he relies.

12. However, we should observe that rather surprisingly towards the end of the hearing the Claimant also asserted and maintained that he was pursuing complaints of harassment and victimisation. This had arisen as a point when the Tribunal had pointed out to him that certain questions he was asking in cross-examination tended to suggest that he was contending that he had been victimised (within the meaning of Section 27 Equality Act 2010).

13. Despite the Claimant's insistence at that time that the claim did and always had encompassed complaints of victimisation and harassment, it was abundantly clear from the Order of Employment Judge Camp that they did not. The Claimant had made no application to amend the claim, whether in connection with Employment Judge Camp's Order or otherwise, to include such complaints and he had made no suggestion at the outset of the hearing when discussing the List of Issues that he believed that the claim encompassed harassment and victimisation complaints. We are entirely satisfied therefore that there were no complaints of harassment and victimisation before us for determination and this was simply a regrettable feature of the shifting sands nature of the Claimant's claim. We have concentrated our findings and conclusions, therefore, on the complaints as set out in the List of Issues which was agreed at the outset of the hearing and which reflected the Orders of Employment Judges Camp and Hutchinson.

THE CLAIMANT'S POSITION

14. The Claimant contends that during the course of his employment with the Respondent he made three protected disclosures in the terms recorded both above and also in the attached List of Issues.

15. He contends that as a result of having raised those protected disclosures, he was subjected to detriment by the Respondent or its employees and that the reason or principle reason for his later dismissal by the Respondent was because he had made those same protected disclosures.

16. Further and/or in the alternative, the Claimant also contends that during his employment he was subjected to direct discrimination on the protected characteristic of race. As we have already identified above, the Claimant is of black African Caribbean ethnicity. He contends that he was treated less favourably than other white members of staff were or would have been treated and that the reason for that difference in treatment is his race.

17. The Claimant advances an overarching case that everyone in the Respondent organisation (or indeed at some points he suggested that this extended to everyone in the world at large) were inherently prejudiced (either consciously or unconsciously) towards him on the grounds of his race and therefore that any adverse treatment received was on account of that racial bias and a negative perception of him because of his identity as a black African Caribbean male.

18. Alternatively, he contends that certain staff at the Respondent College were prejudiced against him as a black African Caribbean male and that they actively sought to subject him to the treatment of which he complains and to

ultimately remove him from employment at the Respondent College because of his race.

THE RESPONDENT'S POSITION

19. The Respondent contends entirely to the contrary.

20. It is not accepted by the Respondent that the Claimant had made protected disclosures but it is said that if he had, he was not subjected to detriment nor was any treatment of which he complains materially influenced by the disclosures upon which he relies.

21. Further, insofar as the matter of his dismissal was concerned, the Respondent's position was that the Claimant had committed acts of gross misconduct which entitled them to terminate his employment and to do so summarily. The Respondent's position is that if the Claimant was found to have made a protected disclosure or disclosures, those had nothing at all to do with his dismissal and certainly were not the reason, or principal reason, for it.

22. Insofar as the Claimant's complaints of race discrimination were concerned, the Respondent's position is that race was not a factor in any of the treatment of which the Claimant ultimately complains.

23. With regard to certain of the detriment and discrimination complaints, the Respondent also contended that the Employment Tribunal had no jurisdiction to entertain them as the Claimant had presented them outside the appropriate statutory time limit provided for by Section 123 Equality Act 2010.

THE HEARING

24. The claim was originally listed for 10 days of hearing time which took place between 9th and 23rd June 2017 (with the exception of 16th June when the Tribunal did not sit). It became clear during the course of that hearing, however, that despite the efforts of the Tribunal to deal with matters of timetabling there would be insufficient time for the claim to be concluded within that original time estimate. The matter was therefore adjourned part heard and listed for a further seven days of hearing time. That was subsequently extended to an eighth day to enable the Tribunal to complete our deliberations.

25. During the course of the hearing, we attempted to assist the Claimant insofar as it was permissible for us to do so in order to ensure that he was placed on as equal footing as possible with the Respondent who was represented by Counsel. That was particularly the case in respect of cross-examination, where on occasion it became necessary for us to formulate the questions to be put to the witnesses on the Claimant's behalf.

26. However, we should express that we had considerable concerns as to the Claimant's preparedness for these proceedings and the hearings before us. For example, it did not appear that he was taking any notes at all in relation to much of the evidence and therefore it was no doubt difficult for him to recall on occasion what witnesses had in fact actually said rather than what he might have wanted or expected them to have said. Equally, it also appeared to us that on occasion the Claimant appeared to be reading documents, parts of documents or

even witness statements for what seemed to be the first time. There were at the very least a significant number of documents that he appeared unfamiliar with, including on occasions the actual reasons given for his dismissal by the Respondent, and to some degree the same appeared to be the case with some of the Respondent's witness statements.

27. At times when we had asked the Claimant to give thought overnight to certain matters – such as identification of which allegations he levelled against the next witness in order that we could ensure that all had been covered in his cross examination – that often did not occur.

28. Whilst taking into account the fact that the Claimant was acting as a litigant in person, as a Tribunal we were concerned about the matter of his preparation or perhaps more accurately lack of it.

29. We did express our concerns in this regard to the Claimant on a number of occasions, but particularly towards the end of the hearing in June 2017 when we remarked to him that he must ensure that when the matter returned before the Tribunal in November of that year, he was completely familiar with the documents and witness statements, had adequately prepared his questions in cross-examination and that he had conducted a little research where appropriate in relation to the basis upon which his case was brought.

30. Regrettably, when the matter returned before the Tribunal in November 2017, the Claimant did not appear to have made that necessary effort by way of additional preparation. This had the result that much of the Claimant's cross examination and approach to matters generally amounted to very little other than a fishing expedition rather than identification of any points which were in fact rooted in evidence.

31. We should observe also that the Claimant's case has been built on somewhat shifting sands. For example, during the course of the hearing he had identified certain allegations as relating only to members of staff by the name of Kane Bramhall and Ian Vanes-Jones. However, that was later expanded in relation to allegation 26 for example to include Angela O'Neill and it was clear that he sought to apportion responsibility for acts to people who were clearly not and could not possibly be responsible for them.

32. A further example of that related to an allegation made by the Claimant that a letter had been falsified (allegation 29 in Employment Judge Camp's Order), a matter which he ascribed blame initially to Angela O'Neill as the author of the letter in question. However, later he had sought to extend that also to Earl Laird, despite the fact that it was abundantly clear that Mr. Laird had had nothing at all to do with preparation of the letter.

33. One particular example of a lack of preparation related to a point raised by the Claimant very late in the course of cross examination of the Respondent's final witness, Mr. Beaty. During that cross examination, the Claimant discovered within the hearing bundle a letter relating to a Freedom of Information request that he himself had made of the Respondent. The Claimant raised at that stage that the documents which had been sent to him in reply to that request were not included within the hearing bundle. That had never previously been mentioned at all and the Claimant had had the hearing bundle by that stage for a good many

months. He also told us that he had copies of the documents themselves yet had not asked them to be included as part of the disclosure process and simply maintained, when he remembered about them, that the Respondent should have done that.

34. He had clearly given no thought to the issue, nor was he able to tell us if the documents that he was complaining about being omitted actually said anything of relevance. The best that he could say was that they might potentially do so if we were to read them. The Claimant then attended the following day without those documents, despite having told us that he had them at home and that he could bring them with him. Again, this left us with the impression that the Claimant was ill prepared for the hearing before us despite our entreaties to him to ensure that he was familiar with the hearing bundle and witness statements at the conclusion of the part heard June 2017 hearing.

35. The shifting nature of the claim and the lack of preparedness of the Claimant's case and, on occasion, lack of thought given to the allegations he was actually making were also underpinned by his continued assertion that two teaching assistants (Smyth and Moss) should have been interviewed by the Respondent as they would have provided evidence which would have exonerated him in respect of one of the allegations that led to his dismissal. This was despite the fact that the Claimant then admitted, having put that point to the Respondent's witnesses, that he had no idea whether they had in fact actually been present at the material time or not.

36. A tendency to present matters as fact when they were in fact anything but was something of a continuing feature in both the Claimant's evidence and cross-examination of the Respondent's witnesses. The Claimant persisted in that behaviour despite being warned about it by the Tribunal on a number of occasions.

37. A further issue in relation to preparedness manifested itself in that many of the allegations made by the Claimant were not actually dealt with in his witness statement at all, or those which were said to be included did not correlate to the actual allegations made –for example allegations 2, 3, 4 7, 10, 19 and 32 as referred to in the Orders of Employment Judge Camp did not appear to be covered at all by the Claimant's evidence in chief.

38. Our overall impression was one that we were not entirely convinced that the Claimant actually understood his case or the allegations which he had made in these proceedings.

WITNESSES

39. During the course of hearing, we heard evidence from the Claimant on his own behalf. The Claimant was in fact also recalled to give further evidence as a result of matters which had come to light since he had initially given his evidence. Those matters related to the question of jurisdiction and whether evidence that the Claimant had given that he did not know anything about Employment Tribunal time limits was in fact correct.

40. That situation arose in view of the fact that the Respondent had become aware after the Claimant had given his evidence that he had in fact been involved

in earlier Employment Tribunal proceedings claiming race discrimination where certain of his complaints had been struck out for having been presented outside the appropriate statutory time limits. The Claimant objected to being recalled to give evidence on the basis that it would cause further delay. However, for the reasons that we gave orally to the parties at the time we required him to give further evidence to deal with what was clearly a relevant point relating to jurisdiction. Neither party has requested that those reasons be included within this judgment and therefore that decision, and all other interlocutory matters dealt with during the course of the hearing, are not recorded further here.

41. In addition to hearing evidence from the Claimant, we also heard from a number of individuals on behalf of the Respondent. Those individuals were as follows:

- David Brough – a former course leader who had also been employed by the Respondent and who had been assigned to mentor the Claimant at the outset of his employment;
- Mick Rowbottom – a Work Based Assessor within the Carpentry and Joinery Department, of which the Claimant was a part prior to his dismissal;
- Ian Vanes-Jones – the Claimant's former line manager and Deputy Head of the Construction & Built Environment Department;
- Angela O'Neill – Head of Human Resources in the Respondent College;
- Earl Laird – a former employee of the Respondent and the investigating officer in relation to allegations which led to the Claimant's dismissal;
- David McMillan – Vice Principal of Curriculum and Performance and the dismissing officer;
- Everton Burke – a Governor of the Respondent College who dealt with the Claimant's appeal against dismissal;
- John Beaty – Vice Principal of Corporate Relationships at the Respondent College who investigated allegations of whistleblowing detriment and race discrimination raised by the Claimant during the course of the appeal against his dismissal.

42. We make our observations in relation to matters of credibility in respect of each of the witnesses from whom we have heard below.

43. In addition to the witness evidence that we have heard, we have also paid careful reference to the documentation to which we have been taken during the course of the proceedings and also to the oral submissions made by the Claimant and the oral and written submissions made by Mr. Bromige on behalf of the Respondent.

CREDIBILITY

44. One issue that has invariably informed our findings of fact in respect of the complaints before us is the matter of credibility. Therefore, we say a word about that matter now.

45. We begin with our assessment of the Claimant. Ultimately, we found him to be an unsatisfactory witness. In many areas of his evidence we found him to be evasive and devoid of a reasonable explanation for many issues put to him in cross-examination by Mr Bromige. The problematic nature of the Claimant's

evidence manifested itself in a number of ways. For example, he failed to answer a number of questions in cross-examination by Mr. Bromige without having to be asked several times and this gave us the overall impression that the Claimant's evidence was somewhat evasive when faced with difficult questions.

46. Equally, the Claimant often simply went off at a tangent of wanting to answer the question that he might have preferred to have been asked despite us having made it clear to the Claimant at the outset of his evidence that that was precisely not what was expected of him.

47. We also found the Claimant's evidence on some issues to be untruthful. That manifested itself in evidence given both at the hearing before us and also during the course of earlier internal proceedings with the Respondent where, as we shall come to, he was prepared to tell them what clearly he must have known were untruths.

48. In relation to the latter point, for example, the Claimant had been adamant at certain meetings with the Respondent that CCTV evidence would exonerate him from an allegation that he had worked on his own kitchen doors during work time, albeit he now says for a relatively brief period. However, it was later conceded by the Claimant that he had in fact worked on those kitchen doors during working time and the basis of the allegation against him therefore was in fact correct. Despite that, the Claimant had maintained that CCTV evidence would exonerate him when he must have known that that could not possibly be accurate.

49. In addition, and more importantly than that, the evidence that the Claimant initially gave to us that he had no knowledge of Employment Tribunal time limits cannot possibly have been accurate given that an earlier race discrimination complaint brought by the Claimant before the Nottingham Employment Tribunal was dismissed on jurisdictional grounds[3]. We found it inconceivable that the Claimant would not have been aware of time limits given the dismissal of race discrimination claims brought against an earlier employer on jurisdictional grounds. He had made no mention of any earlier proceedings in his evidence and had been most reluctant to be recalled to deal with the point. We simply found his evidence of his lack of knowledge of time limits did not stand up to scrutiny given his earlier claim and the dismissal on jurisdictional grounds of complaints of race discrimination. At best we considered his evidence to us on that point to have been most unreliable and at worst – and in all likelihood - entirely untrue.

50. We also found the Claimant's evidence and presentation of his case to be prone to exaggeration. For example, an allegation that Ian Vanes-Jones had pointed to the Claimant and also to a mixed race student (referred to in this Judgment simply as "EV" given that he is a minor) during a toolbox talk. The inference made by the Claimant in that regard is that Mr. Vanes-Jones had singled out the only two ethnic minority persons in the room during that presentation.

51. The Claimant had only raised the "pointing allegation" during the course of his submissions. It was not covered in his witness statement nor was it put at all

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[3] As referred to at paragraph 2 of a Judgment of Employment Judge Britton and members following a hearing in May 2012.

to Mr Vanes-Jones in cross-examination. We had viewed the recording which the Claimant had, it seems, covertly taken in respect of that particular presentation before Mr. Vanes-Jones gave his evidence. The Claimant had not raised those matters at the time that we viewed the CCTV evidence and we as a Tribunal had no recollection of seeing the pointing that the Claimant referred to in submissions either.

52. After the Tribunal broke to deliberate, the Claimant sent into the Tribunal a file which he contended demonstrated the position that he and EV had been singled out by Ian Vanes-Jones in the manner described above. The Tribunal staff notified the Claimant that the recording that he had sent could not be opened and asked for it to be sent in a different format. Nothing further was heard from the Claimant in that regard.

53. We should also observe that the Claimant displayed on a number of occasions at the hearing before us many of the same traits for which he was criticised by the Respondent. This included interrupting; talking over people, including the Employment Judge; raising his voice and having to be asked on a number of occasions to calm down whilst cross-examining witnesses and of entering into argument with Mr. Bromige, and on occasion the Tribunal.

54. This included one notable exchange as to whether a “paedo” and a “paedophile” were one the same thing. Despite the fact that they clearly mean precisely the same thing and one is simply a shortened version of the other, the Claimant was at pains to insist and argue that they were not and to fixate himself with a semantic debate on the subject. Such instances of behaviour, as we shall come to further below, resonate with criticisms of the Claimant which were made by the Respondent and others during the course of his employment with them.

55. This exhibition of the same traits for which he was criticised by the Respondent in our view gave credence to the accounts before us as to the Claimant’s behaviour during the period of his employment and, further, damaged in our view the credibility of the Claimant’s continued denials that he had or would act in such a manner.

56. Therefore, for the reasons that we have set out above we considered the Claimant not to be a witness of truth, prone to exaggeration and with a tendency to be evasive when faced with difficult questions in cross examination. Invariably that led us to have serious doubts about accepting the evidence of the Claimant, particularly where it was at odds with the evidence of other witnesses or the documentation which we had before us.

57. Invariably, therefore, unless we have expressly said otherwise we have preferred the evidence of the Respondent’s witnesses whom we found on the whole to be much more candid, open to the possibility of an alternative view point and accepting that in some cases things could have been done better. That acceptance was in stark contrast to the Claimant who steadfastly refused to accept that there might be another view point or explanation, even where that was recorded in a document and therefore entirely obvious for all to see.

58. Whilst we have therefore assessed the evidence of each of the Respondent’s witnesses for ourselves and entirely separate from our views as to

the credibility of the Claimant's evidence, we have generally preferred the evidence of the Respondent on a number of points. Where we have not, we have set that out within this Judgment.

59. We turn then to consideration of the Respondent's witnesses. We found Mr. Brough to be a credible witness. His cross-examination was very lengthy and it was clear that he often became upset during the course of the same, particularly as a result of the questions being repeated to him on a number of occasions when he had given answers that were not to the Claimant's liking - albeit that they were entirely consistent with what had been said previously and what was contained in the documents and witness statements.

60. Mr. Brough clearly reached a point where he did not wish to answer repeated questions but that was not an unreasonable stance for him to have taken in the circumstances and, particularly, given the difficult relations that it is clear that he had with the Claimant during the latter stages of their employment together. However, we found him to be a straightforward and credible witness and we had no reason to doubt the account which he gave to us.

61. Turning then to Ian Vanes-Jones, we were satisfied that the evidence that Mr Vanes-Jones gave to us was essentially honest and reliable and we accepted him to be a credible witness. However, it was clear to us, as we shall come to further below, that it might be fair to say that his own judgement could be brought into question. For example, one element of questionable judgment was how Mr. Vanes-Jones conducted himself in language used at a toolbox talk to impressionable students. We shall come to that matter further below. However, despite somewhat questionable judgment in that regard, we accept that the evidence that he gave to us was that which he provided to the best of his knowledge, recollection and belief and we had no reason to doubt the truthfulness of his account.

62. We considered Mick Rowbottom to be an essentially honest witness, but perhaps something of a poor historian. He had a lack of recollection in relation to a number of the questions asked of him but we should observe in this regard that the matters that he was being asked about occurred rather a long time ago and it is not unusual in this respect that recollections will have faded. However, we did not doubt that where Mr. Rowbottom was able to assist us with matters within his knowledge, that he sought to do so to the best of his recollection and belief.

63. We also considered Angela O'Neill to be essentially honest and credible in the account that she gave to us. Her evidence was largely consistent and she sought to provide relatively detailed explanations to assist the Tribunal in our understanding, despite often having lengthy and confusing cross-examination questions put to her.

64. We equally considered Earl Laird to be an essentially honest witness although one who again clearly had difficulty in relation to recollection due to the passage of time. We have therefore scrutinised the evidence that we have heard from Mr. Laird against contemporaneous documents and the evidence of other witnesses in the case.

65. We considered Mr. McMillan to be an entirely straightforward and reasonable witness. We had no reason to doubt the evidence that he had

provided to us.

66. In respect of Mr. Everton Burke, we considered him again to be an essentially honest witness but a poor historian who seemed somewhat unprepared for the hearing. For example, he did not recall that he had commissioned Mr. Beaty to undertake an investigation during the course of the Claimant's appeal when clearly that had been referred to in his own appeal outcome letter. In fairness to him, the events were some time ago and his evidence that he had moved swiftly on from one matter to the next belied, it seems to us, his lack of recollection of a number of issues within his evidence. He had not paid any real scrutiny it seems to his witness statement – which itself was in surprisingly brief terms given his involvement as appeal officer and did not mention the Beaty investigation at all either - or preparation for the hearing before us but we have little doubt that that simply is as a result of him having moved on with matters since the point of his dealing with the appeal and this not being a matter that has since played on his mind in the way that it has potentially for some other witnesses, including for example Mr Brough. We therefore considered him to be an essentially honest witness but a poor historian and therefore again we have scrutinised the contemporaneous documents before us when considering the relevant allegations which relate to Mr. Burke.

67. Finally, we deal with Mr. Beaty. We considered him to be an impressive witness who was clear in his answers and entirely consistent with both his witness statement and the contemporaneous documents. We have no doubt whatsoever that the evidence that he was providing to us was accurate insofar as his recollection was concerned and, further, that it was an honest account.

THE LAW

68. Before turning to our findings of fact, we remind ourselves of the law which we are required to apply to those facts as we have found them to be.

Complaints pursuant to Section 47B and Section 103A Employment Rights Act 1996 – Protected Disclosures

69. In any claim based upon "whistleblowing" (whether for detriment or dismissal) a Claimant is required to show that firstly they have made a "protected disclosure".

70. That in turn brings us to the definition of a protected disclosure, which is contained in Section 43A Employment Rights Act 1996 and which provides as follows:

> ***"In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H*** (with which we are not concerned in the context of this complaint)."

71. Section 43B provides as follows:

> ***"In this part, a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following:***

> ***a) that a criminal offence has been committed, is being committed or is likely to be committed;***
>
> ***b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;***
>
> ***c) that a miscarriage of justice has occurred, is occurring or is likely to occur;***
>
> ***d) that the health and safety of any individual has been, is being or is likely to be endangered;***
>
> ***e) that the environment has been, is being or is likely to be damaged; or***
>
> ***f) that information tending to show any matter falling within one of the preceding paragraphs has been, or is likely to be deliberately concealed.***
>
> ***For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is of the United Kingdom or of any other country or territory.***
>
> ***A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.***
>
> ***A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice."***

72. An essential requirement of a disclosure which qualifies for protection under Sections 47B and 103A (in respect of which the relevant provisions are set out below) is that there is a disclosure of information. A disclosure is more than merely a communication, and information is more than simply making an allegation or a statement of position. The worker making the disclosure must actually convey facts, even if those facts are already known to the recipient (See **Cavendish Munro Professional Risks Management Ltd v Geluld [2010] IRLR 38 (EAT)**) rather than merely an allegation or, indeed, an expression of their own opinion or state of mind (See **Goode v Marks & Spencer Plc UKEAT/0442/09**).

73. A disclosure need not be embodied in one communication and it is possible, depending upon the content and nature of those communications, for more than one communication to cumulatively amount to a qualifying disclosure, even though each individual communication is not such a disclosure on its own (**Norbrook Laboratories (GB) Ltd v Shaw UKEAT/0150/13**.)

74. It is not necessary for a worker to prove that the facts or allegations disclosed are true. Provided that the worker subjectively believes that the relevant failure has occurred or is likely to occur and their belief is objectively reasonable, it matters not if that belief subsequently turns out to be incorrect (See **Babula v Waltham Forest College [2007] IRLR 346 (CA)**.

75. A worker must establish that in making their disclosure they had a reasonable belief that the disclosure showed or tended to show that one or more of the relevant failures had occurred, was occurring or was likely to occur. That reasonable belief relates to the belief of the individual making the disclosure in the accuracy of the information about which he is making it. The question is not one of the reasonable employee/worker and what they would have believed, but of the reasonableness of what the worker himself believed.

76. However, there needs to be more than mere suspicion or unsubstantiated rumours and there needs to be something tangible to which a worker/employee can point to show that their belief was reasonable.

77. The questions for a Tribunal in considering the question of whether a Protected Disclosure has been made are therefore firstly, whether the Claimant disclosed "information"; secondly, if so, did he believe that that information tended to show one of the relevant failings contained in Section 43B Employment Rights Act 1996 and thirdly, if so was that belief reasonable.

Complaints of detriment under Section 47B Employment Rights Act 1996

78. If a worker can demonstrate that they have made a protected disclosure, then in order to succeed in a complaint under Section 47B Employment Rights Act 1996, they must also demonstrate that they have suffered "detriment". In this regard, Section 47B(1) Employment Rights Act 1996 provides as follows:

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

79. A worker must therefore prove that they have made a protected disclosure and, further, that there has been detrimental treatment. The term "detriment" is not defined within the Employment Rights Act 1996 but guidance can be taken from discrimination authorities and, particularly, from **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285.** In this regard, for action or inaction to be considered a detriment, a Tribunal must consider if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. However, an "unjustified sense of grievance" is not enough to amount to a detriment.

80. If the worker satisfies the Tribunal that he has both made a protected disclosure and suffered detriment, the employer then has the burden of proving the reason for the treatment pursuant to the provisions of Section 48(2) Employment Rights Act 1996. If the employer fails to prove an admissible reason for the treatment, a Tribunal must conclude that it is because of the protected disclosure.

81. In a case of a detriment, a Tribunal must be satisfied that the detriment was *"on the ground that the worker has made a protected disclosure"* and there must be found to be a causative link between the protected disclosure and the reason for the treatment. The test to be considered if whether "*the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment*" of the Claimant (see **NHS Manchester v Fecitt & Others [2012] IRLR 64**). It follows that unless the individual who is said to subject the worker to detriment (or, in the case of a claim of automatically unfair dismissal, the person who takes the decision to dismiss) knows that the employee/worker has made a protected disclosure, their decision cannot be said to have been materially influenced by it (see also **Anastasiou v Western Union Payment Services UK EAT/0135/13/LA**).

82. There will be occasions where acts taken by an employer are based upon information which is given by another party with improper motive. However, in order for the actions of the employer to of themselves amount to an unlawful act, the individual employee who did the act complained of must him or herself have been improperly motivated in their own decisions or actions. Another person's motivation, taint, misleading or influence upon an unwitting or "innocent" decision maker discriminator does not render the act in question unlawful (see **Royal Mail Ltd v Jhuti [2017] EWCA Civ 1632**).

Automatically unfair dismissal – Section 103A Employment Rights Act 1996

83. Section 103A ERA 1996 provides that one category of "automatically unfair" dismissal is where the reason or principle reason for the dismissal is that the employee has made a protected disclosure. Section 103A provides as follows:

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

84. A Tribunal therefore needs to be satisfied that a Claimant bringing a successful claim under Section 103A ERA 1996 has firstly been dismissed and, secondly, that the reason or principle reason for that dismissal is the fact that he or she has made a protected disclosure.

85. The burden of proving the 'whistleblowing' reason for dismissal under s.103A Employment Rights Act 1996 lies on the employee who has insufficient continuous service to bring a claim of ordinary unfair dismissal (see **Ross v Eddie Stobart UKEAT/0068/13/RN**).

Discrimination on the protected characteristic of race

86. The Claimant's discrimination complaints all fall to be determined under the Equality Act 2010 ("EqA 2010) and, particularly, with reference to Sections 13 and 39.

87. Section 39 EqA 2010 provides for protection from discrimination in the work arena and provides as follows:

(1) An employer (A) must not discriminate against a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;

(b)as to the terms on which A offers B employment;

(c)by not offering B employment.

(2)An employer (A) must not discriminate against an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

(3)An employer (A) must not victimise a person (B)—

(a)in the arrangements A makes for deciding to whom to offer employment;

(b)as to the terms on which A offers B employment;

(c)by not offering B employment.

(4)An employer (A) must not victimise an employee of A's (B)—

(a)as to B's terms of employment;

(b)in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c)by dismissing B;

(d)by subjecting B to any other detriment.

(5)A duty to make reasonable adjustments applies to an employer.

(6)Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—

(a)unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or

(b)if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.

(7)In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—

(a)by the expiry of a period (including a period expiring by reference to an event or circumstance);

(b)by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.

(8)Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

88. Section 13 EqA 2010 provides that:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".

89. It is for a Claimant in a complaint of direct discrimination to prove the facts from which the Employment Tribunal could conclude, in the absence of an adequate non-discriminatory explanation from the employer, that the employer committed an unlawful act of discrimination (see **Wong v Igen Ltd [2005] ICR 931**).

90. If the Claimant proves such facts, the burden of proof will shift to the employer to show that there is a non-discriminatory explanation for the treatment complained of. If such facts are not proven, the burden of proof will not shift.

91. In deciding whether an employer has treated a person less favourably, a comparison will in the vast majority of cases be made with how they have treated or would treat other persons without the same protected characteristic in the same or similar circumstances. Such a comparator may be an actual comparator whose circumstances must not be materially different from that of the Claimant (with the exception of the protected characteristic relied upon) or a hypothetical comparator.

92. Guidance as to the shifting burden of proof can be taken from that provided by Mummery LJ in **Madarassy v Nomura International Plc [2007] IRLR 246**:

"'Could conclude' ….. must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of …… discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage …. the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like….. and available evidence of the reasons for the differential treatment.

The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."

93. The protected characteristic need only be a cause of the less favourable treatment but need not be the only or even the main cause. A Tribunal when considering the cause of any less favourable treatment will be required to consider

that question having regard not only to cases where the grounds of the treatment are inherently obvious but also those where there is a discriminatory motivation (whether conscious or unconscious) at play (see **Amnesty International v Ahmed [2009] ICR 1450**.)

94. Reliance upon tainted information by an innocent employee who is relying upon or was influenced by information or views expressed by others whose motivation was discriminatory will not itself render the act of that innocent employee one of unlawful discrimination (see **CLFIS (UK) Ltd v Reynolds [2015] IRLR 562**). However, where the alleged discriminatory decision is made jointly, the conscious and subconscious motivation of all those responsible must be considered and a discriminatory motivation on the part of any of them could be sufficient to taint the decision (see **Commissioner of Police of the Metropolis *v* Denby [2017] UKEAT 0314/16/2410**.)

The ECHR Code

95. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) ("The Code") to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

FINDINGS OF FACT

96. We ask the parties to note that we have only made findings of fact where those are required for the proper determination of the issues in this claim. We have inevitably therefore not made findings on each and every area where the parties are in dispute with each other where that is not necessary for the proper determination of the complaints before us. The relevant findings of fact that we have therefore made against that background are set out below. References to pages in the hearing bundle are to those in the bundles before us and which were before the witnesses. We make that reference given that during the course of the hearing it transpired that not all of the bundles being used were in fact identical.

The Respondent College

97. The Respondent is a Further Education College. It is based over two sites, one of which is in Burton-upon-Trent in Staffordshire and the other in Swadlincote in Derbyshire. As with most Further Education Colleges, the Respondent has a number of different departments within the overall College unit so as to provide a wide range of subjects from which students are able to choose.

98. One of those departments is the Construction and Built Environment Department of which a part is the Carpentry and Joinery division. The Head of the Department at the time with which we are concerned was one Kane Bramhall. Mr. Bramhall was assisted by Mr. Ian Vanes-Jones as Deputy Head of Department.

Application for and offer of employment for the Course Leader position

99. As we have observed above, Carpentry and Joinery sits within the Construction and Built Environment Department ("The Department"). In or around September 2014 the Claimant applied for a vacancy at the Respondent

College as a Course Leader/Lecturer within Carpentry and Joinery. That vacancy had been created by the departure of the previous incumbent of the position, Ady Clucus.

100. We understand the Claimant to have had some academic experience previously but that prior to that he had spent a significant amount of time, some 30 years or more, working in industry in the carpentry and joinery field.

101. The Claimant was invited to attend an interview on 3rd October 2014 with Mr. Bramhall and Mr. Vanes-Jones for the position (see page 255(a) of the hearing bundle). He duly attended that interview and thereafter was asked to attend the Respondent College again to undertake a short presentation to learners on 14th October 2014 (see page 255(d) of the hearing bundle). We understand that to have been, in essence, a "micro-teach" to a group of approximately 26 students, the purpose of which was to assist the Respondent in gauging if the Claimant would be suitable for employment as a Course Leader/Lecturer. In addition to Mr Vanes-Jones and Mr. Bramhall, that presentation was also observed by another Course Leader/Lecturer in Carpentry and Joinery by the name of David Brough.

102. Both the interview and the presentation went well, although we accept that the evidence of Mr. Vanes-Jones and Mr. Brough that they both noted that the Claimant had struggled with some technical points or questions during the process. However, the decision of Mr. Bramhall and Mr. Vanes-Jones was to offer the Claimant the position that he had applied for.

103. As we have touched upon above, the Claimant contends that Mr. Bramhall, Mr. Vanes-Jones, Mr. Brough and others within the Respondent College were inherently prejudiced against him because of his race. We have to say that if that was the case, it was perhaps curious that Mr. Bramhall and Mr. Vanes-Jones decided to offer the Claimant the position in the first place. Similarly, there is nothing to suggest that Mr. Brough made any negative comment as to the Claimant with regard to his micro-teach presentation which we might have assumed that he would have otherwise done if, as the Claimant suggests, he was inherently prejudiced against him and did not want a black member of staff to work alongside him in the Department. In essence, the Claimant contends that Mr. Bramhall, Mr. Vanes-Jones and Mr. Brough actively sought to engineer his dismissal by the Respondent College because they were prejudiced against him on account of his race but that simply does not fit with the fact that Mr. Bramhall and Mr. Vanes-Jones offered him the position in the first place and Mr. Brough had also not sought to dissuade them at all from that course.

104. We did not accept the Claimant's contention that the Respondent was desperate to fill the Course Leader/Lecturer post such that, in effect, that desperation trumped the deep-seated prejudice that the Claimant contends that Mr. Bramhall and Mr. Vanes-Jones had on account of his race and that, therefore, there was no real option but to offer him the role despite that. There is, quite simply, nothing at all to support that contention other than it was something of the Claimant's own invention to seek to square that particular circle.

105. The Claimant was accordingly offered employment by the Respondent in the Course Leader/Lecturer position in Carpentry and Joinery based at the

Burton-upon-Trent site. He was offered the position at a salary of £25,856.00 per annum and with a proposed date of commencement of employment of 10th November 2014 (see page 255(e) of the hearing bundle).

106. The Claimant duly accepted the offer of employment made by the Respondent and was provided with a contract of employment setting out the main terms and conditions of his employment (see pages 256 – 257 of the hearing bundle). The Claimant's employment began with effect from 10th November 2014 and he was remunerated on a salary scale of £25,856.00 per annum in accordance with the offer originally made. The Claimant's contract of employment made reference to the Respondent's grievance procedure, disciplinary procedure, health and safety policy and public interest disclosure procedure, amongst other things. We accept the evidence of the Respondent that those policies and procedures were accessible to the Claimant and others within the Respondent's own Intranet.

107. The Claimant was subject at clause 24 of the contract of employment to a probationary period of 12 months to assess, in the usual way, his suitability for continued employment in the position to which he had been appointed.

108. Again, in the usual way, the contract of employment also set out the relevant termination provisions in relation to the Claimant's employment and, particularly, it set out that employment could be terminated without notice in the event of an act of gross misconduct, gross negligence or gross incompetence (see page 264 of the hearing bundle).

109. It was agreed that as a new starter the Claimant would, in the first instance, be mentored by Mr. Brough who was at that time a long-standing member of staff in the Carpentry and Joinery Department. Mr. Brough was not appointed as the Claimant's line manager as he too was employed as a Course Leader/Lecturer and thus on the same level as the Claimant. Line management responsibility fell to Ian Vanes-Jones as the Deputy Head of Construction and the Built Environment. Mr. Vanes-Jones in turn reported to the Head of Department, Kane Bramhall. The purpose of Mr. Brough mentoring the Claimant was, we accept, was to ease his transition into the Respondent College and allow him to gradually build up responsibility as he gained knowledge and experience of practices within the organisation.

110. Mr. Bramhall informed the members of staff within the Department of the appointment of the Claimant as the replacement for Ady Clucas at a Whole Construction Skills meeting on 10th November 2014 (see page 268 of the hearing bundle). The Claimant was not present at that meeting.

Notice to improve

111. The day after the Claimant commenced employment with the Respondent, he along with others in the Construction & Joinery team, were sent a notice to improve by email by Kane Bramhall in his capacity as Head of Department (see page 271 of the hearing bundle). The notice to improve said this:

> "*The current state of the Carpentry and Joinery/Wood Machining workshop is unacceptable please ensure this is in a fit safe condition for an inspection next Tuesday, by myself and Andy,*

> *Kettle and tea making equipment to be removed from workshop.*
> *Fire door wedge open please stop this from happening* (sic).
> *General tidiness is poor please ensure at the end of the day the workshop is clean and tidy allow time to do this.*
> *Student clothing being kept in the fire escape route needs removing (coat pegs need removing).*
> *All machines need switching off when not in use.*
> *Guards to be in place at all times.*
> *Jigs/patterns need storing correctly.*
> *Store learners work correctly.*
> *Bay areas need tidying into an orderly manner.*
> *Consumption of food and drink must cease only bottled water within the classroom and workshop.*
> *Tools and materials left out need replacing at the end of the day.*
> *Housekeeping throughout the day.*
> *PPE to be worn and stored correctly.*
> *Storage shelving to be tidy.*
> *No storing height.*"

112. There is no suggestion that any of those matters related to the actions of the Claimant given that he had commenced employment only one day previously but they were simply matters that it appears that Mr. Bramhall had observed in the Department and that he required members of the team to rectify.

113. As a result of the inspection referred to within that notice to improve, some adjustment was made to equipment used by the team and Mr. Vanes-Jones also arranged for the Claimant and another member of staff, Karl Beeby, to receive training to operate the machines safely (see page 271 of the hearing bundle).

114. Mr. Brough, who had also received the notice to improve, replied to the email from Mr. Bramhall highlighting a number of issues of concern with regard to the removal of equipment and also a lack of Personal Protective Equipment ("PPE") within the workshop. Mr. Bramhall undertook to chase that matter up (see page 272 of the hearing bundle).

115. The sending of the notice to improve and the action taken following the inspection is demonstrative of the fact that the Respondent was in fact already taking steps to drive forward health and safety issues and there is accordingly absolutely nothing in the Claimant's contention that health and safety concerns were not taken seriously by the Respondent.

<u>Attendance issues</u>

116. In addition to the matters raised above which were of concern to Mr. Bramhall as highlighted in the notice to improve, the Carpentry and Joinery course also suffered historical problems with regards to absence of certain students and of attendance levels generally. That was monitored by Mr. Brough and the other relevant course leaders and tutors within the team and action taken where appropriate to deal with attendance levels. That included referring certain students to the Student and Learning Mentor, Paul Dace, letters being sent home to parents and the development of action plans to monitor and tackle attendance levels. One student with attendance issues was an individual who we shall refer

to as "EV" (see page 273d of the hearing bundle). EV had been placed upon an action plan in respect of his attendance within the first weeks of the Claimant's employment (see page 274a of the hearing bundle).

The incident of 11th December 2014

117. On 11th December 2014, there was an incident in the workshop involving Mr. Brough which was witnessed by the Claimant. Mr. Brough was taking a lesson with students on this date and it appears to be common ground that he became angry that students were not clearing away materials as they had been instructed to do and that he lost his temper as a result. This manifested itself in Mr. Brough shouting at students and that he had thrown some off cuts of wood or similar that the students had not been clearing away, into the middle of the room. Mr. Brough also accepted in evidence before us that it was possible that he had sworn during the course of this incident.

118. However, we are satisfied that the Claimant has grossly exaggerated the events of this incident and the severity of it during the course of these proceedings and in his evidence before us. Indeed, his account of the events in question has been a somewhat evolving one, increasing in severity, as time went on.

119. By the time that the matter reached the Tribunal the Claimant's account was that Mr. Brough's actions had been such as to amount to a danger to students, a risk to health and safety and that he was in a fit of "uncontrollable rage". We are entirely satisfied from Mr. Brough's evidence and the documentation before us that that is a gross exaggeration by the Claimant of the incident in question. We accept that, effectively, Mr. Brough lost his temper with unruly students and nothing more. Particularly, we have taken the following matters into account in reaching that conclusion:

(i) We prefer the evidence of Mr. Brough to that of the Claimant for the reasons that we have already set out above;
(ii) The Claimant has presented a changing and increasingly dramatic account of events;
(iii) The initial report by the Claimant in respect of this incident said nothing as even approaching the severity with which he now describes the incident;
(iv) No students complained to the Respondent about this incident which, if their health and safety had been compromised, one might reasonably have assumed would have been the case; and
(v) The account obtained by the Respondent of an independent third party, Nicola Woodings, who had been in the corridor outside the workshop at the time and had overheard the events in question do not support the Claimant's account of this incident.

120. As such, we are satisfied that while Mr. Brough lost his temper, shouted and possibly swore, no students were put at risk during this incident. Mr. Brough accepts that he may have thrown some off cuts into the middle of the room but this was not directed at students nor did any parts of those off cuts hit them. We are therefore satisfied that the health and safety of any student was not put at risk during this incident and, again, if it had been it appears more than likely that at least one of them would have reported the matter to the Respondent.

121. The characterisation by the Claimant of what occurred during this incident is simply in our view a manifestation of his tendency to exaggeration and we have little doubt that that is motivated in part at least by what is clearly a significant degree of animosity towards Mr. Brough, which was apparent for all to see during the course of his cross-examination.

122. The day after the incident in the workshop, the Claimant sent an email to Mr Vanes-Jones and carbon copied that to Mr Brough and to another member of staff in the Carpentry and Joinery team by the name of Mick Rowbottom. The email, which appears at pages 282 and 283 of the hearing bundle, said this:

> "*Hi Ian,*
> *As no doubt* [you] *are aware Dave and I are trying to meet team objectives as well as address direct student issues which impact on the learner performance. I am aware that a lot of the administration and personal issues are being taken on board by Dave. I* [am] *concerned that it may be affecting Dave as two evening sessions taken into consideration adds to his workload of challenges.*
>
> *Phil.A*"

123. It is notable that nothing at all was mentioned about the incident of 11th December within that email, which goes quite against the Claimant's current assertion that students' health and safety had been put at risk and that Mr. Brough was in a state of "uncontrollable rage" and his suggestion in his Scott Schedule during an earlier part of these proceedings that Mr. Brough was in a violent rage. Had the Claimant genuinely believed that Mr. Brough was in a violent rage, then there was certainly no suggestion of that at all made in his subsequent email to Kane Bramhall, to which we have already referred above. There was no hint of any such matters within the Claimant's email or anything which, at that time at least, could be construed as being anything other than a supportive concern. That is consistent with Mr. Vanes-Jones's evidence before us that that is how he viewed what the Claimant had told him. The Claimant has not provided any reasonable explanation as to why those matters would not have been mentioned in that email if that is what he genuinely believed the position to be at the time.

124. Mr. Brough replied in pleasant terms saying this:

> "*Hi All*
>
> *Thanks for your concern Phil.*
>
> *I am feel the pressure at the moment and it would be fair to say that the cracks are starting to show* (sic). *Whilst the night classes are difficult they are not the reason for me struggling. My difficulty comes with trying to meet deadlines that are out of my control, like getting other departments to do their job or getting students to attend college.*
>
> *I am having a particular hard time at the moment as we are approaching Christmas and my daughter is constantly in my thoughts.*

All of this makes me, to put it mildly, quite irritable and easily wound up. I struggle with having to repeat myself as my patients (sic) *is very short. So when students stand around instead of tidying up the workshop, despite this being a major theme in previous weeks and being told at the time, I tend to lose my temper.*

In short, I am struggling to contain my rage.

…"

125. It seems to us that the Claimant has latched on to the final sentence of Mr. Brough's email in order to seek to escalate the severity of what actually happened on 11th December and, indeed, he fixated on that term to a significant degree during cross-examination of Mr. Brough.

126. In short, whilst we accept that Mr. Brough lost his temper we are satisfied that the Claimant has exaggerated this incident as we have set out above. We are satisfied that Mr. Brough was simply frustrated, lost his temper and shouted at some students. There is a possibility that he had thrown, as his own evidence suggests, some scrap offcuts into the middle of the workshop. We are entirely satisfied that he had not launched them towards learners as suggested by paragraph 58 of the Claimant's witness statement.

The first alleged protected disclosure

127. The Claimant contends that he had a conversation with Mr. Vanes-Jones about the 11th December incident and that that took place on 12th December 2014. That is the first protected disclosure upon which the Claimant relies.

128. Mr. Vanes-Jones' evidence was that he recalled having a conversation with the Claimant on that date and that that had included the fact that the Claimant told him that Mr Brough had put students at risk and should not be teaching. That was accepted by Mr. Brough when the Claimant put it to him in cross-examination. However, he did not recall the exact words that the Claimant had used but he was told that Mr. Brough had been in a "rage" the night before.

129. The Claimant's account of that conversation can be found at paragraph 59 of his witness statement. The Claimant suggested in cross-examination that he had told Mr. Vanes-Jones that Mr. Brough had put students and staff at risk.

130. Ultimately, we cannot be certain as to the exact content of the conversation that the Claimant had with Mr Vanes-Jones on 12th December. As we have already observed, we found the Claimant's own account to be inconsistent; prone to exaggeration and in some parts largely lacking in credibility. There are also a fair number of incarnations in the Claimant's various versions of this conversation which lead us to doubt the veracity of his evidence before us about this particular conversation. Mr. Vanes-Jones cannot recall specifics but accepts that he was told something along the lines of the fact that Mr. Brough had been in a rage, had put students at risk and should not be teaching.

131. We therefore find ourselves unable to make any finding that the discussion went any further than that. We accept Mr Vanes-Jones's account that he did not

view this as any form of complaint by the Claimant regarding Mr. Brough or the incident of 11th December, but simply the expression of concern for a colleague akin to the content of his email.

132. We do not accept that the Claimant made any reference, as he now says, that he told Mr. Vanes-Jones that Mr. Brough had been shouting and swearing and throwing shovels and tools in the workshop. It is notable that was not at any point put to Mr. Vanes-Jones by the Claimant in cross-examination and the later account given by Nicola Woodings during the course of an investigation by the Respondent do not support what the Claimant says had occurred on 11th December in terms of throwing shovels and tools (see page 472 of the hearing bundle.)

133. In this regard, the account given by Nicola Woodings, the Evening Duty Manager for the Burton-upon-Trent campus, during that later investigation, recorded that she had been standing in the corridor outside the workshop on 11th December when the incident had occurred and she provided the following by way of her recollection of those events:

> "… *I do recall DB* [David Brough] *shouting at learners within an evening workshop session during early January 2015. DB did not swear or behave in an abusive or unprofessional manner towards the students. His raised voice related to the fact that he was ensuring that all students were taking responsibility for replacing equipment in storage and the workshop was left tidy prior to the end of the lesson.*"

134. We are satisfied that irrespective of the reference to January 2015, Nicola Woodings was in fact referring to the 11th December incident. There is no other suggestion that Mr. Brough lost his temper with learners at an evening session in January 2015 and Nicola Woodings was being asked about the matter on 8th June 2015, some time after the event in question. The fact that she could not recall the date does not, in our view, alter the fact that she would have had in mind the specifics of the incident itself.

135. We are satisfied that the Claimant has embellished both the incident in question and also the conversation that he had with Mr. Vanes-Jones for the purposes of these proceedings.

136. The evidence of Mr. Vanes-Jones was that he did not discuss the conversation which he had had with the Claimant with Mr. Brough, although he did discuss it with Kane Bramhall. That would be a natural course for him to have taken given that Mr. Bramhall was Mr. Vanes-Jones's line manager and ultimately the Head of Department.

137. We are satisfied, however, that Mr. Vanes-Jones did not discuss the matter with anyone else other than Mr. Bramhall and that he certainly did not make any reference to Mr. Brough about what the Claimant had told him.

138. The Claimant ultimately has nothing to gainsay that evidence from Mr. Vanes-Jones, other than he thought that that was what would have happened. Indeed, his own evidence before us was that he was not aware whether Mr. Vanes-Jones or Kane Bramhall had spoken to Mr. Brough about what he had told Mr. Vanes-Jones regarding the incident of 11th December. That was despite the

fact that, like much of the Claimant's case, his position on that matter changed demonstrably when cross-examining the Respondent's witnesses when he asserted that such a conversation with Mr. Brough had taken place. He could not, however, provide any basis to support that position.

139. Mr. Brough's evidence, which we accept, was that he had not been told by anybody about the conversation that the Claimant had had with Mr. Vanes-Jones on 12th December and we accept that that was indeed the case. Mr. Brough's knowledge of that particular conversation becomes relevant, as we shall come to in due course, with regard to later acts of detriment which the Claimant contends Mr. Brough subjected him to as a result of him having made the disclosure to Mr. Vanes-Jones.

15th December 2014 meeting

140. On 15th December 2014, there was a further Whole Construction Skills Department meeting. The Claimant was present at that particular meeting. Some of the items on the agenda for that meeting included the question of equality and diversity with Mr. Bramhall stressing that staff needed to add equality and diversity to their student session plans. That is, we should note, entirely contrary to the Claimant's assertion that equality and diversity was not challenged or promoted by the Respondent at all during the course of his employment. The Claimant furthermore did not make mention of any alleged equality and diversity issues when that matter was discussed at the meeting despite his assertions before us that learners did not respect him because of his race and the fact that they were not used to having a black person in a position of authority.

141. Following on from earlier representations which had been made by Mr. Brough, the matter of health and safety was also discussed with the finding that high vis vests should be implemented in the workshops and hard hats provided for some particular aspects of work undertaken. Again, the Claimant made no comment in relation to those matters at that particular meeting.

The 17th December 2014 email

142. On 17th December 2014, Mr. Brough wrote to Mr Bramhall and carbon copied the same to Ian Vanes-Jones (see page 287 of the hearing bundle). That email was, in effect, a complaint about the Claimant. The Claimant objects to the use of word “complaint” in relation to this email and also to a number of other issues raised about him which were to later form part of an investigation into his conduct. In essence, the Claimant's issue with this matter is that if the word “complaint” is not expressly used, then whatever the content of the concerns or issues raised, it cannot be a complaint. We did not accept that contention. It is the content that is important, not the label used.

143. It is abundantly clear, whatever label is used, that Mr. Brough was expressing concerns about the Claimant and that he was asking Mr. Bramhall as Department Head to assist.

144. The email said this:

“*Hi Kane*

I feel that I need to inform you of the difficulties I am experiencing with our new member of staff. Whilst he is pleasant and courteous, I am not entirely convinced he knows his subject too well and is not committed to achieving the high standards that our area aspires to.

Punctuality
Not in on time of a morning, has long breaks. Today was especially difficult as we had students in to catch up, at the same time I was supposed to be attending meeting with parents and support staff. As Phil was not in attendance for most of the morning I had to miss most of these meetings, to instead look after the students that we had in.

Subject knowledge
On several occasions we have had conversations about the qualifications, the subjects to be cover (sic) *and various other trade related topics. The conversation always ends with either talking about we need to get the learners to understand about health & safety, or in some occasions talking about some completely unrelated topic (often leaving me confused and not entirely sure what had just happened).*

Workshop tidiness
When the students are told to tidy up towards the end of a practical session, rather that supervising the activity and directing individuals to clean up activities that are required, he will pick up a brush and do it for them (sic). *This puts the pressure on me to motivate the group and delegate activities.*

Course leadership
Phil has asked on several occasions whether there are any course management jobs I want him to do. So far I have not given him much to do in this regard. Instead I have asked him to plan and deliver the level 1 lessons, to take a large amount of pressure off of me. Prior to Phil's last theory lesson I asked him if he was ready, answer "yes all sorted mate". Question "Are you going to go and start it then?" He then spent the next 10 – 15 minutes getting his computer set up, trying to find his lesson materials, and adjusting the layout of the room. All jobs that he should have done before the start of the lesson, rather than leaving it until the students are waiting at the door. When someone tells me it's all sorted, not to worry etc … I assume it's all in hand.
Until I can trust Phil to plan his lesson, set it up on time and use all of the resource available (ALS support being a major one), I feel that I cannot trust him with the management of any course, currently looked after by me.

Promotion of the courses we deliver
On numerous occasions Phil has told learners and staff that the content within the qualifications that we deliver is not relevant and will never be used in industry. Essentially telling people your course is pointless, stating we should be doing something else instead (the something else is more

health & safety and using hammers as far as I can tell). I am now getting learners coming to me and asking what's the point in doing this?

Learner support
During the one meeting I managed to attend this morning, it was drawn to my attention that part of the reason for the learner's non-attendance was down to Phil. The problem being the way that Phil interacts with him (shouts a lot and very dismissive).

I have no issue with supporting new members of staff, or training them to our way of working. I struggle when the member of staff is trying to implement changes, before actually finding out what the current system is. My initial though (sic) *was that Phil just needed time and support. It is now getting to the point where I feel as though he is either speaking a different language to the rest of us, or he is just covering for his lack of knowledge/experience.*

…"

145. The Claimant's position is that all of those matters as raised by Mr. Brough in his email were entirely unfounded and were simply to get back at him for the disclosure which he had made to Mr. Vanes-Jones on 12th December or, otherwise, because Mr. Brough was inherently prejudiced against him because of his race.

146. As we have already observed, we are entirely satisfied that Mr. Brough did not know about the issue of the conversation which the Claimant had had with Mr. Vanes-Jones on 12th December. We are equally satisfied that there is nothing whatsoever to suggest that the email was written because of the Claimant's race and the Claimant has adduced absolutely nothing to even begin to suggest that that was the positon, other than his own continued assertion that it must have been as a result of race because everything done has a racial connotation.

147. In fact, we are satisfied from the evidence of Mr. Brough that the concerns which he had raised in his email were in fact entirely justified. Mr. Brough was by this stage under a considerable amount of pressure and we are satisfied that far from easing that burden, the Claimant was in fact exacerbating it. It was for that reason that Mr. Brough sent the email setting out his concerns to Mr. Bramhall and Mr. Vanes-Jones.

148. Far from the content of the email being unfounded, it is clear from the evidence before us that there were considerable concerns in relation to the Claimant's conduct at work. We take each of those as raised by Mr. Brough in turn. Firstly, punctuality was a matter raised by Mr. Brough in his email and we accept his evidence that in his view that was a problem. Particularly, we note from the documentation before us that on one occasion the Claimant absented himself from work for around two and a half hours to wait for his chimney to be swept and we similarly experienced problems in the hearing before us with the Claimant not arriving at the hearing centre on time. He was also late for both the later disciplinary and appeal hearings with the Respondent and therefore this gives credence to the fact that the Claimant has difficulties with punctuality and timekeeping. Clearly, in a learning environment where lessons are to be

delivered to a strict timetable, punctuality was a key requirement of teaching staff and we do not consider it unusual that Mr. Brough raised a concern about the Claimant failing to be on time. The issue of lateness was subsequently addressed by Mr. Vanes-Jones and Mr. Bramhall (see pages 366 and 381 of the hearing bundle) and the Claimant made no comment at the time to suggest that that action was unwarranted.

149. Equally, we have little hesitation in accepting the evidence of Mr. Brough that the Claimant frequently went off on tangents and this cast doubt on his subject knowledge. Indeed, the Claimant also displayed that particular trait before us on a number of occasions in both his evidence and in his cross-examination of the Respondent's witnesses.

150. We further accept that Mr. Brough had concerns about the Claimant's preparation and, again, that echoed our own experiences of the Claimant as we have already touched on above.

151. Mr. Brough's email also raised concern about the Claimant's interaction with students. By his own admission in evidence before us, the Claimant had made comments to students, as echoed in Mr Brough's email, suggesting that there were certain areas of the course which would not be used in industry. Whilst the Claimant may well consider that to be fair comment, it is clearly not an appropriate remark or observation to make to learners when the Respondent College was trying to motivate them to follow a particular course of study or curriculum. Motivation of students was clearly an important issue given the problems which the Respondent faced on the course with regard to attendance and we were surprised that the Claimant still cannot accept that it would not be appropriate to express opinions to learners that part of their course of study would never be used in industry.

152. Lastly, the Claimant accepted before us that on occasions he had been going over log books during lessons. He maintained that this was necessary in order to provide feedback to students but we accept Mr. Brough's position was that the Claimant undertaking that task for a small number of students during a lesson led to the Claimant not supporting him with the lesson as he should have been.

153. We are entirely satisfied, therefore, that Mr Brough was raising genuine concerns which he reasonably held that the Claimant was not doing his job, or at least he was not doing as he should have been doing it.

154. It was clear that Mr. Brough was under a significant degree of pressure, not only professionally but also personally, and that the Claimant was simply adding to that position. We do not find it unusual, therefore, that he wrote to Mr. Bramhall to seek guidance in the way that he did and we are satisfied that the content of that email was fair comment as Mr. Brough saw it regarding the Claimant's performance in the Department.

155. The Claimant contends that the purpose of that email was to sour the relationship between himself and Mr. Bramhall and Mr Vanes-Jones. There is absolutely no evidence whatsoever that it did so nor that that was at all what Mr. Brough intended. All this email amounted to was Mr. Brough raising genuine concerns about the Claimant's performance. It is clear that Mr. Brough was

under increasing work pressure and in light of that we do not find it unusual that he would raise those genuinely held concerns when he did.

156. The Claimant complains as part of these proceedings before us that Mr. Vanes-Jones and Mr. Bramhall did not provide him with a copy of Mr. Brough's email nor did they provide him with a copy of the Respondent's complaints or grievance procedure. Mr. Vanes-Jones's evidence before us was that he left the matter to Mr. Bramhall to deal with so he did not consider it necessary to provide a copy to the Claimant as he was not managing the process. That would seem to us to make sense given that Mr. Bramhall was the ultimate Head of Department and Mr. Brough had addressed his concerns in his email to him. We have not heard from Mr. Bramhall during these proceedings but it is clear, as we shall come to, that he took informal steps to deal with the concerns that Mr. Brough had raised. Mr. Vanes-Jones was also aware that Mr. Bramhall intended to arrange an informal meeting to air concerns in the Department and that was therefore his understanding of how the matter was to be dealt with.

157. We cannot therefore see that it would have served any purpose at all to have provided the Claimant with a copy of Mr. Brough's email. It seems to us that that would have simply have been likely to have made the situation worse and place further strain on an already stretched relationship between the Claimant and Mr. Brough. The Claimant has not taken us to anything to suggest that the Respondent was obligated to provide him with a copy of Mr. Brough's email nor has he demonstrated that the Respondent had done so for other employees on other occasions.

158. The Claimant's case is that the email was not shared with him so as to alienate him and to ensure that others were able to talk about him behind his back but there is quite simply no evidence of any of that at all. It is merely an unsupported assertion by the Claimant. It is not unusual in our experience in the workplace for staff to raise concerns about others, including by way of emails, so as to request assistance from those at a higher management level. We would not expect for the complainant to copy the subject of his or her complaint into that email or for the person complained about to be provided with a copy of the communication in question unless it was to be dealt with by formal means. As we shall come to further below, the way in which Mr. Bramhall decided to deal with the matter was informally.

159. In addition to not being provided with the email itself, the Claimant also complains that he was not provided at this time with a copy of the Respondent's grievance procedure. It was unclear during the course of the hearing before us, given that as we have already observed the Claimant's case was built on somewhat shifting sands, whether he was saying that he should have been provided with a copy of the grievance procedure so as to raise a grievance about the content of Mr. Brough's email or if he was contending that Mr. Brough's email was a grievance so that that process should have been followed. In our view either of those arguments are clearly nonsense when looked at against the context of the email and how the Respondent chose to deal with it.

160. We can see no reason why the Respondent would have provided the Claimant at that time with a copy of the grievance procedure. If this was to invite him to raise a grievance himself against Mr. Brough then that simply makes no sense. There was and is nothing at all to suggest that Mr. Brough had done

anything at all wrong in raising his concerns about the Claimant. We cannot therefore fathom why it should have struck the Respondent to invite the Claimant to raise a grievance about the matter.

161. If the Claimant's position is that he should have been provided with a copy of the grievance procedure and the Respondent should have followed that process then again we dismiss that suggestion. Mr. Brough had not raised a grievance against the Claimant. He had simply raised concerns that he wanted Mr. Bramhall to deal with. There can be no reasonable suggestion at all that Mr. Brough had raised those concerns under the Respondent's grievance procedure nor that they should have been investigated and dealt with under that particular procedure. In fact, given that as we have set out above the issues raised by Mr. Brough about the Claimant were accurate, it appears to us that dealing with the matter informally at this stage was far from the Claimant's detriment and was actually to his distinct advantage.

162. We remind ourselves here that the Claimant was at this stage in the early period of his employment and still well within his probationary period. It seems to us that had the Respondent or any of its management team been prejudiced against the Claimant as is now suggested (whether on the grounds of race or otherwise) then they would have escalated the matter at this juncture in an attempt to secure his exit rather than having taken an informal approach.

163. Given that the Respondent at that time did intend to deal with the matters raised by Mr. Brough on an informal footing, we are entirely satisfied that there was no need to provide the Claimant with either a copy of Mr. Brough's email or a copy of the grievance procedure.

164. After the complaint was made, the Respondent College shut down over the Christmas and New Year period with staff and students returning on or around 5th January 2015.

165. In order to deal with the matters raised by Mr. Brough both at this time and in January 2015 and to deal with matters generally, Mr. Bramhall and Mr. Vanes-Jones scheduled a meeting of staff in the Department to air and deal with concerns. That meeting took place on 19th January 2015 and we shall come to the events of that meeting later.

<u>Relationship with Mr. Brough</u>

166. The Claimant's position is that from this point onwards, Mr. Brough ceased to have one to ones with him and in conversation was abrupt and critical of his work. We accept Mr. Brough's evidence, which we prefer to that of the Claimant, that that was not the case. We accept in this regard that there were no set pattern for one to ones taking place and that there were approximately six or seven such sessions as part of the mentoring arrangement. We have not seen any records of those sessions but accept that the same would not be made given that they were informal. The reason for any diminution in the sessions was, in fact, we are satisfied down to the Claimant. Mr. Brough was under pressure and the Claimant's attitude and conduct did not assist with that.

167. We are satisfied that any diminution in the one to ones during the course of December 2014 was simply as a result of the concerns which Mr. Brough had

identified as being prevalent with the Claimant. Mr. Brough's evidence, which we accept, was that the Claimant was simply doing matters his way and his attempts to guide the Claimant came to nought so he effectively gave up. As Mr. Brough had personal concerns and a considerable workload, we do not find that an unusual position. He was not, after all, the Claimant's line manager. He had already reported to the Head of Department his concerns about the Claimant in his 17th December email and we accept that he effectively began to leave the Claimant to his own devices given that the Claimant was somewhat intent on doing things his own way. Furthermore, the Claimant's own evidence under cross examination was that Mr. Brough had a "problem with rage" so he questioned why he himself would continue with the sessions. In the Claimant's own admission, therefore, he decided not to engage. Therefore, any diminution in one to ones was largely of the Claimant's own making.

168. We accept that the relationship between Mr. Brough and the Claimant began to deteriorate but the souring of that relationship was certainly not related to any conversation that the Claimant had had with Mr. Vanes-Jones. Firstly, as we have already found above, Mr. Brough was not aware of any such discussion.

169. We are also satisfied that the deterioration in the relationship had nothing to do with the Claimant's race, which we accept was not an issue to Mr. Brough at all. The Claimant has not taken us to anything, other than his own belief to that effect, to begin to suggest that race played any part in the matter. The reason why the relationship began to suffer was on the basis that the Claimant had adopted a difficult approach at work and this was increasing the stress and pressure on Mr. Brough.

170. We also remind ourselves in this regard that Mr. Brough made no attempt to influence Mr. Bramhall and Mr. Vanes-Jones regarding the Claimant's appointment in the first place and he had also confided in the Claimant previously about personal matters relating to the tragic death of his daughter and that he had struggled to come to terms with matters. If he had been inherently prejudiced against the Claimant on account of his race as is now suggested, we cannot see that Mr. Brough would have shared such deeply sensitive and personal information with the Claimant. We again prefer Mr Brough's evidence to that of the Claimant on that point.

171. The relationship between Mr. Brough and the Claimant continued to deteriorate as time went on. Again, we do not accept the Claimant's suggestion that that further deterioration had anything to do with the conversation that he had had with Mr. Vanes-Jones (a matter of which Mr. Brough was not in any event aware) or anything to do with his race. Instead, we are satisfied that the Claimant continued with the pattern of behaviour described in Mr. Brough's earlier email and that he became increasingly awkward in the workplace. Mr. Brough therefore continued to experience difficulties in relation to the Claimant doing his job or perhaps more accurately performing in the role in accordance with the expectations of the Respondent College.

172. We should note here that on a significant number of occasions during the course of the hearing before us the Claimant sought to explain away his conduct, including conduct that as we shall come to was clearly inappropriate, by contending that he was entitled to do things his way given that he was exercising his academic freedom. The Claimant appears to have interpreted the exercising of academic freedom as giving him the ability to do whatever he pleased, which clearly is not the way any reasonable individual would interpret it. We have little doubt that that

continued belief that he was exercising academic freedom in the way in which he performed his role was a continuing source of frustration to Mr. Brough. It is therefore unsurprising that the relationship continued to deteriorate but this had nothing at all to do with the Claimant's discussion with Mr. Vanes-Jones or the matter of his race.

173. Unsurprisingly given his continued frustrations with the Claimant, Mr. Brough raised further concerns with Mr. Vanes-Jones and Mr. Bramhall by way of another email on 16th January 2015 (see pages 296 and 297 of the hearing bundle). We have no doubt that this was prompted by an incident which had occurred the day previously involving the Claimant and an altercation with a student. We shall come to further details of that particular incident in due course below.

174. The email from Mr Brough was entitled "Staffing concerns" and it said this:

"*…*

Further to our conversation yesterday, I have decided to put in writing the issues I have been experiencing and witnessed regarding Phil Abrahams.

First of all I would like to point out that I have no issues with Phil as a person, but am concerned that he does not fully support the college core values. Rather he has his own opinion of how learners should be dealt with, and his set of ever changing standards that the learners must adhere to.

I have tried to support Phil and point him in the right direction, however, his response to all efforts to get him to work with me have been met with arguments. Simple things like an explanation of how to deal with absent students is met with argument, usually Phil saying you can't keep doing that (despite the procedure being college policy).

Learner feedback
This week I decided to use the time afforded due to the break in timetable, to get feed back from the apprentices, to assist in writing the next course report. Whilst some of the items discussed were useful in improving the course and possibly the college, a large amount of the problems learners quoted about the course related to Phil specifically. The majority of the concerns revolving around his theory lessons, and the repetition of the same lesson on at least 2 separate occasions. Other comments referred to the lack of participation they received in theory lessons, rather they were just told to take notes whilst he talked. This is of particular concern for me as I have given Phil access to all of my lesson materials including activities, presentations and study resources.

Theory lessons
In order to reduce my workload and still teach all lessons as well as manage the courses, I agreed with Phil that he would take responsibility of the level 1 theory lessons. Whilst I carry on with Level2. The idea being, when course management work needs to be done urgently I could dedicate more time to that. Particularly as Phil is not yet up to speed with the systems and procedures within the college.

My faith in Phil's ability to plan and prepare lessons appears to be ill placed, as he still develops his lessons 15 minutes before he is due to deliver them. I have also given him additional time from teaching in the workshop during quiet times and during my theory lessons, so that he can better plan his theory sessions. At the very least familiarise himself with the resources I have supplied him with and adapt them as appropriately (sic)*.*

Judging by the learner feedback and my own observations Phil needs a lot of support within the theory sessions to get him to the standard required. His use of support staff is minimal at best, mainly due to the lack of activities given to the learners.

Verbal exchanges with students
On Wednesday 14th January I overheard the verbal exchange between Phil and the learners within the afternoon practical session. At the beginning of the session rather than getting the learners on task he started an argument with one of the first year apprentices (BC 301) the argument lasted over 5 minutes. In which time I ended up issuing out power tools within the store. I then overhead another learner state, "you're a bit angry today aren't you Phil", Phil's response "Are you calling me an angry black man, your saying I'm angry because I'm black" (sic)*, then repeated himself as a question, "are you saying I am an angry black man". The learner responded by saying "I didn't say any of that your just putting words into my mouth"* (sic)*. The situation then ended as I came out of the store to see what was going on. The rest of the session was awkward with none of the students going to Phil for help, putting more pressure on me to keep* <u>*all*</u> *learners on track.*

Supporting of the staff within the workshop
Yesterday I asked Phil to spend less time writing feedback I (sic) *the training log books and more time supporting the learners, as the lesson had gotten off to a slow start due to me being the only member of staff setting targets and supporting the learners. Phil's response was that: he was carrying out an important part of the practical lesson by providing written feedback, and he was going to carry on as he was. I explained that feedback is important but not at the expense of letting learners stand around without any direction. I also told him that he was putting additional pressure on me to look after all of the learners myself. Phil stood his ground and had little to contribute to the group, with the exception of a handful of learners who received written feedback. The knock on effect being that a large number of learners following me around as I helped each one in turn.*

I later challenged Phil for his lack of support and explained how we work as a team within the workshop, again his reaction was to disagree with the system that we have in place and to say that he will carry on as he is. I explained that all learners need to be checked on and kept on track, his reaction was that the ones who want to get on will and the others won't. He then tried to imply that I'm working too hard and should not care so much. I explained that all learners matter equally and need to be supported and kept on track. I said that if we all took the attitude that he was implying <u>*I*</u> *should, we would have no learners at all and we'd be out of*

a job. Rather than consider the implications of what he was suggesting I do he started to argue that I was saying he had the wrong attitude. As I could see that Phil was not listening and spoiling for an argument I chose to leave, rather than say something I'd later regret.

During the evening session Phil chose to support me more in line with the way I had discussed; by this time however the learners were already set to work and didn't need much support.

I am finding Phil to be argumentative and slow to embracing the college core values, the usual statement being that's standard in every college, but then not following them anyway.

I appreciated that Phil is new and requires patients (sic)*, as a mentor and supporting member of staff I feel that I can't give the help and support he needs. He has his own ideas of how the course should be run, despite not yet learning how to use what is already in place. When stating facts about elements of the qualification, he often argues and says that we don't need to cover that. I rarely have the opportunity to finish what I am saying before he tells me I'm wrong and arguing with me, often turning the subjects onto Health and Safety.*

Phil is fully aware that my daughter died last year, making my ability to work very difficult. With some of the comments he has made and the way he sometimes dismisses me in the middle of a discussion, I feel that he is holding my personal circumstances against me. Comments like your taking too much on, with your personal issues (sic)*. Despite me explaining that all of the work I do is part of the course leader* role. He thinks it's me trying to do too much.

To conclude what has become a very long email, I feel that Phil requires close monitoring and support from someone other than myself. I will continue to work with him, but feel that his argumentative nature and his inability to work as a team are adding to my stress and anxiety. None of what are making my working day any earlier. I currently feel as though I should be doing all of the work that Phil has currently been given, for no other reason than to safeguard the future success of my students.

…"

175. No disciplinary action was taken at that stage against the Claimant but the informal meeting to which we have referred above was scheduled for 19th January 2015 with the intention that this would allow members in the Department to air their concerns and get back to a more harmonious way of working. We shall come to the details of that meeting further below.

The 15th January 2015 incident

176. As highlighted within the email from Mr. Brough, the day previously there had been an altercation between the Claimant and a student within a lesson in which both the Claimant and Mr. Brough were teaching.

177. We are satisfied that that incident occurred in the terms that it was reported in Mr. Brough's email. Indeed, the Claimant does not deny the general thrust of what was said and accepts that he had said to the student in question that he was calling him an angry or aggressive black man, or words to that effect (see for example pages 295 and 342 of the hearing bundle). The Claimant has sought to justify the comment by contending that it was a perfectly understandable reaction for him to have had because the student must have been referring to his race when he called him angry or aggressive. This is on the basis that the Claimant contends that the student was using stereotypical assumptions because he maintains that black African Caribbean men are seen typically as angry. The Claimant has adduced nothing at all in support of that general contention nor anything other than his own belief that the student in question held such an assumption or had made that assessment of him.

178. We frankly find it surprising that the Claimant would have assumed that simply because a student had referred to him as angry or aggressive that this must be on account of his race. We find it equally surprising that the Claimant said what he did to the student and that he continues to maintain before us that it was a perfectly justifiable reaction.

179. There is absolutely nothing at all in what the student said or did which could reasonably lead to the assumption made by the Claimant that the comment was made because of race. The student was simply making an observation about the way in which the Claimant was presenting himself because at that time the Claimant had engaged himself in a heated discussion with another student (see page 295 of the hearing bundle).

180. We find that to have been a wholly inappropriate reaction for the Claimant to have had and that it was equally inappropriate to speak as he did to the student in question. We have little surprise whatsoever that that was therefore a matter which Mr. Brough reported to Mr. Bramhall and Mr. Vanes-Jones. Indeed, he was not the only person that reported the matter as on the same date as the incident another member of staff, Stuart Arnold, reported the incident to Mr. Vanes-Jones (page 295 of the hearing bundle).

181. The Claimant asserts that the content of the email, including the "angry black man" incident being raised with Mr. Vanes-Jones and Mr. Bramhall, was an act of detriment. However, we are entirely satisfied that the content of the email was in fact accurate and it had nothing at all to do with the Claimant's race or his conversation with Mr. Vanes-Jones on 12th December. Indeed, it is notable that Mr. Brough did not make any suggestion that any action should be taken against the Claimant but merely that he should be supported by another mentor. It seems to us that if Mr. Brough was intent, as the Claimant suggests, on his unlawful removal from the Respondent College then he would have sought to have gone far further than to simply suggest a change of mentor.

182. That appears to have been a sensible suggestion at that stage. Although it was not acted upon if that was to the detriment of anybody, it was to the detriment of Mr Brough and not the Claimant.

183. As is clear from the first line of the email of 16th January 2015, the day previously there had been a conversation between Mr. Brough, Mr. Vanes-Jones and Mr. Bramhall regarding the Claimant. Mr. Brough accepts that a conversation did take place on 15th January 2015 as between himself, Mr Vanes-Jones and Mr

Bramhall but we accept that as a result of the passage of time Mr. Brough cannot now recall precisely what was said during the course of that conversation. However, he accepted that the discussion would most likely have been around the topics that he raised in his email the following day. That would equally appear to us to make sense.

184. As we have already observed, we are satisfied that the content of that email was fair criticism, certainly in so far as the position was as Mr Brough saw it with regard to the Claimant's performance and conduct at that time. That is not least of course the incident which we have already referred to in regards to the angry black man comment.

185. The Claimant is quite simply not able to say what happened at all in that discussion or that there was any unfair criticism of him as he now alleges given that he was not a party to it. We are perfectly satisfied that all that was likely to have been said during the course of that meeting was to refer to the complaints as later set out Mr. Brough's email those were, as we have already said, justifiable criticisms of the Claimant's conduct and performance as Mr. Brough saw it.

186. The Claimant contends that Mr. Brough's email of 16th January was sent with the purpose of belittling or devaluing him and was an attempt to try to remove him from his position at the Respondent College. However, there is nothing whatsoever which supports that analysis. It is quite clear that the comments made by Mr. Brough were entirely justifiable insofar as the Claimant's actions and conduct were concerned at that time. All that Mr. Brough had in fact suggested was that a different mentor be allocated to the Claimant. There can be no reasonable suggestion whatsoever that Mr. Brough was seeking to bring about the Claimant's removal from his post. As we have already said, if that was what Mr. Brough was seeking then he would doubtless have been more forthright in his opinion as to how the Claimant's behaviour should be tackled than simply asking for a different person to be allocated to mentor him.

187. We are also satisfied from his evidence that Mr. Brough had in fact already shared, or attempted to share, his concerns with the Claimant previously in order to try and address matters and that his email was necessary given that background.

188. There can be no reasonable suggestion whatsoever in view of the evidence before us that the conversation of 15th January or the subsequent email of 16th January was motivated by the Claimant's conversation with Mr Vanes-Jones on 12th December (again that being a matter which in all events Mr. Brough was not aware of) or the Claimant's race. Once again, the Claimant has provided no evidence at all to even begin to suggest that race was of any concern to Mr. Brough or that it in any way motivated any of his actions towards the Claimant.

189. The Claimant contends that after 16th January 2015 he was isolated or, as he put it before Employment Judge Camp, that he was segregated. The contention in this regard as recorded in the Order made by Employment Judge Camp is that it is said that the members of the Construction and Joinery team had conversations between themselves but not with him and that suggestions that he made regarding to health and safety and training materials and for ways to improve student behaviour were ignored.

190. There is no evidence whatsoever that the Claimant was segregated or isolated as he contends, although we accept the evidence of Mr. Brough that the Claimant had become argumentative and difficult and we consider that it is entirely possible that people may have well avoided him as a result. The fact that the Claimant had become increasingly argumentative is supported in the emails sent by Mr. Brough and, also a prime example occurred with regard to such behaviour during the 15th January 2015 altercation that the Claimant had had with a student.

191. Any isolation, therefore, was it seems to us a direct result of the Claimant's own conduct and behaviour. Furthermore, there is no evidence before us of any secretive discussions having taken place behind the Claimant's back as he contends. The only discussion of that nature would, we accept, have been on 15th January 2015 as between Mr. Vanes-Jones, Mr. Bramhall and Mr. Brough relating to the concerns that he later raised by email. Raising concerns in relation to genuine conduct and performance issues certainly does not amount to isolating or segregating an employee.

192. The Claimant appeared to suggest before us that he should have been invited to attend that discussion. Again, that would not have been something that we would have expected the Respondent to have done given that that would simply at that stage have further served to fracture already difficult relationships. Indeed, had the Claimant been called to a discussion with Mr. Brough, Mr. Vanes-Jones and Mr. Bramhall where those matters had been aired, we consider it entirely likely that the allegation would have been made that the Claimant had been ambushed by unfair criticism. The Respondent in that regard was caught between something of a rock and a hard place.

193. There is no evidence that there were any other occasions when staff discussed the Claimant behind his back and the Claimant has not been able to take us to anything that suggests to the contrary. Indeed, Mr. Brough was not able to recall any other occasion where he had had a conversation with other members of the team relating to the Claimant where the Claimant had not been present and, as we have already said, the Claimant has not been able to take us to anything which suggests that that account is not accurate or that there were any further discussions with staff about him.

194. The Claimant also complains that after 16th January 2015, his recommendations that students should wear hard hats and high visibility jackets were not implemented. We accept the evidence of Mr. Brough that his view was that this was not necessary in a teaching environment as there was an existing method statement and risk assessment which had determined those items of equipment were not required and the Respondent College did not possess the equipment that the Claimant was recommending. Mr. Brough did not therefore agree with the Claimant's assessment but invited him, if he felt otherwise, to review the necessary documentation. There is nothing at all wrong with that approach. Members of staff are entitled to have a different opinion to one another and Mr. Brough had not closed the door to the Claimant's suggestion but had simply invited him to consider the existing method statements and risk assessments and to raise any issue that he felt had not been attended to in respect of the same. The Claimant did not do that.

195. We also take into account in respect of the reasonableness of the approach taken by Mr. Brough the fact that Mr. Vanes-Jones gave evidence that there was no risk of anything falling onto students within the lessons which took place within the

College environment and so there was no need to deal with the provision of hard hats and that that had been a matter which had been identified in the risk assessment that Mr. Brough had referred the Claimant to.

196. The Claimant contended in cross-examination that this issue showed an undermining of his efforts to change things. However, what that fails to recognise is that the Respondent's view was that things did not need changing and that it was not necessary to therefore agree to fix something that was not in fact broken.

197. Around a similar time, the Claimant also made other suggestions such as in relation to the provision of a training board using old materials within the workshop. In this regard, on 26th January 2015, the Claimant sent an email to Mr. Vanes-Jones regarding his views on theory resource needs. The email was also sent to Mr. Bramhall and was copied to Mr. Brough, Mr. Rowbottom and others within the Carpentry and Joinery Department. The email said this:

> "*Hi Ian,*
> *Considering the lack of teaching recourses* (sic) *available for both lectures and ALS, I propose we address this by developing a stock of resources dedicated form* (sic) *the theory rooms.*
>
> *How:*
> *The last few weeks have resorted to support my lessons bring in my own tools for theory session.*
> *I am aware there is a mass of tools which are out of service and surplus to the cohorts needs which could be used as teaching aids and exploration and discovery.*
> *I request permission to assemble a display board of tools and related resources using this stock as well purchased items for academic learning.*
>
> - *Power tools de-commissioned cleaning up and made safe for learner investigation;*
> - *Hand tools made safe where applicate boards*
> - *Teaching aid tool boxes*
>
> *Security of recourses* (sic)
>
> *I propose these items to be dedicated to the theory rooms, wall mounted where required, colour coded and security marked, locked up if required.*"

198. Mr. Vanes-Jones responded less than an hour and a half later saying this:

> "*Phil thanks for your email regarding resources for theory we currently don't have a dedicated room for each area and have spoken about identifying some rooms per trade area.*
> *I will ask Kane for is* (sic) *opinion when we next meeting regarding allocating a room to display relevant trade material. If this can be agreed then we can also look at ironmongery and fixings.*
> *Try contacting construction supplies of burton to see if they can assist in supplying such a board.*
> *I will feed back to you all after talking to Kane*"

199. Mr. Vanes-Jones, contrary to the Claimant's assertion in his evidence, did not therefore block that particular suggestion but put in place measures for the Claimant to follow up as to how that might be achieved with the assistance of others within the Respondent College and that he would also discuss the suggestions made with Mr. Bramhall. That was abundantly clear from email correspondence that Mr. Vanes-Jones sent to the Claimant on that subject (see page 310 of the hearing bundle).

200. There was no evidence at all that Mr. Vanes-Jones was not supportive of the Claimant's suggestion as he contends. The Claimant's evidence before us was that going to Burton (i.e the Burton site) as had been suggested by Mr Vanes-Jones was too long winded and not as supportive as it could be for, in the Claimant's words, "some reason".

201. The Claimant never contacted anyone in Burton about that matter and there was no opportunity for further feedback on the proposal by Mr. Vanes-Jones given that, as we shall come to, the Claimant was suspended shortly afterwards.

202. The Claimant's evidence in relation to this particular allegation was that Mr. Vanes-Jones was making him go through unnecessary hoops. There were, however, clearly procedures to be followed and again that was a matter not recognised by the Claimant. It is noteworthy of course that his lack of interest in adherence to policies and procedures in this regard was not an isolated matter and were criticisms that both Mr. Brough and Mr. Rowbottom had made of him as we have already observed above.

203. The Claimant's evidence as he told us during his own cross examination was that Mr. Vanes-Jones should have simply "Yes Phil I give you my blessing". That was in fact what he did insofar as Mr Vanes-Jones was able to do so at that stage. It was put to the Claimant in cross-examination that because Mr. Vanes-Jones did not shoot from the hip and immediately agree, then it must be less favourable treatment. The Claimant agreed that that was precisely what he was saying.

204. We cannot agree. The Claimant did not follow those matters up and he contends that Mr. Vanes-Jones could and should have been more pro-active to immediately put his suggestions in place. That was not, however, something that Mr. Vanes-Jones could immediately do and he made it clear to the Claimant that he would discuss matters with Mr. Bramhall. That would be a natural thing to do given that Mr. Bramhall was the Head of Department. There was nothing wrong at all with the approach that he took and we do not accept at all that it was dismissive of the Claimant's suggestions or was intended to undermine him.

205. The Claimant also contends that at around the same time, the amount of team teach sessions that the Claimant and Mr. Brough had together were significantly reduced. Mr. Brough's evidence was that he had never been present for workshop sessions and only for classroom sessions but to any extent that the team teach position had diminished, we are satisfied that that was as a result of Mr. Brough's anxiety and the state of his relationship with the Claimant. That relationship by that stage was of the Claimant's own making and was nothing whatsoever to do with the disclosure to Mr. Vanes-Jones - of which Mr. Brough had no knowledge in all events - or the matter of the Claimant's race and the Claimant has again adduced nothing to suggest to the contrary.

Clear the air meeting

206. As we have already observed, as a result of the concerns which Mr. Brough had raised, both on 16th January and on 17th December, it was determined that there would be an informal meeting for the staff within the Construction and Joinery Department and the purpose of that meeting was to "clear the air". Unfortunately, as we shall come to that did not go entirely to plan and it is perhaps fair to say that far from clearing the air, the meeting had the result of making things worse.

207. Mr. Mick Rowbottom was in attendance at the meeting as one of the members of the Construction and Joinery team. During a period of discussion at the meeting, and in response to matters which were being raised by the Claimant, Mr Rowbottom said words to the effect of: "*I don't care where you have worked or how you have done things in the past if you cannot do things our way, you should find yourself another job*". That was a comment for which Mr. Rowbottom, we accept, later apologised to the Claimant.

208. We are satisfied from the evidence before us, including that from Mr. Rowbottom, that that comment was simply a manifestation of the frustrations that members of the team, including Mr. Rowbottom and Mr. Brough, had in regard to the Claimant's failure to adhere to the way in which the Respondent wanted things to be done and to established College practice. Mr. Rowbottom's frustration in this regard was a similar frustration to that which Mr. Brough had referred to previously as thinking that the Claimant knew better and only wanting to do things his way.

209. Whilst clearly an inappropriate outburst from Mr. Rowbottom, we are satisfied that that was a matter borne from frustration with regard to the fact that he felt that the Claimant was not listening and as a new member of staff was not behaving in the way that would be expected with regard to following existing policies and procedures. It cannot reasonably be said as the Claimant contends that this was an issue which was related to the conversation that the Claimant had had with Mr. Vanes-Jones on 12th December as we accept Mr. Rowbottom's evidence that he was not aware of the conversation at that time. Equally, we accept Mr Vanes-Jones's evidence that he had not told Mr. Rowbottom about those matters either. The Claimant has not been able to take us to anything at all to suggest that those accounts as given by Mr. Rowbottom and Mr. Vanes-Jones were not accurate and we accept their evidence on the point.

210. We further accept, and the Claimant has raised nothing other than continued insistence on the point, that race had anything to do with the comment made by Mr. Rowbottom. As we have already observed above, the reason why the comment was made was simply as a result of ongoing frustrations of Mr. Rowbottom and others about the Claimant's attitude and insistence that things should be done his way.

211. It was the Claimant's position before us that this meeting was simply held to make criticisms of him. We do not accept that. Had the Respondent been so minded then of course he was still within his probationary period and the Respondent could have looked to discipline him or to even terminate employment at that juncture. Instead, they had attempted to deal with the legitimate concerns raised by Mr. Brough in an informal context and we accept that the purpose of the meeting was simply to clear the air, to get back on track and to find a way forward for all members of the team to work effectively together. As we have already observed, as it transpired that did not end up being the result of that meeting but we accept that it

was the intention.

212. The Claimant contends that following the meeting of 19th January and/or in place of it, there should have been a Personal Development Review ("PDR") or similar to address any performance and conduct issues at that time. Given that the concerns raised about the Claimant were justified, it is difficult to see how it was to the Claimant's detriment to have those matters considered informally at this stage rather than adopting a more formal approach. That is particularly the case given that the Claimant was still in his probationary period.

213. We accept the evidence of the Respondent that PDR's would take place later in the probationary period and the Claimant had by that stage not reached the necessary point where one would be scheduled before his later suspension. The evidence of Mr. Vanes-Jones in this regard was that PDR's would be scheduled when a probationer had completed 3 months, 6 months and the 9 months service. That would appear to us to make sense given that there was a 12 month probationary period. The Claimant commenced employment on 10th November 2014 and he had been suspended by 13th February 2015 when the 3 month anniversary of his start date came round.

214. Moreover, the Claimant did have a review of his teaching when Mr. Bramhall conducted a later "Thematic Walk". As we shall come to, that review identified deficiencies in the Claimant's teaching but even now he does not accept that any of those criticisms were justified and it is difficult to therefore see how a PDR, whether at this stage or any other, would have assisted.

215. There was a further whole construction skills meeting on 21st January 2015. The Claimant was present at that meeting. Again equality and diversity and health and safety were on the agenda but the Claimant did not raise any issues at all at that meeting. That was despite the fact that, on his account now, he had a considerable number of concerns regarding health and safety and equality and diversity issues which were embodied in a later statement of experiences, to which we shall come in due course. The Claimant would appear to have had a prime opportunity to raise such matters at that meeting.

Toolbox Talk

216. Following on from the clear the air meeting, it had also been decided that there would be a "toolbox talk" which was to be presented by Mr. Vanes-Jones to students within the Carpentry and Joinery Department. The purpose of that tool box talk, was we accept, with the intention of reaffirming with the students the standard of expected behaviour and that included towards members of staff.

217. As we understand it, the Claimant has suggested before us that he should have been singled out at that meeting and students specifically told that they were to respect him. We find that a curious suggestion. The Claimant's overall argument in this regard appears to be that he should have been singled out in this regard because he was under represented as an ethnic minority within the Respondent workplace.

218. We cannot agree that such a course would have been at all appropriate. The Claimant had not raised any issue that students did not respect him because of his race and it is clear that there were behavioural issues with students for many of the

staff – for example, Mr. Brough had of course experienced his own difficulties with unruly students during the 11th December incident. Indeed, Mr. Brough's evidence in cross-examination before us and which we accept was that he himself was facing the exact same issue with students as the Claimant – such as their failure to wear lanyards, bringing drinks into the workshop, attendance issues and not doing as they were told - and indeed the notice of improvement sent only a few days after the commencement of the Claimant's employment suggests that a number members of staff were experiencing difficulties with students in respect of those issues. This was certainly not a matter therefore which only affected the Claimant and in respect of which he needed to be singled out for specific mention. The Claimant had not, at that stage, raised any issue that he believed that the students did not respect him because of his race.

219. Moreover, we accept the evidence of Mr. Brough that when the Claimant had made mention to him of learners misbehaving in lessons he had told him to highlight such matters to his attention when they occurred and he would reinforce it.

220. We also accept Mr. Vanes-Jones's evidence that the Respondent had a number of equality and diversity posters on the walls in corridors and in the canteen and, as per the instruction in the 14th November 2014 Whole Construction Skills meeting, tutors were to place emphasis in classes on equality and diversity issues. Students had also had a number of awareness presentations given to them by the Respondent which included matters such as cultural awareness and challenging stereotypes (see page 251 of the hearing bundle). Therefore, it was not necessary for any specific mention of the Claimant or of race to be made at the toolbox talk.

221. There was, therefore, quite simply no basis for Mr. Vanes-Jones to have singled the Claimant out for specific mention to the students. Indeed, it seems to us that it would be singularly unhelpful for any member of staff to be singled out in this way, particularly on account of their race, before a group of students.

222. The purpose of the talk was to reinforce the standards of behaviour expected of students, including those towards staff generally and we accept that that was done. Although the Claimant was reluctant before us to accept that point, it is clear from his own later "statement of experiences" document that he prepared that conduct issues that he himself had complained about, such as the failure to wear lanyards and bringing food and drinks into the workshop had been specifically placed onto the agenda and were dealt with during the toolbox talk.

223. The Claimant's evidence, which we did not find credible in this regard, sought to argue against that particular positon despite the fact that he himself was the author of the statement of experiences document. We accept the evidence of Mr. Vanes-Jones that all topics set out by the Claimant in that portion of his statement of experiences document were discussed with the students so as to support the team.

224. There can be no reasonable suggestion therefore that insufficient was done during the toolbox talk to support the Claimant. Instead, it is abundantly clear that those matters raised in the Claimant's statement of experiences as to the topics for discussion were raised by Mr. Vanes-Jones during the course of the toolbox talk. While the Claimant was not singled out specifically with students being told that the must afford him respect, as we have already established Mr. Brough was experiencing difficulties with students of a similar nature to that reported by the Claimant.

225. During the course of the Toolbox Talk, Mr. Vanes-Jones made a number of comments to students which might best be described as inappropriate or unwise. We deal with those matters further below. We are satisfied from the evidence of Mr. McMillan that once he became aware of that after he had viewed the tool box talk he instructed Lorraine Howard, the Assistant Vice Principal for Curriculum, to talk to Kane Bramhall and Mr. Vanes-Jones about terminology and expectations. That informal approach was not, we find, unusual given that Mr. Vanes-Jones had otherwise been interacting well with the students, there had been no complaints and there were no other conduct concerns.

226. The Claimant alleged in his closing submissions that during the toolbox talk Mr. Vanes-Jones had clearly pointed to him and to a mixed race learner in the context of having commented that one student was blushing like a tomato and then saying words to the effect "they're not blushing". The Claimant says that Mr. Vanes-Jones specifically pointed at that stage at him and the mixed race student, the inference being that they would not be seen to be blushing because of the colour of their skin. As a Tribunal, we did not recall that there had been any pointing by Mr. Vanes-Jones and the Claimant and the learner in question when we had viewed the footage. The Claimant sent in a video after the hearing but was notified that the Tribunal could not view it in that format and he was asked to send a copy in a different format. Nothing further was received. We do not find that the pointing issue therefore occurred. That was not references in the Claimant's otherwise lengthy witness statement or, indeed, anywhere else such as in his Statement of Experiences. Equally, it was not put at all to Mr. Vanes-Jones in cross examination. The closest that the Claimant came to that was asking "was the reference to tomato anything to do with race". There was no mention of pointing. Mr. Vanes-Jones replied "No" and the matter was not taken any further by the Claimant.

227. We should observe here that the Claimant's evidence was that Mr. Vanes-Jones had been aware that he was recording the Toolbox talk. Mr. Vanes-Jones denied that and his position was that the Claimant had recorded him covertly. We preferred his evidence on that to that of the Claimant. Particularly, the Claimant's evidence that he was recording the talk with the agreement of Mr. Vanes-Jones for training purposes did not accord with the fact that he was recording Mr. Vanes-Jones from behind when logically the recording would have been from the front if the purpose was to observe what the tutor (Mr. Vanes-Jones) was doing. It also did not accord with the fact that we accept that Toolbox talks had never been recorded before, either for training or otherwise.

228. Moreover, we accept the evidence of Mr. Vanes-Jones that had he known that the Claimant was recording him then he would have checked that the Claimant had written parental consent (which the Claimant eventually accepted in cross examination that he did not) because the students were minors.

<u>Thematic Walk</u>

229. On 27th January 2015, Kane Bramhall as Head of Department conducted a "thematic learning walk" with the Claimant. This was essentially an observation of one of the Claimant's lessons. It is fair to say that the report from that thematic walk (see pages 312 and 313 of the hearing bundle) described the lesson as something of a disaster and negative verbal feedback was given to the Claimant with observations being made such as that he had put students down; that he had been arguing with

them and dismissing their questions, that there were issues with the planning of the session and that student/teacher relationships and class management needed development.

230. Although we have not heard from Mr. Bramhall we do have his account at page 366 of the hearing bundle as taken during a later investigation with regard to how the thematic walk had progressed. There is no evidence at all to suggest that Mr. Bramhall's account, either within the thematic walk, or as later given at page 366, was fabricated or was not a realistic impression of his views of the Claimant.

231. We have no reason to doubt that that was an accurate reflection of matters as he saw them at that time. Indeed, they mirrored the experiences that Mr. Brough had described as having observed with regard to the Claimant's work and other evidence that we have before us.

232. We have no doubt, however, that those matters came as a shock to the Claimant given that we accept the submissions of Mr. Bromige that even now it is impossible for the Claimant to accept that there were any shortcomings in his conduct or abilities.

233. We accept that Mr. Bramhall may have said that he was not going to give the Claimant a weeks notice. The Claimant contends that that was said so as to make him resign but that in our view makes little or no sense. If Mr. Bramhall had wanted the Claimant to leave the Respondent College then he was still in his probationary period and his employment could have been terminated there and then. It is more likely that the comment was made to allay any fears that the Claimant might have had that he was going to be dismissed because of the disastrous session that Mr. Bramhall had witnessed. Mr. Bramhall in fact arranged for the Claimant to observe and be given pointers by another member of staff, Steve Darby, to try and assist and support him. Despite the fact that the Claimant clearly needed such pointers after what Mr. Bramhall had told him he maintained a frankly baffling position in cross examination that the purpose of the observation had been for him to give pointers to Mr. Darby and not the other way around. The Claimant appeared to be under the impression that because he did not have his lesson observed by Mr. Darby, then the intention was for him to support Mr. Darby. That was clearly either a fundamental misunderstanding or just plain refusal to accept the reality of the situation when put to him.

234. We should also observe that the Claimant's evidence under cross examination was that the students were in on the conspiracy to remove him from the Respondent College and that the learners had a problem with him teaching them because of his race. There is not one shred of evidence to support that.

The "paedophile" incident

235. The day after the thematic walk had been conducted the Claimant was undertaking a lesson with the same group of students that Mr. Bramhall had observed him teaching the previous day. Despite the feedback provided to the Claimant at the observation, the Claimant again got into a confrontation with students on 28th January.

236. This had included a heated exchange following the Claimant having commented, or at least laughed, after a student had been called a "paedo" or

"paedophile". That was clearly a matter where the Claimant should have stamped on such behaviour in his position as a Lecturer but he failed to do so and a heated discussion then arose between the Claimant and the student in question. Those matters were reported to the Respondent by another member of staff, Karl Beeby (see page 314 of the hearing bundle).

237. A further complaint about the Claimant was also made by Mr. Brough on the same date (see page 316 of the hearing bundle) and also by an independent CITB Co-ordinator, Sarah Widdowson, at around a similar time by email (see page 317 of the hearing bundle). Particularly, Ms. Widdowson made this comment:

"It would appear from talking to my students, that they do have an issue with this tutor, and one of them even suggested that the way in which they are spoken to sometimes is tantamount to bullying".

238. Ms. Widdowson's email was sent to Mr. Vanes-Jones and Mr. Bramhall and she asked them to look into the issues raised.

239. We should observe here that the Claimant contends that as a result of the incidents on 28th January 2015, he had to take absence from work as a result of stress. That was, of course, recorded particularly as part of the allegations set out by Employment Judge Camp. What the Claimant had said in that regard was, we are satisfied, not the case given that the Claimant attended the very next day upon Human Resources and we have been taken to no record of the Claimant having been absent from work on a date surrounding this particular incident. The Claimant's evidence when this was put to him by Mr. Bromige was that he had only had one day off work and that was because of flu. He could not recall when that was but despite that admission he continued to nevertheless remain adamant that he had taken time off with stress when that was clearly inaccurate. Again, this evidenced the Claimant simply making entirely unfounded allegations that he had taken time off with stress when he must have known full well that that was untrue.

240. The Claimant further contends not that there were failings or shortcomings by him but that he was set up by Mr. Vanes-Jones who he says allocated him a group of disruptive students to teach and did not provide him with any colleague support. It should be noted that by this stage, Mr. Brough was absent as a result of ill health absence and was suffering from stress and anxiety. He was not therefore present within the workshop during the incident on 28th January.

241. We accept the evidence of Mr. Vanes-Jones that he had done nothing of the sort and had it been practicable for a technician to be allocated to assist the Claimant then they would have been, although he cannot recall now with the passage of time whether anyone else was able to be allocated to assist the Claimant on that particular date. If there was no other person provided to assist, that was because no-one was available.

242. We therefore do not accept at all that the Claimant was set up to fail or given disruptive students. Much of the disruption was, we are satisfied, caused by the Claimant's own conduct.

The second alleged protected disclosure – discussion of 29th January 2015

243. Following the somewhat disastrous thematic walk and the altercation with students on 28th January 2015 the Claimant went to see Angela O'Neill, the Respondent's Human Resources Manager. He did that on 29th January 2015. The Claimant's case was that at that stage he told Angela O'Neill that he was not supported by his manager, that he had been exposed to danger with students ganging up around him, that he had experienced threatening behaviour from students and that he had felt that on one occasion he could have been stabbed. His position before us was also that he told Ms. O'Neill that since he had told Mr. Vanes-Jones about the incident with Mr Brough on 12th December 2014, he had been treated unfairly.

244. There is a dispute between the Claimant and Angela O'Neill as to what precisely was said on that occasion. Her evidence was that she recalled the Claimant attending the Human Resources Department on 29th January 2015 and she accepted that he had told her that he did not feel supported by his manager. She also accepted that he made reference to students being taller than him and that the Claimant had felt over shadowed by their stature. She was clear in her evidence, however, that the Claimant had said no more than that and, particularly, if the Claimant had said anything about believing that he might be stabbed, then she would have triggered the Respondent's Safeguarding Procedures.

245. We accept the account as given to us by Ms. O'Neill and we prefer her evidence over that of the Claimant for the reasons that we have previously given.

246. At the close of the discussion, Ms. O'Neill asked the Claimant to write down his concerns and we accept her evidence that her understanding at that time was that she felt that he needed help and intended to support him in that regard. In this regard, she later contacted the Black Professionals Network as she thought that they might be able to assist in providing some advice or support for the Claimant. That eventually came to nought but, as we shall come to, the Claimant was in fact suspended not long after his discussion with Ms. O'Neill.

The third alleged protected disclosure – the Statement of Experiences

247. Following on from the Claimant's attendance upon Angela O'Neill, he compiled a document entitled "Statement of Experiences" (see pages 301-306 of the hearing bundle). That was done on the basis that Ms. O'Neill had asked him to put things in writing. However, we are satisfied that that document went far further than anything that the Claimant had said to Ms. O'Neill the previous day. It is notable, however, that one thing that was conspicuous by its absence was any reference to the Claimant believing that he had been at risk in a workshop session and had feared that he might be stabbed. If true, that was an extremely serious matter but it was not mentioned at all. We can see no reason why it would not have been and it reinforces our view that nothing of that nature was said to Ms. O'Neill just the day previously.

248. The statement of experiences was sent by email to Ms. O'Neill, Mr. Vanes-Jones and Mr. Bramhall on 30th January 2015.

249. Somewhat curiously at first glance, the Claimant littered the statement of experiences with references to the fact that he had made protected disclosures. That might be seen as rather an odd thing to have included within such a document.

However, we are satisfied that the submissions of Mr. Bromige are correct that the Claimant had been labouring under an erroneous understanding that if he makes a protected disclosure, then he cannot be taken to task for anything at all – even where that action is completely unconnected to the making of such a disclosure. That misunderstanding was evident from the Claimant's own evidence and also his cross examination of witnesses for the Respondent.

250. We are satisfied that the reason that the Claimant approached Ms. O'Neill and the reason for him submitting the lengthy Statement of Experiences was on the basis that he saw this as a pre-emptive strike which would protect him from any action that may result from the outcome of the Thematic Walk and the incident on 28th January 2015. The Claimant's misunderstanding of what protection is afforded by making a protected disclosure was, we are satisfied, what prompted his attendance upon Angela O'Neill on 29th January and the content of the Statement of Experiences as he understood, albeit erroneously, that this would protect him from any repercussions in relation to his earlier conduct. We have no doubt that it was this which prompted the references to having made protected disclosures in the Statement of Experiences.

251. Therefore, given the somewhat disastrous thematic walk and the report that had resulted and also the further altercation that the Claimant had entered into with students on 28th January, we are satisfied that the repeated references in the statement of experiences to having made protected disclosures was to seek to stall any possibility of disciplinary or performance action being taken in respect of those matters. The timing of his visit to Ms. O'Neill was no coincidence.

252. The Claimant has identified the following passages from his statement of experiences, which he contends amount to protected disclosures. We have considered those both in isolation and also in totality when read with the remainder of the document and with the earlier discussions that he had had with Mr. Vanes-Jones and Ms. O'Neill.

253. The sections on which the Claimant relies in this regard read as follows:

> *"Learners were in my view evidently not meeting bench mark levels of expectation."*

> "*Shelly*
> *13/1/14 I worked with 2nd year apprentice, when I asked an apprentice to work safely by keeping his work area safe and tidy he responded, saying "fuck Safety".*

> *Senior Craft Students*
> *17/12/15 Whilst working on the benches in the workshop I witness 3rd year learners routering MDF stair treads. They were filling the air with harmful particles without extraction, when I asked them to consider their unsafe action and fit a hoover to the router, one learner became defiant and rude making all sorts of remarks and excuses not to comply whilst learner rep stood by. The 3rd rep finally told his peer to stop is* (sic) *attitude and comply.*

> *Owen*
> *I raised the concern about a Stanley knifes* (sic) *being used and brought into theory sessions, an incident occurred shortly afterwards involving our learners*

which left an apprentice in need of stitches and off work.

Staff Stress and Swearing
19/12/14. As a protected disclosure I drew attention to the inappropriate yelling, swearing and throwing of items in the workshop by a colleague in a fit of rage or frustration, who I believed to be suffering stress. I wonder how many of these learner's complained.

… Basic HASA WA legislation followed in some cases as we prepare learners for work we can expect them to adopt the appropriate PPE required. I conveyed to DB he should not attempt to take on the whole responsibility of learners as he was getting stressed out, and this was affecting the way he related to me.

…

34 years Trade Experience

I am aware when I offer help many cold shouldered me or refused to follow the guidance, some learners become defensive contradicting my instruction sometimes two or three learners will be attempting to bully me into submitting to their opinions. As if my industrial knowledge and experience from 16 years old to 50 years old working on building sites, shop fitting, shuttering and 12 years of self employment amounts to nothing.

…

My experiences and observation to date at BSDC is EQ still not promoted or celebrated amongst construction managers and staff at BSDC; observed attitudes and behaviour encourages learners to hold onto learnt prejudice or conditioned intolerance. During the visit of overseas partners from India I was privy to comments expressed around the college, workshop and in meetings which was reflective of the true mind set of the learners and staff regarding the Indian visitors. The unspoken fears, mistrust and unwarranted disrespect directed to these foreigners was noticed.

Promoting Respect Equality and Diversity
The Staffordshire County Council make no secret of the degree of deprivation and Child Protection issues it as (sic) *to deal with, we can make a link between education and diversity. It seem reasonable to believe many learners and their families have never encountered a black man in a position of power or authority, some may have been nurtured to resist the dominance of a black man; in fact many learners only accept the negative stereotypical image of black male portrait in the media. It is with these considerations and against such a back drop of resistance that any judgment on the outcomes of my performance in a teaching and learning context need to be made.*"

255. On 6th February 2015, Angela O'Neill acknowledged the statement of experiences that the Claimant had submitted and confirmed that the Respondent was looking at putting a programme into place to address the issues highlighted and that she would get back to him in that regard. We accept Angela O'Neill's evidence that the issue that she referred to in that letter (see page 321 of the hearing bundle) was that she had contacted the Black Professionals Network and had been seeking to get

a contact from that network to review the issues that the Claimant had raised. She did that on the basis that she considered that that Network might be able to offer the Claimant support as that was the issue that she still thought was at the heart of what the Claimant was telling her.

256. Whilst that contact with the intention of providing support did eventually come to nought, we accept that that was matters had been somewhat overtaken by the events which were to shortly follow and the suspension of the Claimant from employment.

3rd February 2015 e-mail

257. On 3rd February 2015, Mr. Brough wrote again to Mr. Bramhall and Mr. Vanes-Jones regarding his concerns about the Claimant. By that stage, Mr. Brough was in all likelihood still absent on the grounds of ill health. The Claimant's contention is that to write such an email from home was indicative of the fact that Mr. Brough was out to get him. We do not agree. Whether the email was written at work or at home, Mr. Brough was entitled to raise his concerns regarding problems in the workplace. The email did no more than that. Particularly, we accept that it was Mr. Brough's view, at that time certainly, that the cause of his stress was the Claimant and that the advice of his counsellors had been to "get it all out". It is therefore hardly surprising that he wrote to notify Mr. Bramhall and Mr. Vanes-Jones of that matter given that the 19th January meeting had not resolved the situation.

258. The email from Mr. Brough said this:

> "*Prior to leaving the college to attend my counselling appointment I started to feel ill (tired, shakey, stomach upset and sickly feeling)* (sic).
>
> *On attending my counselling appointment and later my doctors, I have found that the cause for my being ill is stress related anxiety. Having discussed at great length with my counsellor, I have come to realise that the cause is directly related to the problems I am experiencing with Phil.*
>
> *Prior to my leaving for my appointment, I had a discussion with Phil about the theory lessons he was delivering. He told me that he had been on the same topic for the past two weeks and was about to do the same again, he was ranting about how the learners are not listening. I explained that he can't keep repeating the same lesson and he needs to move onto the core units ASAP so that we don't run out of time, for exams and resits if necessary. I explained how I did my lessons to which he told me that I'm doing is wrong and proceeded to rant aggressively seemingly trying to draw me into an argument. At this time I felt threatened and had butterflies in my stomach as well as feeling nervous. I haven't felt this way since being shot at in the army. In an attempt to stop the argument that Phil was obviously spoiling for I explained that my results have always been excellent with very few exam re-sits and in most cases none at all.*
>
> *This lead Phil into an aggressive rant about his lesson observation* (sic). *Phil was not happy with the way his lesson went and felt put out by what he considered a lack of time to prepare a good lesson. I suggested that for his future lessons, he aught to use the lesson material that I had already provided for him* (sic). *He would only need to further develop what was already in*

place, rather than starting from scratch. His instant reaction was to start aggressively ranting about how Ian and Kane are setting him up to fail. It was at this point I decided to sit in in the staff canteen and eat my dinner, out of his way.

I have been advised by my doctor and counsellor to take time off to recover. I have also been prescribed medication to help with the anxiety. They have also advised that I look at ways of limiting my contact with Phil, so as not to put myself in similar positions in future. I am not sure how the latter will work, although I have some ideas.

Despite me always wanting to look for the good in people, I find myself struggling with Phil. He is devious and aggressive since he used my personal issues as a weapon to win an argument I have found it difficult to see Phil's positive attributes. I would even go so far as to say that he is a bully.

All I want is the best for the students I am responsible for and to better move the area forward but feel that Phil is working against me at every turn. Rather than support me and in turn accept my support, I feel that Phil is working against me".

259. The Claimant's position in relation to that email is that he denies any form of aggressive behaviour towards Mr. Brough and contends that Mr. Brough had made up all of the allegations in his email.

260. However, we prefer Mr. Brough's evidence that this is how he genuinely felt at the time regarding his experiences and interactions with the Claimant. Mr. Brough's evidence was that he felt bullied and indeed there is some support for that being the perception of others about the Claimant given his frankly bizarre reaction to having been called angry by a learner (see the above "angry black man" incident) and also comments made by Sarah Widdowson that the Claimant's conduct had been viewed by some of her learners as being tantamount to bullying (see again page 317 of the hearing bundle). We therefore accept that that email was a genuine assessment by Mr. Brough of how he was feeling at the time and we fail to see, and the Claimant has not been able to explain to us, how it is contended that that amounted to stereotyping on the grounds of race or indeed had anything to do with anything other than the Claimant's own behaviour and conduct.

<u>EV</u>

261. One of the students on the Carpentry and Joinery Course was EV and he was a student taught by the Claimant. It is clear that prior to the Claimant joining the Respondent College there had been difficulties in relation to securing EV's attendance on his course such that he had been put on the action plan to which we have already referred.

263. On 4th February 2015, an email was sent regarding EV from Paul Dace, the Respondent's learner mentor, to Mr. Vanes-Jones and Mr. Bramhall. The email said this:

"Just to give you the heads up I have had a meeting with the above learner from level 1 C&J and his mother this morning. She is withdrawing him with immediate effect.

She stated the reason is that she is having to force EV into college. He has become completely disengaged and really does not like the new tutor. His mother met his new tutor briefly in reception this morning and has complained to me about his general attitude, abruptness and rudeness and said that she now understands why she has been having to force EV into college."

264. It does not appear to be disputed by the Claimant that he was the "new tutor" referred to in that email and, indeed, this can only logically refer to the Claimant as he was the only new tutor in the Carpentry and Joinery team at that time.

265. The Claimant complains before us that Mr. Vanes-Jones did not discuss that email with him at the time that it was received. However, we accept the evidence of Mr. Vanes-Jones that whilst he did not recall discussing the matter with the Claimant at that time, his primary concern would have been for losing the learner rather than, at that stage, notifying the Claimant about the complaints which had been made by EV's mother. We do not find in the circumstances that to be particularly unusual and we have not been taken to anything to suggest that it was normal practice or some other College requirement for the concerns to have been raised with the Claimant upon receipt of the email. In all events, those matters were later part of a disciplinary case against the Claimant when he was given more than ample opportunity to address them.

266. Moreover, we should also note here that the Claimant had in fact been notified of the fact that a meeting was going to take place between EV's mother and Mr. Dace to discuss attendance issues and we accept that he would have been able to attend had he wished to do so (see page 318a of the hearing bundle). The Claimant chose not to attend but had he done so, he would have been aware of the complaints which EV's mother had made at that earlier stage. As we shall come to further below, the fact that the Claimant was notified and able to attend that meeting further reinforces our view that Mr. Dace had not set up the meeting as the Claimant alleges with the purpose of inducing or persuading EV's mother to make complaints against him.

267. The Claimant was copied into notification that EV had withdrawn from the course (see page 318b of the hearing bundle) and as we shall come below to he subsequently processed the necessary paperwork to confirm EV's departure from the course.

268. We should observe here that it difficult to see how not providing a copy of Mr. Dace's email to the Claimant immediately upon receipt could amount to a detriment as the Claimant alleges. Firstly, not taking the Claimant to task about that matter at that time cannot possibly to have been to his disadvantage it appears to us given that, as we shall come to, EV's parents raised legitimate concerns and had those been investigated sooner, they might well have signalled an earlier end to the Claimant's employment. We remind ourselves in this regard that at that stage he was still within his probationary period. Moreover, as we have already observed the matter was raised at a later stage during a disciplinary process and therefore the Claimant had the opportunity at that stage to fully address it (see for example page 352 of the hearing bundle)

269. The Claimant's case appears to be that the email devalued him and this was on the basis that he had made protected disclosures and on the grounds of his race. However, there is no evidence whatsoever to even begin to support that and, indeed,

as we shall come to the content of the email was entirely accurate as to what EV's mother had told Mr. Dace. All that Mr. Dace was doing was repeating the complaints that EV's mother had made to him about the Claimant. We are entirely satisfied that he was entitled to do that. Those complaints were in fact entirely consistent with what EV's mother and father later told Earl Laird as part of an investigation into allegations against the Claimant and we shall come further to that in due course. Given that the content of the email was entirely correct, it is difficult to see how the email devalued the Claimant.

270. The Claimant later processed the leaver form in relation to EV (see page 318c of the hearing bundle). Eventually, after having been asked in cross-examination several times, the Claimant did accept that he had been the one to process the paperwork. The Claimant's contention is that he was forced to write the withdrawal form in the terms that are set out. We do not accept that and it was not something that the Claimant had ever mentioned previously. The reason for EV leaving was not accurately reflected in that leaver form but do not go so far as to find that the Claimant set out erroneous information to seek to absolve himself of any blame for the matter.

271. A further complaint is made by the Claimant regarding the email sent by Mr. Dace. The Claimant in fact contends that Mr. Dace persuaded EV's mother to make the complaints about him which are referred to in that email. He alleges that EV's mother would not have made such complaints on her own initiative on the basis that he had had no significant contact with her prior to the alleged complaint being made.

272. There is absolutely nothing whatsoever to support the Claimant's contentions in this regard and his allegation in this respect is, in our view, simply fanciful. The Claimant knew that the meeting with EV's mother was due to take place. As we have already observed, he had been copied into an email to that effect before the meeting took place and we accept that he could have attended had he been minded so to do.

273. Therefore, if the suggestion is that Mr. Dace had set up the meeting with EV's mother of his own initiative so as to persuade her to raise complaints against the Claimant, it would be most unusual for him to have invited the Claimant to that particular meeting given that if the Claimant had attended, his intended course could not have realistically been achieved.

274. It is clear from the evidence before us that EV's mother had been the one to initiate contact with the Respondent and the meeting was set up by Mr. Dace as a direct result. There had clearly been a complaint by EV's mother and it is equally clear that she withdrew EV from the course as a result of those concerns. It is inconceivable to suggest that Mr. Dace had persuaded EV's mother to complain and withdraw her son from a course of study simply on the basis that this would enable him to have a stick to beat the Claimant with. Again, it is quite simply fanciful. For the Claimant's contention to be correct, EV's mother would have to have been a part of that conspiracy and be prepared to jeopardise her son's education to achieve that end. Equally the conspiracy would also have to later take in EV's father who gave evidence to Earl Laird during the course of a subsequent investigation. It is perhaps noteworthy in that regard that EV's father is also from a black ethnic minority background and it is difficult if not somewhat impossible to ascertain what he would have had to gain from assisting Mr. Dace with falsifying complaints against the Claimant for a discriminatory motive. Again, this is simply a further example of the Claimant refusing to accept criticism or that his own behaviour played a part in

complaints being made against him.

275. During his evidence, the Claimant pointed in support of his contention that Mr. Dace had initiated, encouraged or facilitated the complaint against him to page 293b of the hearing bundle. There is nothing whatsoever within that particular page, or indeed elsewhere, to suggest any conspiracy at all but not least any involving EV's mother.

276. The Claimant also contended before us that page 318a showed that there was additional discussion with EV's mother about him, although he eventually accepted in cross-examination that there was nothing suspicious about that. That realistically had to be the case because it is clear there was not anything at all unusual about that position. This demonstrated a propensity, however, for the Claimant to see conspiracy where none in fact lay.

277. Despite that initial acceptance of the position as set out immediately above, the Claimant then backtracked in his evidence and maintained that any criticism of him, if there had been any by EV's mother, should be recorded at page 318a. The Claimant maintained thereafter that Mr. Dace had created EV's mother's complaint (despite his position as set out to Employment Judge Camp being to the contrary) and had then also persuaded her to come in two months later when she met with Mr. Laird for the purposes of the investigation and persuaded her to repeat the same false allegations again. When it was put to the Claimant in cross-examination as to whether that was in fact what he was actually saying, he responded "*Of course he has, exactly what Paul Dace has done*".

278. There is no evidence whatsoever to substantiate that. Even assuming that Paul Dace knew about the disclosures that the Claimant had made and upon which he relies (and there is absolutely no evidence whatsoever to suggest that he did as the Claimant accepted in cross examination), the allegation that he would manufacture a complaint and do so using the parents of a learner is fanciful and not grounded in any fact.

279. As we have already observed, the Claimant had difficult relationships with students. Contrary to his assertion, there is no evidence at all before us that that difficulty had anything at all to do with his race and the situation with EV is simply a further example of that. Indeed, by the Claimant's own later admission (to which we shall come again in due course), he had "pushed" EV more than other students and had openly admitted to EV to doing so on the grounds that he was mixed race. Whilst the Claimant contends that he had done that for proper motive as EV would find life more challenging given his ethnic minority background, we accept that the Claimant had no basis for putting additional pressure on to EV in this regard and that it was manifestly inappropriate for him to have done so.

280. On 9th February 2015, a further issue arose in relation to EV's parents and the Claimant. On that date, it is common ground that the Claimant telephoned EV's father. That, as far as we can ascertain, is not denied by the Claimant. Again, we accept that after that call had taken place EV's mother telephoned Mr. Dace to complain about that matter and, understandably, Mr. Dace referred that matter to Kane Bramhall as Head of Department and to Mr. Vanes-Jones as the Claimant's direct line manager. His email said this (see page 323 of the hearing bundle).

> "*…*

Just to give you the heads up again, I have been speaking with the mother of EV (Mrs B) again as she wanted to complain about Phil Abrahams ringing E's father this morning.
She stated that the father told her that he (Phil) was very unprofessional and the father had to question whether he was supposed to be ringing him as he did not act in a manner associated with a tutor and that he didn't appreciate Phil insinuating that E was not intelligent enough to pass the course.

Mrs B asked for my email address so that she may send me a letter/email regarding the withdrawal of E and complain about Phil Abrahams attitude.
She has asked that no contact be made to the family again by Phil Abrahams.

…"

281. The Claimant contends that allegation to be unfounded and that it had been inaccurately reported in Mr. Dace's email. The Claimant has absolutely nothing whatsoever to substantiate that position. It does not appear to be disputed that he contacted EV's father by telephone and as, the later investigation by Mr. Laird shows, EV's father was clearly unhappy about that. There is no reason to suggest that anything that Mr. Dace had put in his email was inaccurate and EV's mother's statement given to Earl Laird (see page 406 and 407 of the hearing bundle) and both the comments of herself and EV's father support entirely the content of that communication. It should be noted that Mr. Dace was not present in that later meeting with Mr. Laird to prompt anybody insofar as the Claimant may contend that EV's mother (or both parents) had been briefed or coached by Mr. Dace to make the complaint in the terms that they did.

282. The Claimant's position under cross-examination was that this particular allegation was unfounded was that an email from Mr. Dace did not constitute a complaint having been made. His position was that this was "merely a conveyance of information that could not be verified" and he told us that he would only accept that EV's mother was making a complaint if she had done so by letter, email or another written document which was sent by her to the Respondent. That is clearly nonsense. Whether EV's mother had put the complaint in writing or not, plainly she was complaining verbally to Mr. Dace. It matters not if she used the word complaint, if she wrote that complaint down or if she made it over the telephone. The matters that she raised were self evidently a complaint about the Claimant's conduct and his attempts to argue to the contrary are clearly nonsensical.

283. The Claimant was suspended 4 days after this particular complaint.

<u>The Respondent College Open Day</u>

284. On 7th February 2015, there was an open day within the Construction Skills Department and this included the Carpentry and Joinery team of which the Claimant was a part.

285. We accept the Respondent's evidence that the open day was extremely important. It is of course a matter of common sense that it would be on the basis that the whole point of an open day is to encourage new students to enrol at the College and therefore to showcase what the College and the courses of study taught there have to offer.

286. Moreover, there were a number of communications sent by Mr. Bramhall to members of the team in the run up to the open day which stressed the importance of the day. One such piece of communication was an email sent only two days before the event itself by Mr. Bramhall and which read as follows:

> "*Open day*
> *Please ensure the Workshops are clean and tidy for Saturday and all arras* (sic) *have Hav-A-Go events in the workshop* (sic). *Corporate and smart clothes are worn.*
> *Construction staff are to be based in the workshops.*
> *We have merchants and guest speakers attending as well as employers 41 people have registered to attend.*
>
> *And now we have our sign this should attract passing traffic.*
>
> *Remember more productive the open day the more learners we enrol.*
>
> *Thank you for your support with the event.*
> *…*"

287. We are entirely satisfied that the event was an important one and that all staff, including the Claimant, were made aware of that. Despite that fact, we are equally entirely satisfied that the Claimant did not put in the effort that was stressed to be needed by the Respondent.

288. This generated concern to be raised by Mr. Dace in his capacity as Learner Mentor and who had made observations of the Claimant during the course of the open day. He committed his concerns to writing after the open day and they appear at page 322 of the bundle, which reads as follows:

> "*…*
>
> *On the morning of the open day at approx. 10am I was showing visitors and their children around the Carpentry and Joinery workshop. I was doing this as the probationary tutor for Carpentry and Joinery, Philip Abrahams was busy at the back of the workshop away from the public.*
>
> *After leaving the visitors at the Have a go stand with Learner WP I went to chat with Philip Abrahams and see what he was doing. He was fixing some cupboard doors that he had brought in from home. He asked me if I could open the tool cupboard for him as he needed a drill bit and drill. He then proceded* (sic) *to drill the doors and fix them with doweling joints. I do not know where he got the other materials from. I asked if he was communicating with the public but he just carried on working without answering.*
>
> *I left him so I could continue to engage with the public at the Have a go stand. I then left the workshop to come back around 45 minutes later and PA was still fixing his cupboard doors while the public were not being engaged.*
>
> *As Sean Foran had a number of visitors I then went to help out in the Painting and Decorating workshop. I did not go back into C&J workshops again that day. I did not feel it was appropriate for me as a Mentor to explain the C&J courses and opportunities to the public whilst the tutor was doing his own personal chore.*

…"

289. That was not the only complaint regarding the Claimant concerning the open day which was received by the Respondent. Mr Vanes-Jones similarly wrote to Kane Bramhall by email on 12th February 2015 (see page 326 of the hearing bundle) saying this:

…

Having been busy within the canteen area I managed to go into the Carpentry and Joinery workshop to check on the competition students and the volunteers helping with the have a go activity.
I noticed to the rear of the workshop Phil Abrahams working on some kitchen doors. These were not college doors that were being worked on.
I felt that the helpers/competitors were not fully supervised while Phil was working on the doors and he was not ready for when guests entered the workshop.
If you require additional information please contact.

…"

290. The Claimant contends that the content of that email was unfounded. Again, plainly it was not, even by the Claimant's own admission before us. Mr. Vane-Jones's feeling that supervision was not going as it should was a reasonable one and we accept that he felt that the Claimant undertaking his own work on a private project during working time was not appropriate. Indeed, it was not given the Claimant's requirement under his Contract of Employment to devote his whole time and attention to his duties and the emphasis which the Respondent had placed on the Open Day to members of staff, the Claimant included.

291. The only matter of concern to us in relation to this particular email is the fact that Mr Vanes-Jones had indicated that he himself had observed the Claimant undertaking work on doors. However, this is in contrast to the fact that when he was interviewed by Earl Laird at a later stage of the process he had informed him that someone else had told him about this and that he had not caught the Claimant in the act. There was a clear difference in recollection in that regard. We would find that more troubling, however, if the matters in question had not been witnessed and reported by others and, of course, the Claimant has now admitted it after the event. Clearly, those matters had occurred and it is more likely than not that the email was the accurate picture as it came closer in time to the events in question than Mr. Vanes-Jones's later interview with Earl Laird. Either way and in all events, Mr. Vanes-Jones was aware that the Claimant had been working on the kitchen doors when he should not have been.

292. The allegation was plainly not therefore unfounded as the Claimant contends. He further asserts that Mr. Vanes-Jones had "jumped on the band wagon", possibly as a result of the fact that he accepts now that he did work on the doors and therefore the allegation could not possibly be said to be unfounded despite his assertions to the contrary, but there is no evidence of any conspiring between those who had complained, nor was that put to Mr. Vanes-Jones by the Claimant at the hearing before us.

293. Whilst Mr Vanes-Jones accepted before us that he did not see the Claimant not engaging with learners; did not see a lack of support and that his actions did not jeopardise learner engagement, that does not equate to a falsity of the content of the email regarding working on kitchen doors and therefore there being a risk of there not being full supervision.

294. One of the areas which, as we have already observed, causes us to question the credibility of the Claimant was his initial denials to the Respondent during the course of a later investigation process that he had been working on his own kitchen doors. This then changed demonstrably with the Claimant accepting that he did in fact do so. However, in reality he had little option but to do that given that CCTV evidence, which the Claimant had previously represented to the Respondent would exonerate him in respect of this allegation, did in fact show him in fact to be doing exactly as Mr. Dace and Mr. Vanes-Jones had complained of in regards to him working on his own kitchen doors at the back of the workshop and in working time during the open day. Despite the fact that the Claimant was untruthful in the later investigation undertaken by Earl Laird (and to which we shall come in due course), he accepted before us that he did in fact work on the doors, albeit he only accepted that was for a few moments. He was clearly, for whatever period of time, working on his own private project when he should have been devoting his time and attention to his work and to the students. The allegation therefore, despite the Claimant's continued assertion to the contrary, was clearly not unfounded as he claims.

295. The Claimant asserts before us that the complaint was still unfounded on the basis that he did not sacrifice learner and student engagement and that, for example, he was not failing to interact with anyone who may have wanted to talk to him. However, Mr. Dace does not say that in his complaint and neither did Mr. Vanes-Jones. However, clearly if the Claimant was working on his own project, which he should not have been doing, there was a possibility that the learners and potential learners might be ignored and we consider it legitimate in the circumstances for Mr. Dace and Mr. Vanes-Jones to have raised their concerns. Moreover, they were not the only ones to raise a concern about this issue.

296. As we have already observed, the importance of the open day had been stressed to staff and the Claimant had clearly not paid appropriate heed to that. This was, we are satisfied, a further example of the Claimant choosing not to comply with an instruction which he had been given by the Respondent and this was another issue before us that elicited a response that he had been perfectly entitled to work on his doors in working time because he was exercising his academic freedom. That is, in fact, effectively the Claimant's stock answer to why he was entitled to do things other than what he was supposed to be doing.

297. The Claimant views Mr. Dace's email as unreasonable. It was plainly not. The Claimant accepted as we have already indicated above that there was no evidence that Mr. Dace knew about the disclosures that he had by that stage made and upon which he relies. That position was accepted by him in his evidence before us under cross-examination. However, that admission did not temper the Claimant's continued later assertion just one answer later that the sending of the email was on the grounds of "Whistleblowing" and this is, in our view, a further example of the Claimant's ill thought out approach to the allegations that he makes.

11th February 2015 complaint and the Parent's Review Day

298. On or around 11th February 2015, there was a further complaint by a member of staff within the Constructions Skills Department by the name of Sean Foran (see page 324 of the hearing bundle). The complaint emanated from an overheard conversation between the Claimant and a learner's mother at a Parent's Review Day. The note from Mr. Foran in which the complaint was recorded said this:

> "*I overheard Phil Abrahams talking to parents stating 'David Brough has issues' and also he was stating that the previous academic year with Ady Clucas was 'not run' properly indicating that the learners and staff were not following the C&G*[4] *standards that were set. I immediately informed Ian Vanes-Jones regarding this matter as I thought it was inappropriate and unprofessional behaviour.*"

299. Sean Foran was the Painting and Decorating Course Leader. That course sat within the Construction and Skills Department which, as already referred to above, also housed Carpentry and Joinery. However, Painting and Decorating was a different branch of the Department and Mr. Foran was not therefore in the same team as the Claimant. There is nothing at all before us to demonstrate that Mr. Foran was in any way biased against the Claimant nor that he knew of the disclosures upon which the Claimant relies as part of these proceedings.

300. In fact, insofar as this complaint is concerned this matter is in our view a further example of the Claimant not being prepared to accept that people had genuine cause for concern about his actions and therefore that legitimate complaints in the eyes of those persons had been made against him. The complaint made by Mr. Foran in this regard was in fact corroborated by the mother of another student whom we shall refer to as "JG", who had been recipient of the comments made by the Claimant to which Mr. Foran's email referred (see page 385 of the hearing bundle).

301. JG's mother was of course an external individual and not someone within the Respondent College who could have been influenced in any way by the Claimant's disclosures or his assertion that race was at the heart of everything that happened to him at work. Unlike the allegation relating to EV's parents, there is no assertion by the Claimant (or at least none that he has made us aware of) that JG's mother was influenced or that she herself had any discriminatory motive.

302. Despite the Claimant denying at the time what had been reported by Mr. Foran, he admitted in his evidence before us that he had said that JG had not been taught properly in the first year. Even if the Claimant did not name names, JG's parents would clearly have known who the tutors were that the Claimant was referring to as they had only been Ady Clucas (who had been his predecessor) and David Brough teaching JG on that particular course. This is simply a further argument on semantics that he did not name names and, therefore, asserts as a result that the complaint is in some way inaccurate, invalidated or otherwise unfounded. The allegation was not unfounded at all and we accept that it was accurate despite the Claimant's attempts to argue before us on the absolute specifics rather than on the substance of the complaint.

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[4] A reference to the City & Guilds Qualification.

303. As we have already touched upon above, there is no evidence whatsoever to suggest that Mr. Foran was aware of disclosures that the Claimant had made (and there is no reason to possibly suggest that he would be given that he was in a different section of the Department to the Claimant) and there is equally no basis to say he was influenced at all by the Claimant's race. Moreover, the content of the complaint appears to be entirely accurate given the independent corroboration from JG's mother on the topic of complaint and the Claimant's own admissions before us. There was also support for the complaint made by Sean Foran in a separate complaint made by Elaine Gallear (see page 325 of the hearing bundle).

304. The complaint by Mr. Foran regarding the Claimant was not the only one which emanated from the Parent Review Day on 11th February 2015. In this regard, Mr. Dace also raised a further complaint in respect of the Claimant. That is set out at pages 327 and 328 of the hearing bundle. That complaint also further substantiated the complaint made against the Claimant by Sean Foran but it was also asserted by Mr. Dace that the Claimant had told him to '*fuck off'* during the course of the Parent's Review Day.

305. The Claimant contends that this allegation was false on the basis that a subsequent investigation by Mr. Laird (and again to which we shall come in due course) found the complaint not to have been made out. We are not prepared, however, to make any finding as the Claimant invites us to do that Mr. Dace had lied about that particular complaint. Contrary to the conclusion reached by the Claimant on this issue, the finding of Mr. Laird as set out in his investigation report does not mean that the words were not said. It was merely the case that he did not uphold the allegation on the basis that there was no corroboration of it.

306. Moreover, we were not ultimately prepared to accept the Claimant's account that that particular incident most certainly did not occur and was therefore malicious. That was on account of our considerable concerns over the credibility of the Claimant and, particularly, the fact that he had told untruths himself during the investigation about the kitchen doors incident and had been prepared before us to allege that matters had not occurred as recorded in complaints when, in fact, it was plain to see that they had.

307. In view of that and the fact that we have not heard from Mr. Dace on the matter, we are quite simply not prepared to make any finding that the allegation was false or unfounded as the Claimant contends. However, even if the allegation was inaccurate, then it could have been so for a multitude of reasons including misunderstanding or miscommunication. As we have already observed, Mr. Dace did not know about the Claimant's disclosure and there is no evidence at all, and the Claimant has not been able to take us to anything to begin to suggest, that race was a factor in Mr. Dace making that particular complaint any more than he has any of the others which form part of this claim.

<u>The Claimant's suspension</u>

308. By this point, a pattern of complaints had emerged against the Claimant. We do not take the view that this supports the Claimant's theory that there was a conspiracy afoot to remove him from the Respondent College but instead that it was his actions that had caused genuine upset and concern amongst some of his colleagues and students and that those matters had been reported to the Respondent as a direct result. As we have already observed, the complaints which

had been made were genuine ones and, in some cases, they were serious - for example the ‘angry black man’ incident; the complaints from EV’s parents and the “paedophile” incidents. Matters had therefore come to something of a head and perhaps unsurprisingly given those circumstances, the Claimant was suspended by the Respondent pending an investigation into his conduct.

309. The suspension was carried out by Karen Proctor, the Vice Principal of the Respondent College. The Claimant maintained before us that the suspension was carried in fact out by Angela O’Neill of Human Resources. This appears to be founded simply on the basis that the suspension letter was written was Ms. O’Neill and the Claimant accepted in evidence that the person who had informed him verbally about his suspension was Karen Proctor.

310. It is not unusual in our experience for communications to be drafted by Human Resources (“HR”) even where that HR officer does not make the decision which the letter is confirming. We are satisfied from the Respondent’s disciplinary policy that it would have been Karen Proctor who made the decision to suspend the Claimant, that she did so and that the letter although signed by Ms. O’Neill merely confirmed the suspension decision of Ms. Proctor which by that stage had already been verbally communicated to the Claimant by the latter.

311. Whilst we have not heard from Karen Proctor but given the pattern of complaints and serious issues which had by that stage emerged, it was plainly not unreasonable in the circumstances for the Respondent to have suspended the Claimant given that the acts which he was accused of and which, if proven, clearly amounted to potential gross misconduct.

312. That letter confirming suspension from Ms. O’Neill was dated 13th February 2015 (see page 331 of the hearing bundle) and it said this:

> *“…*
>
> *The College has received a formal complaint relating to your conduct. It is alleged that you displayed unprofessional behaviour which may be to the detriment of the College reputation.*
>
> *The College will undertake a thorough investigation of the allegation before deciding what, if any, further action to take.*
>
> *For this reason it is considered inappropriate that you attend College premises until this matter has been fully investigated. You are therefore suspended from duty pending the holding of an investigation which may lead to a formal disciplinary hearing. A copy of the College’s Disciplinary procedure is enclosed.*
>
> *You will receive your normal pay during your suspension. However, you should not make contact with either members of staff or learners whilst this matter is being investigated.*
>
> *Earl Laird has been appointed as Investigating Officer and he will be in touch with you to arrange an investigatory interview. Whilst you are suspended you will need to be contactable and able to attend the college when required.*
> *…”*

313. Although not expressly set out at this stage in the suspension letter, the allegations against the Claimant at this stage included the fact that students had been spoken to inappropriately, and in some cases aggressively, and that learners had been affected. It was not in our view, and set against that background, unreasonable for the Claimant to be suspended and therefore away from the classroom environment whilst an investigation into those matters was taking place. There was no evidence whatsoever to which we were taken to begin to suggest that any white member of staff would have been treated differently and would not have been suspended when faced with the allegations against the Claimant and the plethora of complaints which had been made by this stage.

314. The Claimant has sought to compare his treatment in respect of his suspension with that of Ian Vanes-Jones, David Brough and Paul Dace – a matter that we would observe has somewhat evolved during the course of the hearing.

315. With regard to Mr. Vanes-Jones, the Claimant points to the fact that he was not suspended when it came to light that he had acted inappropriately in his interactions with learners during the tool box talk to which we have referred above.

316. However, we are satisfied that this is a situation where the Claimant is seeking to compare apples with oranges. Mr. Vanes-Jones had not been subject to any complaint (other than matters raised by the Claimant during the course of the later disciplinary process) about the events of the tool box talk. He had not been the subject of complaints from a number of staff about his conduct and attitude, he had not been the subject of complaints by learners or their parents and whilst his actions were inappropriate, they were not challenging, confrontational and bordering on the aggressive as was the case with the Claimant. The two situations quite clearly are not comparable and a comparison with Mr. Vanes-Jones is quite clearly artificial given the catalogue of allegations against the Claimant. Moreover, as we shall come to below, Mr. Vanes-Jones was spoken to about the tool box talk and in respect of appropriate communications with students when this matter came to light.

317. The Claimant also refers to Paul Dace and the fact that he was not suspended for telling untruths about the Claimant in respect of the swearing allegation to which we have already referred above. However, we are satisfied that the Claimant is again seeking to compare apples with oranges in this regard. It was never determined that Mr. Dace was in fact lying about this incident. Moreover, even if that had been the view that the Respondent had taken that conduct was not even close to approaching the catalogue of complaints that had been made against the Claimant by that stage and for which he had been suspended.

318. The Claimant also relies upon the fact that David Brough was not suspended for the 11th December incident where he had lost his temper in the workshop with students. Again, that is not comparable to the myriad of complaints against the Claimant. No one, including students, had complained about that incident. All that had occurred was that Mr. Brough had shouted, lost his temper and thrown off cuts of wood into the middle of the room at a time when he was under a good deal of professional and personal stress of which the Respondent was aware. He was not the subject of complaints from staff, students and parents as the Claimant was and whilst his actions were clearly inappropriate, they are simply not in any way comparable to the Claimant. We are therefore not surprised that Mr. Brough, or indeed any of the other comparators relied on by the Claimant, were not suspended.

319. Moreover, the Claimant has not been able to take us to anything, except his belief that that was the case, to begin to suggest that Karen Proctor was motivated by his race or that she knew that he had made any of the disclosures upon which he relies. The Claimant was suspended plainly because of the catalogue of conduct complaints that had arisen by that juncture.

<u>The investigation</u>

320. Following the Claimant's suspension, the Respondent commenced an investigation into the allegations against him. The commissioning manager for the investigation was Angela O'Neill and an external investigating officer was appointed rather than an individual from within the Respondent College. This was a gentleman by the name of Earl Laird.

321. Mr. Laird was a former employee of the Respondent. He is of black African Caribbean origin. Prior to leaving the Respondent College he had held a senior position there as the interim Assistant Principal with responsibility for providing academic leadership to a number of departments. Those were the departments of Hair and Beauty, Creative Studies, A-Level, Sport and Special Educational Needs. He had had no involvement during his time at the Respondent College with the Construction and Built Environment Department or the Carpentry and Joinery division.

322. The post of Assistant Principle, even on an interim basis, is a relatively senior position in the Respondent College and we note that this does not sit well with the Claimant's overarching allegation that black staff were devalued within the Respondent generally and were not seen as suitable for roles of responsibility or authority.

323. At the material time of his investigation, Mr. Laird was on the Board of the Burton & South Derbyshire Education Trust ("The Trust"). Contrary to the assertion that we understood the Claimant to be making, the Trust does not have any direct contact with or responsibility for the Respondent College. In fact, it deals with only one educational establishment by the name of Kingfisher Primary School. However, there are three members of staff within the Respondent College who also sit on the Trust Board with Mr. Laird. They were at the material time Karen Proctor, John Beaty and David McMillan.

324. The Claimant's contention is that rendered Mr. Laird an inappropriate individual to deal with the investigation on the basis that he was not independent due to his sitting on the Board with employees of the Respondent College. We struggle, even after having heard evidence and representations from the Claimant on that point, as to ascertain how he has reached that conclusion. The investigation could, under the Respondent's disciplinary policy, have been undertaken by someone internally within the Respondent College. Mr. Laird was of course one step removed from that. Anything by way of his involvement on the Board of the Trust and/or previous employment by the Respondent did not in our view appear to taint his independence and there is nothing to suggest that being a fellow Board member to Ms. Proctor or Messrs. Beaty and McMillan was of any consequence to Mr. Laird in the context of his investigation. Mr. Laird had had no earlier knowledge of the allegations against the Claimant; he did not appear to have any relationship with anyone involved in those allegations and overall he did not appear to us to have any

special relationship, despite the Claimant's contention to that effect, with the Respondent College other than as a former employee.

325. As we have already observed, the Respondent was perfectly entitled to appoint an investigating officer from within the College itself under the terms of their disciplinary policy (and see clause 3.6 of that policy at page 214 of the hearing bundle) and Mr. Laird was clearly one step removed from that. He was, we accept, sufficiently independent to deal with the investigation and the Respondent was also entitled if they wished under the terms of the disciplinary policy to use an external investigator (see clause 3.7 of that policy at page 214 of the hearing bundle).

326. Insofar as the Claimant alleges that Mr. Laird was effectively a puppet for the Respondent to achieve the end of dismissing him, there is simply no evidence to support that and we accepted Mr. Laird's evidence that there was no such agenda in that regard.

327. Furthermore, there was no evidence whatsoever of the Claimant's contention that Mr. Laird shared more affinity with and therefore a greater respect for white people as opposed to those of his own ethnic origins and therefore that he would side with them as part of the investigation and so as to achieve what the Claimant contended to be the Respondent's desired outcome of dismissing him. We again have no hesitation in accepting Mr. Laird's evidence that that was quite simply not the case and he dealt with the investigation as he would have any other and with impartiality on both sides.

328. We also do not accept the Claimant's contention that there was any predetermined outcome to the investigation and that it had already been determined that he would be dismissed. We remind ourselves again here that the Claimant was still in his probationary period and had the Respondent been minded to do so, they could have declared that unsuccessful and terminated employment without further ado and without the time and costs of the investigation and subsequent disciplinary proceedings. Particularly in that regard, the Claimant was on full pay throughout the ten month period of suspension. Instead of simply terminating employment during the probationary period the Respondent instead undertook a lengthy and detailed investigation, including by way of the appointment of an external investigator to deal with the matter. That simply does not square with the Claimant's contention that the Respondent had already made up their mind to dismiss him.

329. Turning back then to the investigation, Mr. Laird wrote to the Claimant on 18th February 2015 reiterating the fact that a complaint had been made regarding alleged unprofessional behaviour. It should be noted that no specifics of the allegations were provided either at that stage or by way of the initial suspension letter from Angela O'Neill.

330. We have been taken to the Respondent's disciplinary policy and it is clear that there is nothing within that particular policy which requires the Respondent to have provided details of the allegations against the Claimant ahead of an investigatory meeting. That position is not adrift from the ACAS Code of Practice on Disciplinary & Grievance Procedures either.

331. However, it is clear from pages 333 and 333a of the hearing bundle that the Claimant did ask Angela O'Neill about the substance of the allegations against him and we further accept that it later became clear to Earl Laird that the Claimant did not

have the full details of the allegations when he met with him at an investigatory meeting on 23rd February 2015. Earl Laird had been labouring under the misapprehension that those allegations had been provided to the Claimant at an earlier stage by Angela O'Neill, although he did not ask her specifically about that. The position was merely a misunderstanding.

332. After that point that Earl Laird became aware that the Claimant did not have details of the allegations against him, he arranged for the Claimant to be provided with full details in additional to the discussions that had been held at the investigatory meeting itself.

333. The investigatory meeting was not a disciplinary hearing and Earl Laird made it clear to the Claimant that he would not finalise his investigation report until such time as he had seen and considered all of the evidence that the Claimant felt was relevant to the investigation.

334. Unfortunately, full details of the allegations were not provided to the Claimant in good time after the 23rd February investigatory meeting with Earl Laird. That was despite the fact that prior to that point, Earl Laird had been provided with Terms of Reference by Angela O'Neill (in her capacity as commissioning manager) which set out the specific allegations which had been made against the Claimant. It would have been a simple process for the Claimant to have been provided with a copy of the Terms of Reference or for the relevant parts to be extracted and placed in a communication to him. That did not occur until much later, although the fault for that did not lie with Earl Laird.

335. Whilst there was therefore a considerable delay in respect of details of the allegations being provided to the Claimant, there is no evidence at all that either that or the very general terms of the suspension letter had anything at all to do with the Claimant's disclosures or the matter of his race. Other than the Claimant's contention that there must have been, there is quite simply nothing at all to support this. Whilst matters could have been handled better and with more specificity, we are satisfied that there was nothing sinister about that and it was an oversight.

336. In all events, we are satisfied that the Claimant was not disadvantaged by that omission or the delay. Whilst the Claimant had made a great play of the fact that he would have brought evidence to the investigatory meeting had he known more about the allegations, he was given more than ample opportunity afterwards to do so. Mr. Laird had made it abundantly clear that he would not finalise his report until all evidence (including that from the Claimant) was to hand and we accept that he did just that.

337. In all events, as we shall come to in due course, the eventual disciplinary hearing in respect of this matter did not take place until December 2015, by which time the Claimant had again had more than ample opportunity to consider the allegations against him and to gain any necessary evidence to defend his position.

338. Whilst it may therefore have been helpful to have set out the allegations earlier and ahead of the investigatory meeting, the Respondent's own policy did not require that and for the reasons set out above that did not disadvantage the Claimant.

339. The Terms of Reference set by Ms. O'Neill dealt with all the relevant allegations which had by that stage been made against the Claimant and which we

are satisfied were the catalyst for his suspension. The Terms of Reference set out the following specific allegations which Mr Laird was to investigate:

1. Swearing at Paul Dace during the Parents' Review event on 11th February 2015.
2. Unprofessional and inaccurate feedback given to JG's parents during the same event.
3. Working on his own kitchen doors during the Open Day on 7th February 2015 instead of supervising learners and engaging with parents.
5. Unprofessional communications with EV and his parents.
6. Unprofessional communications with carpentry and joinery students on 28th January 2015.
7. Unprofessional management of learner behaviour, specifically regarding a comment made about being an "angry black man" on 14th January 2015.

<u>The investigatory meeting</u>

340. As already touched upon above, the Claimant attended the investigatory meeting on 23rd February 2015. It is clear to us from looking at the questions that Earl Laird asked at that meeting that he assumed that the Claimant was fully aware of what the allegations were. We find that that supports the evidence that he gave to us in that regard and we have already dealt with the delay in providing the details and substance of the allegations above.

341. During the meeting, amongst other things, the Claimant denied having told Paul Dace to "fuck off". He said that he had provided feedback to JG and his parents and had done so from records held by the Respondent and therefore was fully informed and prepared to provide feedback. He maintained that he had not worked on his own kitchen doors during the open day and that there was CCTV evidence which would be able to substantiate that[5].

342. He told Mr. Laird that he had encouraged EV to make a special effort to achieve and had provided customised additional support for EV during his workshop sessions because he believed that he would find life difficult in the future as a mixed race individual. In that regard, when asked by Earl Laird if the Claimant taught EV he had replied:

> *"Yes, he is a mixed race young man. I don't see him as any man I see him as mixed race – he needs to take responsibility – he will find it difficult."*

343. There had been no reference to EV's race by Earl Laird in the questions that he was asking the Claimant and this appeared to us to have been a curious comment for the Claimant to have made.

344. The Claimant told Mr. Laird that his relationship with EV was good. He also told Mr. Laird that he had laughed when the "paedophile" comment was made but that that was similar to language that would be used on a building site and the learner had been difficult and abusive and that it was the learner who had been the antagonist. He further said that he had not been provided with support in relation to that incident.

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[5] As we have already observed, that was an untruth.

345. With regard to the use of the term "angry black man" the Claimant told Mr. Laird that he had had a learner say to him *"you are aggressive aren't you"* and that he had replied *"are you suggesting I am an aggressive black man"*. He said that that was a normal comment suggesting that black men are an aggressive group of people and he was demonstrating to the learner that in the workplace environment that sort of comment would be challenged. The Claimant said that he felt that it was an appropriate comment for him to have made.

346. Although not directly relevant to the allegations against him, the Claimant also raised with Mr. Laird the fact that he had witnessed Ian Vanes-Jones using inappropriate language in front of learners such as referring to bricklayers as "knuckle draggers" asking "are you from SWAD"[6] and spitting and that he had sworn at students. The Claimant relies on the fact that those matters were not formally investigated by the Respondent and that Ian Vanes-Jones was not suspended and did not face disciplinary action as a result.

347. However, we are entirely satisfied that that was not a matter for Mr. Laird given that that was not within the scope of his particular investigation. In addition, we accept the evidence of David McMillan that once he became aware of those matters informal advice as to conduct was given to Mr. Vanes-Jones. Again, as we have already observed above, the matters raised about Mr. Vanes-Jones were not of the same sort as the numerous allegations of inappropriate conduct against the Claimant. We have also seen the footage taken by the Claimant of the tool-box talk where those matters occurred. It was clear to us that whilst it is not the way in which we would have expected a senior member of staff such as Mr. Vanes-Jones to have conducted himself, there was no malice in his words or actions, that this was his attempt at "banter" (albeit not of an appropriate sort) and creating a rapport with the learners and that there was, unlike the position with the Claimant, no aggressive or challenging conduct towards the students.

348. In addition to having conducted his interview with the Claimant, Mr. Laird also undertook a significant number of other investigatory interviews with the following:

- Karl Beeby
- Luke Gooding
- Kane Bramhall
- David Brough
- Ian Vanes-Jones
- Sean Foran
- Joe Bowley
- JG's mother
- JC's mother
- BC
- Paul Dace
- Elaine Gallear
- EV's parents
- Mick Rowbottom
- KM
- TE
- LM
- WP

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[6] A reference to Swadlincote

- SW
- JM
- Nicola Woodings

349. Those individuals who we have referred to by initials were students at the material time within the Carpentry and Joinery Division. As they are all minors, we have not identified them with their full names.

350. In addition to speaking to those individuals set out above, Mr. Laird also met again with the Claimant on 17th April 2015 before finalising his later report.

Access to documentation

351. During the course of the early stages of the investigation, the Claimant had requested access to his computer and also documentation which he said that he had in the College which would enable him to defend himself in respect of the allegations against him.

352. As early as 6th March 2015, it is clear from the documentation before us that Angela O'Neill had been inviting the Claimant into the College for the purposes of collecting any paperwork and accessing his emails and the Respondent's ProMonitor system (see particularly pages 403 and 404 of the hearing bundle).

353. However, that meeting did not go ahead. The Claimant was later invited to a further meeting on 1st April 2015 for the same purpose. The Claimant did not attend that meeting. The Claimant said before us that he had not received the letter sent by Angela O'Neill or accessed his voice mail where she had left him a message. He also claimed that there were problems with his emails which had led to him not receiving the email copy of the letter inviting him to the meeting either.

354. As the Claimant was on that very same day sending other emails, we consider that unlikely to say the least. We also find it somewhat unlikely that the Claimant had so many difficulties obtaining correspondence or communications from the Respondent which were sent in a number of mediums. If the Claimant had attended on 1st April, then he would have had early access to the information that he was requesting. However, that meeting was later re-arranged after he had failed to attend on 1st April and the Claimant was given access to all of the information and documentation that he had requested and was thereafter given sufficient time by Mr. Laird to submit anything of relevance before his report was finalised.

355. On 12th March 2015, Angela O'Neill sent to the Claimant the notes of the original investigation meeting on 23rd February. The Claimant has placed considerable stock on the fact that this is referred to in Angela O'Neill's covering letter as a "statement" and that he should not have been asked to sign a statement when he had not formally by that stage had details of the allegations against him.

356. Again, this is a matter of pure semantics and given that the Claimant was sent what are quite evidently a set of minutes to consider we are entirely satisfied that he was perfectly well aware of what he was being asked to do. He was not being asked to sign a statement in relation to the allegations but was simply being asked to agree the minutes of the meeting which had taken place between himself and Earl Laird.

357. The Claimant did not require the specific allegations in writing for that purpose but, in all events, he must have known what the allegations were because they were clearly the matters that he had been asked about by Earl Laird at the investigatory meeting.

358. As already touched upon above, the Claimant found some difficulty in agreeing the minutes. He has sought to explain that away with regard to the fact that it had been referred to as a statement but, as we have already made plain, it was perfectly obvious that he was not being asked to sign a statement but that he was being asked to agree the content of the minutes of the meeting which he had been present at and it only required him to confirm whether or not he agreed the content was an accurate representation of what had happened at the meeting. Indeed, if the Claimant did not already know that, then it was spelled out plainly to him by Angela O'Neill on 19th March 2015 by way of further communication (see page 411 of the hearing bundle).

359. The same e-mail sought to rearrange a further time for the Claimant to come in to collect documents and review emails, although that was later postponed to 1st April 2015 as a result of the illness of Mr. Laird. As we have already observed, the Claimant did not attend that meeting.

360. Rather than providing any response to the minutes of the meeting, the Claimant instead forwarded on 29th March 2015 a document essentially complaining about the process adopted and the allegations against him. That was forwarded to Earl Laird.

361. On 13th April 2015, Angela O'Neill wrote to the Claimant setting out the basis of the allegations against him which he had chased up in earlier email communications. This mirrored the allegations set out in the Terms of Reference which Mr Laird was using for the basis of his investigation and which we have already referred to above.

362. Angela O'Neill also rearranged the meeting of 1st April 2015 which the Claimant had failed to attend to 17th April 2015 and to set out that this would be for the purposes of making amendments to the 23rd February 2015 "statement"[7] and to review and provide any evidence that the Claimant required to defend himself.

363. The meeting took place on 17th April 2015. The notes of that meeting, which we accept to be an accurate representation of what occurred at the same, are at pages 429 to 434 of the hearing bundle. We accept that that was a lengthy meeting at which the Claimant was taken through the minutes of the meeting of the 23rd February 2015 with Mr Laird line by line and that the amendments that he wanted to make were recorded by Angela O'Neill.

364. During the course of that meeting, the Claimant contends that he raised a grievance in relation to issues about the process but that the Respondent failed to investigate that. It is abundantly clear from the portions of the notes relied upon by the Claimant in this regard that he did no such thing, either when taking in isolation or when taken as a whole. In this regard, the Claimant relies upon the following extracts:

"*HR required me to have time. HR failed. On the first occasion, HR in the*

[7] i.e. the minutes of the investigatory meeting.

letter of 18th February asked me to bring evidence and documents; I was not given clear details of the allegations. This is a consistent process, HR failed to give me support."

365. Mr. Laird resolved that issue by asking the Claimant if he wanted to reschedule the meeting. The Claimant said that he did not.

366. The second extract relied upon by the Claimant reads as follows:

"*I'm not asking for representation, HR have a duty of care to offer it to any colleague. It is reasonable to have a fair opportunity, 5 days is clearly insufficient. I am not asking for representation. HR has been consistent and unfair. The meeting today can go ahead.*"

367. He also relies upon the following extracts:

"*You are asking me to sign notes."*
"The statement does not relate to dialogue"[8]

368. The Claimant contends that those matters were clearly a grievance. It is clear to us that they were not. The Claimant was simply raising concerns about the process which were dealt with by Mr. Laird at the meeting and he was offered the opportunity if he wished to postpone the meeting and/or to arrange representation. The Claimant did not want to do that and said quite clearly that the meeting could go ahead. There was nothing in what the Claimant said that could reasonably have put anyone on notice that he was raising a grievance as he now contends.

369. During the course of questions asked by the Tribunal, the Claimant could not point to anything in all events that a grievance investigation in relation to those matters would actually have achieved, even if it had been remotely clear that he was raising a complaint of that nature, given that he contended that the Respondent would not have been able to right wrongs that he felt had been done to him by Human Resources. It is difficult to see, therefore, what detriment this caused given that all the matters that could be addressed by Mr. Laird – such as offering further time and to re-arrange the meeting – were addressed and the Claimant elected to continue.

370. We are satisfied that, even if those matters had been investigated and treated as a grievance, that would have had no bearing on anything at all, let alone the way that the meeting of 17th April 2015 was conducted.

371. The Claimant also complained during the course of the meeting as to the fact that CCTV evidence had not been obtained in relation to the events of 28th January 2015. We accept the evidence of both Earl Laird and Angela O'Neill that this was because of the fact that the CCTV system was on a 30 day loop and by the time Earl Laird was able to have the opportunity to gain access to it, more than 30 days had already passed and the CCTV had been wiped.

372. In this regard, we accept that Earl Laird had had an appointment to attend with a technician to view all of the CCTV footage on 25th February 2015 when the CCTV would still have been available for the 28th January incident. However, he ran out of time because of interviewing a number of individuals on that day and accordingly

[8] The statement again relates to the notes of the 23rd February 2015 meeting

could not meet the technician because he had to rush off to Birmingham for a prior appointment.

373. We accept that Earl Laird had no idea that the CCTV was on a 30 day loop and would be wiped after that time. We accept Earl Laird's consistent evidence on that point. We do accept that that CCTV could have been secured in its entirety but we equally accept that that was a genuine error on the Respondent's part and that, in particular, Earl Laird had no idea that there was any wiping of CCTV after a certain period of time. It was simply a mistake that he did not check that and unfortunate that he had not been able to view it on 25th February.

374. However, we should note here that this allegation is a further instance of the Claimant building his case upon shifting sands. In this regard, the Claimant alleged during cross-examination of Mr. Laird that Mr. Laird had seen the CCTV footage, knew that it exonerated him and had therefore "buried it". The Claimant had never made such an allegation at any point prior to his cross examination of Mr. Laird and that included no mention at all of that being made in his own witness evidence. Moreover, there is not one shred of evidence at all that the Claimant is able to point to so as to suggest that Mr. Laird would have done such a thing. We accept entirely Mr. Laird's evidence that that is not something that he did nor is it something that he would he ever do.

374. It is also difficult to see what the CCTV would have added to the 28th January allegations given that the Claimant had admitted laughing when the paedophile comment was made. Mr. Laird also had evidence from a number of other witnesses that confirmed the basis of that allegation.

375. In our view, the Claimant has not given much thought to what would have actually been likely to have been shown on that particular CCTV evidence that would, as he claims, have exonerated him. It is, in that regard, perhaps much like his position to Earl Laird that CCTV footage of the Open Day would have exonerated him of the kitchen doors incident when in fact he was well aware that it did anything but.

376. The Claimant also makes reference to the Respondent having discriminated against him or subjected him to detriment by failing to secure training log records and tracking sheets. Again, this particular part of the allegation shows a misunderstanding by the Claimant as to what Mr. Laird was actually investigating. It is clear that those were not relevant at all to the actual allegations against the Claimant. It was not the performance of the students that Mr. Laird was being asked to consider but the way in which the Claimant had conveyed that performance to both learners and parents. Mr. Laird did have some tracking sheets and information – see for example page 500i of the hearing bundle – but it is difficult to see how any of this affected any of the allegations against the Claimant and, equally, he has not been able to assist us in relation to that particular matter either. This is perhaps best viewed as smoke and mirrors.

377. Moreover, the meeting of 17th April 2015 provided the Claimant with the opportunity to collect and collate any information or evidence that he wanted Mr. Laird to see as part of the process and he has not been able to take us to anything at all to suggest that there was information or documentation which was not made available to him that he could, if it had been relevant, have shared with Mr. Laird as part of the investigatory process.

378. The Claimant also complains that Mr Laird did not interview all of the necessary witnesses to deal with the allegations against him and that he had been selective in doing so. He again contends that that was so as to bring about the desired end by the Respondent, which was to terminate his employment. He relies on witness evidence which he contends was not obtained from Eugene Smyth and Dawn Moss, who were in workshop assistants/technicians.

379. However, it is clear from the notes of the Claimant's discussions with Mr. Laird - and accepted in fact by the Claimant before us - that he had not at any time asked Mr. Laird to interview those individuals as part of the investigatory process. His rather convenient evidence was that he had assumed that Mr. Laird would interview them on the basis that they would be able to provide what he referred to as a balanced report.

380. The difficulty which arises, however, is that by his own admission the Claimant could have requested that they were called at the disciplinary hearing and, perhaps more importantly than that, the fact that he did not have any idea whatsoever if they had even been in the classroom to provide learner support at the material time of the relevant allegations against him. However, that did not prevent the Claimant from putting to Mr. Laird during the course of cross-examination that he did not interview them because they would have exonerated him. When the Claimant was reminded of his own evidence that he himself had no idea what they might have said and whether they were even in the classroom at the time, the Claimant withdrew that particular portion of the allegation. This was a further example, however, of the Claimant's case being built on ever shifting sands.

381. However, despite that withdrawal of that part of the allegation the Claimant subsequently backtracked the following day and asserted that he had only withdrawn that complaint against Earl Laird, but not against the Respondent generally, and therefore that it was still contended that Eugene Smyth and Dawn Moss should have been interviewed by the Respondent in some guise.

382. However, that rather overlooks the fact that even assuming that the Claimant had not withdrawn that portion of the allegation the day before (and we are absolutely clear from all of our notes that he did), the difficulty with that particular part of the allegation is that the Claimant never mentioned Dawn Moss or Eugene Smyth to anybody at all and, in all events, Earl Laird was the investigating officer and it was he who was tasked with conducting the investigatory interviews. If anybody should have interviewed them, and we find it difficult to say precisely why he should have, it was clearly Earl Laird. There is absolutely no basis to still level that aspect of the complaint against Angela O'Neill who was not the investigating officer but against whom the Claimant was insistent that he still wished to pursue that particular matter.

383. We consider that is simply demonstrative of the Claimant's lack of appreciation of the actual allegations that he makes and his insistence on seeking to prosecute ever point, whether it is valid or not.

384. Following the meeting on 17th April, a revised set of minutes of the original investigatory meeting was sent to the Claimant by Angela O'Neill on 20th April 2015. We are satisfied that the Claimant took an unreasonable approach in relation to that position. Despite having gone through the minutes line by line and agreed the required amendments with Angela O'Neill and Earl Laird on 17th April 2015, the Claimant changed his mind and wrote to Angela O'Neill on 21st April 2015 to say that

there were "several corrections" required. However, he did not at that time specify what those were in that correspondence or make any attempt to provide any altered minutes to reflect the changes that he was at that time saying were necessary.

385. Angela O'Neill subsequently requested that the Claimant do so and he later set out a number of minor corrections (see page 447 of the hearing bundle).

Personal property

386. The Claimant contends that during the course of his suspension, the Respondent failed to secure his personal notes and records that had been left in and on his desk when he was suspended. Again, without much apparent thought to that particular matter, that is an allegation that he levels not only at Ian Vanes-Jones and Angela O'Neill but also against Kane Bramhall and, rather bizarrely, Earl Laird.

387. Ultimately, we have been unable to get to the bottom of what personal notes and records the Claimant is in fact talking about in relation to this particular allegation. His position on that point has been somewhat changeable. It is ultimately unclear if the Claimant is referring to the tracking sheets that he says were needed for the investigation (as he had suggested to the Respondent in a meeting in January 2016 and as alluded to in very generic terms in his witness statement) or whether he is referring to his personal belongings.

388. If it was the former, then those were documents which had been provided to the Claimant by the Respondent (see for example pages 403, 552 and 553 of the hearing bundle), although they were of questionable relevance to anything in all events for the reasons that we have already set out above.

389. However, if the Claimant is referring to his personal belongings, then the Claimant's own evidence is entirely to the contrary to such an allegation that his personal belongings were not secured on the basis that paragraphs 267 and 268 of his own witness statement records that he was taken immediately upon his suspension to his office and that he collected his personable belongings before leaving the building. That is despite the fact that his position in cross-examination to Angela O'Neill was entirely to the contrary of his own witness statement with the suggestion that he had much later been called in to collect his boxed up possessions.

390. The Claimant was very unclear to say the least - and indeed it might best be described as evasive - in cross-examination as to what it was that he said had not been preserved on his desk that would have assisted him. If that is the matter of tracking sheets, then the Claimant had opportunity on 17th April 2015 to obtain those and anything else that he required. A number of tracking sheets (which as we have already observed were of questionable relevance anyway) were provided and considered by Mr. Laird. There is therefore quite simply nothing at all in this particular allegation.

391. The Claimant also complains before us of the failure during the course of the investigation to provide him with a copy of the 'formal complaint' referred to within the original suspension letter. The Claimant accepted in cross-examination that there was no duty to provide him with a copy of the complaints, although he indicated that he had expected them to be provided. The Claimant was in all events provided with a copy of the investigation report which dealt with the many complaints made along with the relevant appendices. The Claimant here falls into the same mindset as he

did in relation to the complaint of EV's mother which made to Paul Dace over the telephone, that if something is not put in writing then it does not constitute a complaint. Clearly, that is a nonsense and the Respondent could not provide copies of all complaints made to the Claimant in respect of those that had been made orally – such as that of EV's mother. Despite his insistence to the contrary, we are satisfied that the Claimant was provided with all of the necessary information and documentation that was available by way of Earl Laird's report and the appendices to it. Again, there was nothing at all of substance in this allegation.

Failure to deal with grievances

392. The Claimant contends that during the course of the investigation process, the Respondent failed to deal with grievances that he raised in April and May 2015 regarding the disciplinary process and failed to follow a formal grievance process in relation to those complaints. We would observe that the Claimant had access to a copy of the Respondent's grievance procedure (referenced as it was in his contract of employment) and we are satisfied that at no stage did he raise a grievance in April or May 2015 – or indeed at any other time - but that had he wished to do so that was an option that was available to him.

393. This is again an area where the Claimant's complaints are built on shifting sands and have been somewhat ill thought out in terms of the actual evidence upon which he relies. Initially during the course of cross-examination by Mr. Bromige the Claimant sought to refer to documents upon which he relied as being grievances which were not made either in April or May 2015 and despite that being against the clear scope of his complaint as before Employment Judge Camp.

394. Given the scope of the allegations made by the Claimant and the shifting sands to which we have already referred, we declined to allow the Claimant to further amend his claim to encompass other alleged grievances which he had not expressly referred to before Employment Judge Camp and which did not occur in April or May 2015.

395. It has also been very difficult to ascertain in all events which of the communications in April and May 2015 this allegation in fact relates to. The Claimant's evidence differed on the point from his own cross-examination to that of the Respondent's witnesses. For completeness, we have therefore considered each of the items of correspondence or communications from the Claimant which occurred in April or May 2015 under the ambit of this allegation.

396. The first of those is at page 424 of the bundle. That is clearly not a grievance. It was a matter which was a request for information. It was actioned by Human Resources and the information sought was provided to the Claimant the following week (see page 425 of the hearing bundle).

397. The second document potentially relied upon by the Claimant is at page 428 of the hearing bundle. Again, quite evidently that is not a grievance. It is simply a response to a timeline that had been provided by Human resources highlighting the amendments which the Claimant considered to be necessary to that document.

398. The next document is at page 429 of the hearing bundle which amounts to nothing more than grumbles by the Claimant about the process. Again, akin to the comments made at the meeting of 17th April, it is clearly not a grievance nor did the

Claimant suggest it to be so. By the stage that he raised the matters of which he complained they had in fact already been rectified in all events.

399. The next document is page 430 of the hearing bundle and again this is clearly not a grievance. This was simply the Claimant raising issues about the suspension and investigation process but there was nothing within that document to put the Respondent on notice that the Claimant was raising those matters as a grievance (and we are far from convinced that that is what he intended at the time).

400. The next is page 437 of the hearing bundle. Again, clearly this is not a grievance. It was simply an acknowledgment of receipt of the amended minutes of 23rd February and an observation, although perhaps an unusual one given the time that had been spent in the 17th April meeting going through the minutes of the meeting line by line with the Claimant, that "several corrections" were required.

401. The next is page 438 of the hearing bundle, which is simply a request for documents. It is quite evidently not a grievance.

402. The next is page 443 of the bundle which is a request for confirmation of receipt of an earlier email. Again, it is clearly not a grievance and was a matter that was promptly responded to by the Respondent (see page 444 of the hearing bundle).

403. The next is page 445 of the hearing bundle which was the Claimant again taking issue with the disciplinary process. Again, clearly those were observations or issues raised by the Claimant but were not a grievance any more so than his earlier comments were.

404. The next is page 446 of the hearing bundle, which is a request for information only and clearly does not constitute a grievance.

405. The next is page 447 which is the Claimant's second set of amendments to the minutes of the 23rd February meeting and a further request for information. It is quite evidently not a grievance.

406. The same is the case in relation to page 448, which clearly is not a grievance and amounted only to the Claimant providing information and raising further issues that he had about the process.

407. The next is page 456 of the hearing bundle. Again, this was the Claimant doing no more than raising issues regarding the process but clearly it was not a grievance nor did the Claimant suggest it to be so.

408. Similarly, the next document at page 460 of the hearing bundle was the Claimant again raising his dissatisfaction with certain aspects of the investigation process and a request for information. It was not a grievance and nor did the Claimant suggest it to be so. We remind ourselves once again in this regard that the Claimant was well aware of the Respondent's Grievance Procedure and had he genuinely intended to raise a grievance about any of the matters set out above, he was perfectly able to do so.

409. The final communication within the April/May 2015 period is at page 462 of the hearing bundle. That was simply the re-sending of the email that already appears at page 460 and is therefore no more a grievance than the earlier communication was.

410. We have already remarked upon the aspects of the 17th April 2015 meeting which the Claimant contends to be a grievance and we are satisfied that at no point did the Claimant raise a grievance, whether under the Respondent's formal procedure or otherwise. There can be no reasonable suggestion that his communications or the matters referred to at the 17th April meeting should have been treated as such. Otherwise, practically all expressions of disquiet would have to be dealt with via the grievance process and that is not the purpose of such a procedure. Moreover, the Claimant had access to the grievance procedure on the intranet – if any of the communications referred to above were genuinely a grievance then it was open to him to say so if he believed, as he contends now, that it was not being investigated as it should have been. The Claimant raised no such suggestion.

411. However, and in all events as we shall come to, the Respondent arranged for the Claimant to attend a meeting with Vice Principal John Beaty to discuss the matters of concern and the situation was not therefore ignored.

412. However, even in the unlikely event that we had viewed those matters as grievances and had found that they should have been treated as such (a matter which the Claimant did not suggest at any time before the commencement of these proceedings) then the Claimant has raised nothing at all other than his general overarching argument as to rife and inherent prejudice in the Respondent College, to suggest that the failure to look at matters in that way was deliberate or that it had anything to do with his race or any disclosures that he had made.

Falsification of correspondence

413. During the course of the investigation process, the Claimant was sent a letter by Angela O'Neill dated 12th March 2015. That letter was a relatively innocuous one in that it was the letter in which Ms. O'Neill asked the Claimant to sign and return the "statement" (i.e. the first version of the minutes of 23rd February 2015).

414. The Claimant contends that Angela O'Neill deliberately falsified that letter with the intention of seeking to paint him in a bad light in the eyes of the Respondent. As it transpired from the evidence before us, when sending her letter of 12th March 2015, Angela O'Neill had sent it to the incorrect address as it had been despatched to the Claimant's old address in error. Understandably therefore, the Claimant had not replied to that letter.

415. By way of an email that the Claimant sent to Angela O'Neill on 21st April she was made aware by him that he had not received the letter of 12th March 2015 and she therefore wrote to him the following day enclosing a further copy of a letter of 12th March which she noted that the Claimant "claimed not" to have received. As by that time there had been earlier issues with the Claimant not having received communications sent by Ms. O'Neill (see for example the communications arranging the 1st April meeting referred to above) it was perhaps not unusual that she may have been sceptical as to whether what the Claimant was saying about non-receipt was accurate.

416. However, the original letter of 12th March had of course been sent to the Claimant at his old address and thus it is now not difficult to understand why he may not have received it. When it was re-sent to him on 22nd April 2015, it was sent with his correct address on it rather than the "old" address that the 12th March letter had in

fact originally been despatched to.

417. The Claimant therefore contends that Angela O'Neill had deliberately falsified the letter so as to place him in a bad light. It is not clear who it is said he was to be placed in a bad light with. However, it is abundantly clear from the evidence of Angela O'Neill, which we accept, that all that she was doing was replacing a letter that had been sent out with the incorrect address with one sent with the correct address on it. There can be no credible suggestion that the letter was deliberately, or as the Claimant terms it fraudulently, doctored to suggest that he had received it when he had not. This is an example of the Claimant simply seeing a conspiracy when in reality there was none.

Meeting with John Beaty

418. On or around 30th July 2015, the Claimant met with John Beaty, one of the Respondent's Vice Principals. The predominant purpose of this meeting was to try to move along the impasse that had occurred in relation to the agreement of the minutes of the 23rd February 2015, a matter which was still rumbling on, and to also deal with the concerns which the Claimant had with regard to the disciplinary process and which he had voiced in his April meeting with Mr. Laird and in the April and May emails referred to above.

419. We are satisfied from the evidence of Mr. Beaty that he resolved during the course of the lengthy meeting what was ultimately able to be resolved. Particularly, he explained to the Claimant that if the minutes of 23rd February were not capable of agreement then both sets would be used.

420. There was no point or purpose in, as the Claimant now suggests should have occurred, halting the disciplinary process so as to investigate the Claimant's allegations of procedural failings on the part of Human Resources. It is perhaps noteworthy that the Claimant did not in fact ask Mr. Beaty to do that either at the meeting or at any other time.

421. We cannot see, and the Claimant could not assist us with this point, what the point was in suspending the disciplinary process to investigate issues such as the the missing CCTV for 28th January, given that it was common ground that that was not a matter that could be resolved as the CCTV had already been deleted. The Claimant did not suggest to Mr. Beaty (in contrast to his position now) that it had been considered and suppressed as it exonerated him and therefore that Mr. Laird was conducting an unfair investigation. He was also not suggesting to Mr. Beaty that any disclosures that he had made or the matter of his race were at the heart of the complaints against him or the invoking of the disciplinary procedure.

422. There was therefore nothing that warranted suspension of the disciplinary process and we are satisfied that Mr. Beaty was trying to move on what was fast becoming a stagnated process. It was clearly not in anyone's interests for matters to drag on any further.

423. Moreover, as we have already observed, the Claimant never asked at that meeting for a suspension of the investigation and it is clear from the notes of that meeting that he appeared relatively satisfied by the conclusion of his meeting with Mr. Beaty.

424. In short, therefore, there was simply no need to halt an already protracted process for the purpose of investigating matters which quite clearly could not be remedied and, if they were relevant to any degree, were matters to be taken into account at the disciplinary stage as part of the overall evidential matrix.

425. What the Claimant actually wanted at that stage, it seems to us, was for the allegations against him to be dropped rather than the disciplinary process suspended for investigation on the above issues to take place. That is, in fact something that had been suggested by solicitors appointed on his behalf to write to the Respondent at a similar time and they were clear in the fact that the case against the Claimant should be dropped in its entirety.

426. We are therefore entirely unsurprised that Mr. Beaty did not determine a need to halt the disciplinary process for the purposes of further investigation. Furthermore, we are also satisfied from his evidence that Mr. Beaty was not aware of the disclosures that the Claimant relies upon until he was asked to undertake a later investigation into those matters at the appeal stage. The Claimant has nothing at all to gainsay Mr. Beaty's evidence that he had no idea of those matters at the time that he met with the Claimant other than a general feeling that he would have known about that given that, at some point, he was Angela O'Neill's line manager.

427. We are also satisfied that the matter of race had nothing to do with the actions that Mr. Beaty took and the Claimant has not taken us to anything which would begin to suggest that his race was an issue. It has to be said that the Claimant's evidence on this point was extremely unclear and left us unsure whether he was in fact alleging that Mr. Beaty had discriminated against him. This was, however, in marked contrast to his later cross-examination of Mr. Beaty. However, as we have already observed we are satisfied that there is nothing to suggest that Mr. Beaty would have dealt any differently with matters for a white member of staff or that the Claimant's race was an issue at all.

<u>The investigation report</u>

428. On 27th July 2015, Mr. Laird concluded his investigation report. It was a very detailed report dealing with all of the matters which he had been tasked with investigating under the Terms of Reference. It ran to a number of pages and featured in the hearing bundle before us at pages 478 to 500(ii).

429. We set out here the main findings from Mr. Laird's investigation and we are satisfied that those findings were fully supported by the evidence that he had collated. Those findings and the relevant conclusions and recommendations read as follows:

> "***Swearing at Paul Dace during the BSDC Parents Review event held on Wednesday 11th February 2015***.
>
> *PD stated during his interview that PA had told him to "Fuck off" in the presence of MC and JG during the BSDC parents review day which took place on 11th February 2015. In contrast, PA denied swearing at PD but acknowledged that PD did approach him for the student attendance sheet during the event but could not recall which parents he was with at the time. PA is supported by MC who confirmed during her interview that no one did swear but paradoxically could not remember any disruptions during the*

meeting with PA. JC stated that he recalled PA and PD having a discussion prior to his review meeting with PA but did not hear what they were talking about.

It is clear from the investigation interviews with PD, PA, JC and MC that there is insufficient evidence to determine that PA had sworn at PD during the parents review event. PD had clearly stated that MC and JC were present when the offensive comment was directed towards him and furthermore stated that he looked at MC after the comment was made in disbelief and she was open mouthed at the same time but neither of his witnesses collaborated with his account of events.

Working on your own kitchen doors during the SDC Open Day held on Saturday 7th February 2015 instead of supervising learners and engaging parents.

There is some evidence to corroborate what happened within the workshop during the SDC open day of the 7th February 2015. IVJ reported within his email to KB of the 12th February 2015, that he noticed to the rear of the workshop that PA was working on some kitchen doors which were not College related and stated that the helpers/competitors where (sic) *not fully supervised whilst PA was working on the doors. In contrast, IVJ stated during this investigation interview that he did not see PA working on the doors during the event. Paradoxically, the CCTV coverage illustrates PA working on the kitchen doors at the rear of the workshop at 30.41, 32.10, 32.37, 35.00, 37.00 & 54.52 (CCTV recording times).*

It is clear from the evidence of PD that PA had been working on the kitchen doors for significant periods of time during the event and as a consequence had neglected the competitors and helpers within the workshop. KBe also confirmed that he witnessed PA working on his kitchen doors during the open day instead of supervising his students. Students LM and WP confirmed that they were both present within the workshop between 9.15 a.m and 1p.m and witnessed PA working at the rear of the workshop for approximately two hours. Furthermore, LM confirmed that he watched PA sanding down the doors at the rear of the workshop during the event whilst at the same time acknowledging that the doors had nothing to do with the learning activities at the College.

There is sufficient evidence from witnesses IVJ, KBe, DB, SF and KB which confirms that all members of staff where (sic) *advised of their responsibilities for the open day prior to the event, despite PA stating that his line manager did not advise him of what his responsibilities were during the open day. The investigation confirmed that three emails were sent to all construction skills staff on 12th January (Appendix 5.1) and a further email of the 5th February advised all staff of their responsibilities during the event. Additionally, the construction skills action logs of the 15th December 2014 and the 21st January refer to the SDC open day and PA was present at both meetings (Appendix 5.H).*

Unprofessional communication with EV and his parents.

The evidence sourced from PD, MB and DB suggests that PA attitude towards EV contributed towards his unsatisfactory attendance and subsequent

withdrawal from the Carpentry and Joinery Diploma Level One course. In contrast, EV attendance report of the 11th March 2015 confirms that EV attendance was equally inconsistent for subjects taught by other lecturers and the team taught lessons delivered by DB and PA Appendix 5.L). Additionally, EV learner withdrawal evidence form demonstrates that EV had failed to engage with the course despite receiving support from PD, DB & PA and made no reference to PA as a contributory factor for EV withdrawal from learning (Appendix 5.E).

DB confirmed that PA had advised him that he was being hasher (sic) *with EV during his lessons because he was mixed race. By his own admission, PA confirmed that EV is mixed race and he does not see him as any man because he sees him as a mixed race man so he needs to take responsibility because he will find it life difficult.*

MB[9] *confirmed that she had seen PA within the SDC reception on the 4th February 2015 prior to a scheduled meeting with PD and described how PA did not introduce himself as EV lecturer to her and said arrogantly to MB "I take it that you're his mum" and then said to EV "you are here are you, where are your boots?" In contrast, PA denied communicating with MB within the reception area and stated that he had said to EV "where were you yesterday?" Additionally, EVF*[10] *states that PA insinuated that EV is rubbish at carpentry and joinery during a telephone conversation on the 9th February 2015 but PA denied making any reference relating to EV academic capability during the telephone conversation with EVF.*

In the absence of independent witnesses, there is insufficient evidence to determine if PA had communicated unprofessionally with EV parents but the evidence does confirm that PA intentionally provided EV with a more challenging learning experience than other students because of his race. Independent of EV individual academic ability and support needs which is professionally unacceptable.

Unprofessional communications with Carpentry and Joinery students on Wednesday 28th January 2015.

PA suggests that students BC & JB needed support concerning the safe use of power tools but both students refused to take his advice and consequently became confrontational with him. In contrast, it is clear from the collated evidence from BC, JB and KBe that the students required specific help and guidance for operating a potentially very dangerous power tool and extraction hoover but PA response to the students was found not to be supportive when both BC and JB had advised PA that they had not been shown how to use an extraction hoover previously but PA responded by stating "you should know how to use it … it is common sense". By his own admission, PA confirmed that he had said "surely you can connect a hoover so it works". According to PA, all witnesses and KBe, PA response created a heated verbal confrontation between PA, BC & JB which disrupted the learning experiences of all students within the workshop.

By his own admission, PA confirmed that he laughed at the paedophile

[9] MB is EV's mother
[10] EVF is EV's father

statement directed towards JB during the lesson and confirmed that he did say "If it was on a building site, this is what people say" when students BC and JB challenged his behaviour. In contrast, witness BC stated that PA laughed at JB and then said "I bet that's true" and witness TE stated that PA agreed with him after he had made the paedophile statement and then said to JB "he needed to know when it is banter".

There is sufficient evidence within the witness statements of JB, TE, BC & KM which confirm that PA publicly agreed with the paedophile comment within their lesson and as a result of PA actions an heated argument between PA and JB disrupted the learning experiences of all students within the workshop.

Unprofessional management of learner behaviour specifically regarding a comment made about being an Angry Black Man on Wednesday 14th January 2015

It is clear from the evidence of BC, LG and PA that a heated discussion took place between PA and some students during the lesson and consequently LG said to PA "you are aggressive aren't you". By his own admission, PA did say to LG in the presence of all his other students "are you suggesting that I am an aggressive black man?" and confirmed that it was a normal comment that black men are an aggressive group of people therefore it was appropriate to direct the statements towards a student during a group teaching and learning session. In contrast, JM confirmed that LG had made his statement in jest but PA had responded unprofessionally and confrontationally. In support, lecturer DB stated that he witnesses PA saying "are you calling me an angry black man" and behaving in a confrontational manner towards the student who had made the angry statement. Additionally, DB confirmed the student had tried to explain that he did not use the word black but PA ignored the student and continued to be argumentative.

During the investigation the term angry or aggressive were used by the respondent, complainant and witnesses to describe the terminology used by PA. However, sufficient evidence was collated to determine that PA comment and confrontational behaviour towards LG was inappropriate and unprofessional.

Unprofessional and inaccurate feedback provided to JG's parents during the BSDC Parents Review event held on Wednesday 11th February 2015.

By his own admission, PA confirmed that he advised MG[11] during the BSDC parents review day that her son (JG) would not pass the Bence Level 2 diploma course because he should not have been enrolled onto the course given the degree of his learning difficulties, and because he was four weeks behind with his course work and because JG did not know the basics. Additionally, PA confirmed that he advised MG that the College had done everything possible and therefore JG had maximised his ability.

According to PA, the feedback to MG was based upon information that PA had sourced from JG log book, tracking sheets, pro-monitor and attendance records. In contrast, PD suggests that PA attendance is good and he is not aware of JG being six weeks behind with his work. Additionally, the

[11] This is student JG's mother.

investigation review of JG tutorial records determined that he has a range of learning support needs of which the College had identified and is responding to through its learning support department. JG had achieved the carpentry and joinery level 1 qualification at BSDC with a merit on the 30th June 2014 (Appendix 5.K), the City and Guilds Level 2 Diploma Bench Joinery tracking sheet on the 11th March 2015 (Appendix 5.G) does not confirm that JG will definitely fail the practical subject and his overall attendance was 89% as at the 11th March 2015 (Appendix 5.U). Supportively, JG practical, theory and progression trackers of the 15th June 2015 evidence that JG will achieve the Bench Joinery level two qualification and consequently has been offered a place on the level three Bench Joinery course scheduled to commence September 2015 (Appendix 5.W, 5.X & 5.Y).

In the absence of independent witnesses and by MG own admission, there is insufficient evidence to determine that PA had behaved in an unprofessional manner towards JG parents during the BSDC parents review of the 11th February 2015.

The evidence reviewed on the 11th March 2015 did not indicate that JG would definitely fail to achieve the qualification and the evidence reviewed on the 25th June 2015 confirmed that JG will achieve the level 2 Bench Joinery qualification and progress onto the level 3 course. Therefore inaccurate information was presented to JG parents and consequently their frustration and concerns could have been avoided.

It is clear from the evidence supplied by PD and EG that JG parents were very frustrated and angry immediately after receiving feedback from PA and held the College responsible for failing their son on the basis that they were advised by PA that JG should not have been allowed to commence the course because of his learning disabilities and for citing him as a failure half way through the academic year. Additionally, PA advising JG parents that the College had failed their son instead of working with the parents to find a solution to support JG to successfully achieve his programme of study was unprofessional and impacted negatively upon the reputation of the College at a public event.

PA denied disclosing to JG parents that JG was not been taught properly and also denied referring to any tutor during the feedback meeting. In contrast, SF confirmed that he overheard PA advising parents during the parents review event of the 11th February 2015 that DB has personal issues and that the course was not run properly by AL[12] last year. MG confirmed during her investigation interview that PA had said that J had not been taught properly by AL and DB. Having considered SF and MG evidence, it is clear that PA conduct was unprofessional and inappropriate. Additionally, PA behaviour impacted negatively upon the College's reputation and image which was evidenced through JG parents heated reaction during the Parents Review day.

Overall findings

The evidence gathered has been assessed against the definition of gross misconduct as set out in the College's disciplinary procedure for staff where it

[12] That reference refers to Ady Clucus and no doubt is a typographical error which should have read "AC".

is defined as actions or behaviours likely to bring the College into disrepute. In assessing the evidence, I have therefore considered whether on the balance of probabilities the evidence establishes that the alleged unprofessional behaviour took place, the conduct was repeated and had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the College students, teaching staff and parents.

In reaching my findings, I have considered the pattern of behaviour against each allegation to determine whether or not this has fallen within the above definition.

Swearing at Paul Dace during the BSDC Parents Review event held on 11th February 2015

I am satisfied from the evidence that PA did not swear at PD during the BSDC Parents Review Day held on 11th February 2015.

Working on your own kitchen doors during the SDC open day held on Saturday 7th February 2015 instead of supervising students and engaging parents

Having considered all of the evidence carefully, I have found that PA did work on his kitchen doors at the rear of the workshop during the SDC open of the 7th February 2015.

Unprofessional communication with EV and his parents

There is insufficient evidence to determine that PA had communicated unprofessionally with EV parents but through PA own admission, I am satisfied that PA intentionally provided EV with a more challenging learning experience because of his race rather than his academic capability and therefore behaved unprofessionally towards EV.

Unprofessional communications with Carpentry and Joinery students on Wednesday 28th January 2015

Based upon the available evidence, I have found that PA did behave and communicate unprofessionally towards JB and the other Carpentry and Joinery students within the workshop on 28th January 2015 and consequently loss (sic) *the respect of his students and thereafter failed to effectively managing to control their behaviours during the lesson.*

Unprofessional management of learner behaviour specifically regarding a comment being made about being an Angry Black Man on Wednesday 14th January 2015

*There is evidence to corroborate that PA communicated and behaved unprofessionally towards LG during the workshop lesson held on 14th January 2015 and consequently loss (*sic) *the respect of his students and thereafter failed to effectively manage and control their behaviours during the lesson.*

Unprofessional and inaccurate feedback provided to JG's parents during the BSDC Parents Review event held on Wednesday 11th February 2015

There is insufficient evidence to determine if PA was rude or behaved inappropriately towards JG's parents during the BSDC Parents Review event held on 11th February 2015.

I am satisfied from the evidence that PA did provide JG parents with inaccurate feedback concerning JG academic performance and also did say that the course was not properly taught by DB and AL last year. Reviewing the evidence carefully, I am satisfied that JG parents reacted angrily to the information presented to them by PA during the event which therefore impacted negatively upon the College's image and reputation.

7. Conclusions and Recommendations

There is sufficient evidence to support that PA behaved in an unprofessional and inappropriate way and that his conduct towards parents and his students was unwanted, intimidating and unprofessional. In accordance with the College's disciplinary procedures for staff, I satisfied that the upheld allegations identified within the findings chapter need to be considered further at a disciplinary hearing.

The College should give consideration to exploring further events determined through the collection of evidence during the investigation but are outside the investigation terms of reference,

- *The professional and personal relationships between PA and his academic and support colleagues.*
- *PA teaching, learning and assessment capability based upon feedback received from learner walk reports, focus groups, students, teaching and management staff."*

430. As we have already observed, we are satisfied that the findings that Mr. Laird made were consistent with the evidence that he had before him and, particularly:

(i) His finding that the Claimant had worked on his own kitchen doors was substantiated not only by the witness evidence but by the very CCTV footage that the Claimant had contended would exonerate him;

(ii) The finding that the Claimant had behaved unprofessionally towards EV by placing emphasis on his race and not on him as a person was entirely substantiated by what the Claimant had told Mr. Laird;

(iii) There was sufficient evidence that the Claimant had acted unprofessionally and lost control of the lesson on 28th January 2015 not only from the accounts given by the learners and others but by the Claimant's own admission that he had laughed at the "paedophile" comment rather than taking appropriate action in respect of it;

(iv) By the Claimant's own admission he had challenged a learner who had referred to him as angry or aggressive by suggesting that the learner

was referring to his race and stating "are you calling me an aggressive black man"; and

(v) There was sufficient evidence from the witnesses interviewed that the Claimant had provided negative feedback to JG's parents and that that had included unprofessional comment as to the standards of teaching the previous year from Mr. Brough and Mr. Clucus.

431. We would also observe that, far from being unfair to the Claimant, he was given the benefit of the doubt in relation to some of the allegations against him – such as the swearing incident - where Mr. Laird could not be satisfied from other evidence that the Claimant had committed those acts of misconduct. He did not, for example, simply accept the word of Mr. Dace over that of the Claimant. That to us suggests a balanced and fair investigation by Mr. Laird and, as we have already said above, of the allegations that he upheld there was more than sufficient evidence for him to do so.

The disciplinary hearing

432. Unsurprisingly given the findings of Mr. Laird, the Claimant was called to attend a disciplinary hearing. That, we find, was entirely reasonable given the substantiated findings of the investigatory report.

433. The disciplinary hearing was dealt with by David McMillan, the Vice Principal of Curriculum and Performance. We are satisfied that before that point, Mr. McMillan had not been involved in matters, had no prior knowledge or dealings with the allegations made against the Claimant and had no particular affinity to anyone involved within the process or the allegations. He was therefore an appropriate person, and of appropriate seniority, to deal with the matter. We deal further with the independence point below.

434. Mr. McMillan wrote to the Claimant on 16th November 2015 to invite him to a disciplinary hearing on 3rd December 2015. The hearing set out the six allegations which had been investigated by Mr. Laird and enclosed a copy of the Respondent's disciplinary procedure. Also enclosed was a copy of Mr. Laird's report and the supporting documentary evidence which had been before Mr. Laird when he compiled his report. The Claimant was invited to submit any documentary evidence or written responses prior to the hearing; was advised of his right of accompaniment and also to submit any request for relevant witnesses to attend the hearing. It is notable in this regard that the Claimant submitted no request for any witnesses to be called and this included technicians Smyth and Moss.

435. The Claimant was notified that the outcome of the hearing may lead to dismissal but that no decision would be made on that until the hearing had concluded.

436. The Claimant wrote to Mr. McMillan in response on 20th November 2015 (see pages 541 to 544 of the hearing bundle). The Claimant raised numerous issues within that particular correspondence, although the substance focussed upon his contentions that there had been failures in the investigatory stages of the proceedings and in particular with regard to dealings by Human Resources with the matter.

437. The final paragraph of the letter concluded thus:

> "*Until primary stages of the investigatory process are concluded, I reject BSDC attempt rubber stamp mal practice* (sic) *and rush through an unjust procedure to further disadvantage me. I demand the right to freedom from harassment, bullying, discrimination. I clam* (sic) *the right to my academic freedom, professional expertise, equality and diversity*".

438. In essence, the Claimant's position here is that he was requesting that Mr. McMillan suspend the disciplinary process until there had been further investigation in relation to the matter. Mr. McMillan wrote back to the Claimant on 26th November 2015 (see pages 545 and 546 of the hearing bundle). The letter from Mr. McMillan simply rescheduled the disciplinary hearing and he did not elect to carry out the further investigation that the Claimant was seeking.

439. However, all of the points raised by the Claimant in his correspondence were dealt with, as we shall come to further below, in later correspondence from the Respondent (see pages 552 and 553 of the hearing bundle).

440. The Claimant contends before us that Mr. McMillan discriminated against him and/or subjected him to detriment by failing to halt the disciplinary process at that stage to deal with further investigation. The Claimant further contends that the process was rushed.

441. We find that latter suggestion a complete nonsense given how long things had been going on by that stage and the detailed investigation which had been undertaken by Mr. Laird. There was in our view, as indeed in Mr McMillan's, no need at all to suspend and investigate further at that stage any more than there had been at the point where Mr. Beaty was considering the matter. The Claimant was simply unable to accept before us that there was nothing whatsoever in the disciplinary policy that supported his argument that the process should have been suspended and that was despite a lengthy pause in the proceedings for him to read the relevant documents which he contended demonstrated that he was right about that. He was not able to take us to anything that supported his position and we are satisfied that there was nothing further than could or should have been investigated at this point. Again, by this stage the Claimant had still not raised any suggestion that race was a factor in the allegations or the disciplinary process nor that the disclosures that he relies upon had played any part either. The investigatory report by Mr. Laird was comprehensive and there was nothing further to investigate.

442. By that stage, the Claimant had provided the evidence that he wanted to rely on as had the Respondent. There were still two weeks to go before the disciplinary hearing was scheduled and there was no point or purpose in suspending the process. There was no evidence at all that the decision taken by Mr. McMillan, which we conclude to have been entirely reasonable in the circumstances, had anything to do with the Claimant's race or the fact that he had made the disclosures upon which he relies. Indeed, there is again no evidence at all that Mr. McMillan was aware of the detailed substance of those particular disclosures or that he was remotely influenced by them.

443. As best as we could ascertain during the hearing, the Claimant's evidence in relation to the issue of race in respect of Mr. McMillan was that he had been stereotyped from the outset by the Respondent as a *"black man who did not know*

what he was doing". There was no evidence of that at all and that suggestion was in our view simply quite fanciful. All of the points that the Claimant raised were answered before the hearing by Mr. McMillan and there was quite simply no reason not to continue with the process. Despite the Claimant's now assertion to the contrary, we accept that Mr. McMillan did not consider the issues which the Claimant had raised in his letter as a grievance and having read that letter for ourselves, we do not consider his approach in that regard to have been unreasonable.

444. The Claimant wrote again to Mr. McMillan on 3rd December 2015 effectively seeking to set out a number of conditions which he required to impose in respect of the disciplinary hearing and seeking further documentation. Mr. McMillan responded to those matters on 7th December 2015 dealing with matters raised by the Claimant, including providing the additional documents which he had now requested.

445. The disciplinary hearing subsequently took place on 17th December 2015 before Mr. McMillan with the Claimant present. This was a full 10 months after the Claimant was suspended and there is in those circumstances and in light of the detailed investigation undertaken by Mr. Laird, absolutely no basis for the Claimant to assert as he continued to do before us that the disciplinary process was rushed. The Claimant was late in attending the disciplinary hearing, being approximately 45 minutes late, and as we shall come to at the appeal stage the Claimant was similarly late for that hearing also. Nevertheless, the Respondent had elected to continue with both hearings only once the Claimant had arrived.

446. As we have already observed, Mr. McMillan sat as the disciplinary officer and attended the disciplinary hearing. Mr. Laird as investigating officer was also present to present the management case and Angela O'Neill was present to take notes. We have considered in detail the lengthy notes of the hearing which run from pages 555 to 576 of the hearing bundle. We are satisfied looking at those notes that the Claimant was given ample opportunity by Mr. McMillan to present his case and to deal with the allegations against him.

447. The Claimant makes a number of allegations of unfairness in relation to the disciplinary process and, particularly, the hearing before Mr. McMillan. Those are dealt with at page 123 of the hearing bundle and are as follows:

- That the panel was unfairly chaired by one person.
- That the Chairperson was the senior manager of Curriculum and Performance who had sanctioned the Claimant's suspension.
- There was a restriction of information about the Claimant's alleged protected disclosures available to the panel.
- That the Respondent allowed unfair contractual procedures.
- That the Claimant was prevented by Mr. McMillan from posing questions to the Human Resources manager.
- That Mr. McMillan blocked the Claimant's questions to the investigating officer relating to his style of questions at the interviews.
- That the Claimant was denied fair explanations as to why three other allegations presented by Mr. Dace were not dismissed after the investigating officer concluded his allegation of the Claimant swearing was found to be untrue.
- That Mr. McMillan's decision and reasons to uphold the allegations fell outside the disciplinary policy rules in regard to misconduct or gross misconduct.

448. We take each of those matters in turn.

449. The first of those issues is that it is contended by the Claimant that the panel was unfairly chaired by one person. It is common ground that Mr. McMillan was the chair of the hearing and that he sat alone rather than as part of a panel. We have considered the Respondent's Disciplinary Policy in regards to this allegation and particularly paragraphs 6.6 and 6.7 (see page 216 of the hearing bundle) which provide as follows:

> *6.6 The disciplinary meeting will usually be chaired by the employee's immediate manager, unless they have been involved in giving evidence or bringing the case or dismissal is a possible outcome of the meeting. Where dismissal is a possible outcome, the meeting will be chaired by the Principal or manager to whom the authority to dismiss has been delegated by the Principal.*
>
> *6.7 The manager who conducted the investigation shall not be a member of the panel at the disciplinary meeting, but may attend in order to present the findings of the investigation and any supporting material.*"

450. It can therefore be seen that there is reference indeed to a panel in the Respondent's Disciplinary Procedure. However, the process as set out therein appears to provide for either the possibility of a chair sitting alone or otherwise a panel being convened. We accept Mr. McMillan's evidence that in his experience, matters would usually be dealt with by one person. Therefore, there was nothing unusual that had occurred in the Claimant's case nor is it easy to see what difference it would have made to the Claimant to have had a panel looking at the allegations against him as opposed to Mr. McMillan in isolation given that, as we shall come to, we accept that he was sufficiently independent and objective in his assessment of the allegations against the Claimant.

451. The second allegation of procedural unfairness was that the Claimant contends that Mr. McMillan had sanctioned his suspension. However, even on the Claimant's own account that is not correct. He accepted fully, and indeed as his witness statement records, that he was suspended by Karen Proctor. The Claimant's sole contention that Mr. McMillan had anything to do with the matter came as a result of evidence which had been given by another member of staff (Karl Beeby) to Earl Laird during the course of the investigation to suggest that he had been told by Mr. McMillan to suspend the Claimant (see page 385 of the hearing bundle). We have not heard from Mr Beeby but, as the Claimant fully accepts, Mr. Beeby did not suspend him and that was undertaken by Karen Proctor.

452. Mr. McMillan denied any suggestion in cross-examination that he had told Mr. Beeby to suspend the Claimant. In fact, we know of course that Mr. Beeby did not. This could simply be an error in the notes or a misunderstanding on the part of the notetaker, although we note they have been signed by Mr. Beeby. We accept the evidence of Mr. McMillan, however, that he had given no direction that the Claimant should be suspended. As we have already observed, we know in fact that Mr. Beeby did not take any steps to suspend the Claimant and that that was dealt with by Karen Proctor.

453. Mr. McMillan did have some discussions with a subordinate of his in terms of giving management advice about issues that had occurred with the Claimant but we

accept that matters went no further than that and Mr. McMillan certainly had no hand in either suspending the Claimant or dealing with the basis of the allegations which formed the reason for the disciplinary hearing.

454. The Claimant further contends that at the disciplinary hearing Mr. McMillan, or someone on behalf of the Respondent, restricted the information about his alleged protected disclosures being provided for consideration. However, it is notable in this regard that at that stage the Claimant was not in fact saying that the allegations had arisen because of or that he was being disciplined because he had made protected disclosures. That was only raised later at the appeal stage of the proceedings and was investigated by Mr. Beaty in the manner to which we shall come to in due course. The information that the Claimant had provided was in the statement of experiences which Mr. McMillan had as part of Earl Laird's investigation pack.

455. There was nothing restricted or concealed and we have not been able to get to the bottom, despite cross-examination by Mr. Bromige on the point, of what information precisely it is that the Claimant says was restricted, either by or to Mr. McMillan. We are satisfied looking at the minutes of the meeting and having regard to the evidence which we have heard from Mr. McMillan that the Claimant could have said anything that he wanted to say about those matters. Neither the witness statement of the Claimant nor his oral evidence has been able to assist us on the way in which he contends that he was restricted in this regard.

456. The Claimant also alleged that Mr. McMillan, or the Respondent generally, had allowed unfair contractual procedures. We again found it difficult to understand the precise nature of this allegation and the Claimant appeared unable to put his points in this regard to Mr. McMillan, such that it was necessary for the Tribunal to attempt to deal with it on his behalf. In essence, it appears that the Claimant's case was that he contended that he was not given the allegations and was undermined by people during the course of the process. We are satisfied for the reasons which we have already said that by April 2015, at the latest, the Claimant had the allegations against him in full and in writing and that he had had more than adequate time to prepare before the disciplinary hearing, which did not take place until mid December of that year.

457. The Claimant was not undermined by anyone at any stage of the proceedings and he has not been able to take us to anything to suggest to the contrary. All of the extensive issues raised by the Claimant, including a number of requests for information at various stages of the proceedings, were dealt with in full and in appropriate terms.

458. The Claimant further contends that Mr. McMillan prevented him from posing questions to Angela O'Neill during the course of the disciplinary hearing. The Claimant relies upon the following exchange during the disciplinary hearing in relation to that matter:

> "*PA* (to Earl Laird) *Were you aware of my email to HR 19th/20th February requesting access to details of allegations. Do you recall me asking for evidence and allegations? Were you aware?*
>
> *EL* *I cannot recall – we are now in December – I'm happy to respond.*
>
> *PA* *Can I ask HR?*

DM No – she is here only as a Notetaker, if you wanted her as a witness, you should have called her as a witness. It is clear in the letter dated 26th November."

459. The Claimant accepted during the course of cross-examination that he had not at any time asked Angela O'Neill to be a witness. It was also equally clear that Mr. McMillan had made it apparent to the Claimant that any request for witnesses to attend the hearing should be made to him (see page 540 of the hearing bundle). Angela O'Neill was present only as a notetaker. It had been open to the Claimant to ask for her to be present as a witness but he chose not to do so. There is not one shred of evidence to suggest that the Claimant was prevented from doing so at an earlier stage by Mr. McMillan. However, as we have observed for ourselves during the course of these proceedings, it is often difficult, but entirely necessary, to keep the Claimant on track in relation to issues that need to be determined and allowing him to go off at a tangent and obfuscate the issues by reference to largely irrelevant questions to Angela O'Neill would not be facilitating that process. We are therefore not surprised that Mr. McMillan took the course that he did. The Claimant had had ample opportunity to ask for Angela O'Neill to be present as a witness rather than simply as a notetaker. He had elected not to do so and it is very difficult to see in all events what she could have added in respect of the substance of the allegations that Mr. McMillan was tasked with considering.

460. The Claimant also contends that either at the disciplinary hearing or in respect of the outcome, he had been denied a fair explanation as to why three other allegations presented by Mr. Dace were not dismissed after Earl Laird had concluded his allegation that the Claimant's swearing (i.e. telling Mr Dace to "fuck off" at the Open Day) was found to be untrue.

461. As we understand it in this regard, the Claimant contends that Mr. Laird had found that Mr. Dace has lied about this incident and therefore it should have called into question any other evidence that he had presented to the Respondent in relation to the other allegations against the Claimant.

462. Unfortunately, this is simply an instance of the Claimant reading something into a document that simply was not there. Mr. Laird at no point found that what Mr. Dace had said was untrue or a lie, merely that there was insufficient evidence to support the allegation (see page 494 of the hearing bundle). Whilst Mr. Laird was satisfied that the Claimant did not swear at Mr. Dace, at no point did he suggest that Mr. Dace had been untruthful that he had lied. Despite that clear finding, the Claimant nevertheless continues to maintain that finding was that the allegations had been found to have been untrue and therefore that that tainted any further evidence which Mr. Dace had given.

463. However, that seemingly forgets that the other allegations which Mr. Dace had made against the Claimant were independently supported by other evidence, including in some cases by the Claimant's own admissions. His allegation in this respect conveniently overlooks that particular point. For example, by the time that the matter came to a disciplinary hearing, the Claimant accepted that he had worked on kitchen doors in his own time and there was other evidence such as CCTV evidence and evidence from Ian Vanes-Jones and others to support the allegation. Neither Mr. Laird nor Mr. McMillan were therefore relying on the word of Paul Dace alone.

464. Insofar as the allegation regarding EV was concerned, there was the Claimant's own admission that he had treated EV differently to other students on account of his race. There was quite simply no reason to disregard the other comments made by Mr. Dace, other than the swearing incident, and the Claimant's allegation simply overlooks a wealth of other evidence that was available to the Respondent in support of those particular matters. Whilst the swearing allegation was not corroborated, it is entirely clear that the other allegations were, including on the Claimant's own account in some cases.

465. The Claimant further contends that in addition to preventing questioning of Angela O'Neill, Mr. McMillan also blocked him from asking questions to Mr Laird concerning the style of questions that Mr. Laird had adopted at his investigatory interviews.

466. It is fair to say that Mr. McMillan had to pause the Claimant on a number of occasions during the course of the disciplinary hearing in order to question the relevance of issues that he was raising and to attempt to keep him on track. Having regard to the evidence of Mr. McMillan and our own experiences during this lengthy hearing, we have some degree of sympathy with the position in which he found himself in this regard. It is clear from the hearing notes, which echoed our own experience, that it was difficult to keep the Claimant on track and it was equally difficult to ascertain in some areas the relevance of the points that he was making.

467. We have little doubt, and accept the evidence of Mr. McMillan to that effect, that what he was doing was seeking to adequately control the process so as to focus upon the issues which he needed to determine rather than allowing the Claimant to go off at a tangent. That was a perfectly reasonable stance for him to have taken.

468. We are also satisfied that on occasion it was necessary for Mr. McMillan to intervene where Mr. Laird was being badgered in questioning by the Claimant. A particular example of that appears at page 563 of the hearing bundle where on more than one occasion, the Claimant was demanding a yes or no answer despite the fact that Mr. Laird had already given his response to the issues that the Claimant was raising.

469. The Claimant also relies on the follow extract in support of his contention that he was blocked from raising questions of the investigating officer (see page 561 of the hearing bundle):

> "*PA They were leading questions because I was unable to prepare, I wasn't able to present. I didn't have the information; I didn't have allegation information. I came to the interview ill-prepared. Did you not know that asking me to interview without precise details made the interview incorrect, I was not able to present response as I couldn't prepare.*
>
> *DM You had from 23rd February to 28th July – ample opportunity, you have been involved in the process, you are being semantic about process being followed. If anything we have been too lenient, too accommodating. In terms of questioning the IO[13] about the process, I am ending that, any questions need to be around the allegations, you then have an opportunity to present your case, it is not for EL to be answering those questions related to knowing*

[13] IO is shorthand here for Investigating Officer.

about letters, he is an Independent Investigator. Transcript shows level of support'.

470. Again, we are satisfied that this was a matter of simply seeking to bring the Claimant back on track and we do not accept at all that it was such to subject the Claimant to detriment or to any instance of less favourable treatment.

471. The final allegation relied upon by the Claimant is Mr. McMillan's decision and reasons to uphold the allegations and the suggestion that this falls outside the Respondent's disciplinary policy. We have dealt with that further below in the context of matters relating to the Claimant's dismissal but would note that, as set out in Mr. McMillan's dismissal letter the relevant parts of the procedure were set out. Moreover, the type of conduct that Mr. McMillan found to be made out clearly could be reasonably seen to have constituted gross misconduct. It included challenging and aggressive behaviour on the part of the Claimant towards students. It clearly had the propensity to bring the Respondent College into disrepute which was a matter expressly referred to at paragraph 8.3 of the Respondent's disciplinary procedure relating to examples of gross misconduct and we accept that that was in Mr. McMillan's mind at the time. That list also expressly sets out that it is not exhaustive and, as we have already observed, plainly the Claimant's conduct was such that it could reasonably be said to have equated to gross misconduct.

472. The disciplinary hearing itself lasted approximately four hours from 10:30 am to 2:30 pm and as we have already observed, we are satisfied that the Claimant had sufficient opportunity to make appropriate representations.

473. At the end of the hearing, Mr. McMillan undertook to review the matters that he had heard and reach a conclusion in relation to the allegations against the Claimant. The Claimant was informed that it would be likely to be January 2016 before a decision was able to be communicated to him in that regard. We are satisfied that Mr. McMillan took time after the hearing to deal with such matters and the fact that he did not make a swift decision is demonstrative of his understanding the importance of the task which he had to undertake.

474. Mr. McMillan wrote to the Claimant on 6th January 2016 with the outcome of the disciplinary hearing (see pages 580 – 586 of the hearing bundle). That decision was to terminate the employment of the Claimant on the grounds of gross misconduct.

478. Out of the six allegations against the Claimant, five were upheld by Mr. McMillan. The only one which was not upheld was in relation to the allegation regarding swearing at Paul Dace. We do not need to say more about that, given that the findings of Mr. McMillan essentially followed the recommendations of Mr. Laird in that regard.

479. With regard to the relevant sections of the findings in relation to each of the other allegations, however, Mr. McMillan found as follows:

"*…*

For the purpose of accurately responding to each of the six allegations, each individual concern has been carefully considered and a decision of UPHELD or NOT UPHELD has been recorded in each instance. Where appropriate,

each allegation and decision has been cross-referenced to the relevant Code of Conduct, Professional Standard or College Core Value against which an allegation has been considered.

…"

In relation to the allegation that you provided unprofessional and inaccurate academic feedback to JG's parents during the BSDC parents' review event held on Wednesday 11 February 2015, the allegation is upheld. The reason for this decision being that, having reviewed the investigation evidence, witness statements, available tracking records, progress and achievement logs, and taking into account the statement made to support your case against the allegation during the hearing, I am assured that the evidence supports the allegation.

It is noted that you informed your decision and feedback based on the progress evidence available to you at that time, which indicates that J was appropriately 4 weeks' behind schedule in completion of tasks. However, this in itself was not enough to provide the level of feedback given to J' parents in that J should never have been given a place on the course because of the degree of his learning abilities and because he did not know the basic fundamental principles of his chosen trade. Flatly advising parents that J would be unable to progress to the next level of the course based on the information available was not appropriate and not in keeping with the College's values of 'staff doing their upmost to motivate and inspire learners to promote achievement and develop their skills to enable progression to employment or higher levels of study' or 'staff doing their upmost to help learners achieve their maximum potential'.

In addition, the evidence presented demonstrates that further inappropriate and unfounded comments were made by you to J's parents regarding the poor quality of teaching delivered to J in his previous year of study, and in the 'failings' made by the College in terms of J's education and progression prospects. It is evident that these comments and the other feedback provided regarding J's progress and academic ability based on his individual learning needs were upsetting to J's parents and inaccurately brought the College's reputation with parents into disrepute.

…"

480. Mr. McMillan's letter went on to reference the areas of the Respondent's Code of Conduct, Professional Standards and College Core Values which it asserted the Claimant's conduct breached in respect of his interactions with JG's parents.

481. Mr. McMillan also upheld the allegation as to unprofessional communication with EV and his parents and in respect of those matters he said this:

"…

In relation to the allegation that you engaged in unprofessional communication with EV and his parents, the allegation is upheld. The reason for this decision being that having reviewed the evidence provided and listening to the case presented in defence of the allegation; there is sufficient evidence to support

that an unprofessional approach was taken by you with regard to the academic and personal challenge of EV based on his ethnic heritage rather than his academic ability and progress.

The statements from the parents of EV regarding the allegation of unprofessional communication provide for an accurate account of their perceptions of their engagement with you, however further investigation of unprofessional interaction with EV's parents found insufficient evidence to support this aspect of the allegation.

In investigating this allegation, it was clear from the evidence presented that E was treated differently by you due to his ethnic heritage and by your own admission you confirmed this, both in your investigation meetings and during the disciplinary hearing. You acknowledged that based on your personal previous experience and knowledge, you confirmed to E that due to his mixed race heritage he would encounter 'black man issues' in his future career and therefore you encouraged him to make a special effort to achieve. As a result of this approach, E subsequently withdrew himself from the Carpentry and Joinery course to take up a training course elsewhere, citing his personal treatment by you as the main issue.

The approach taken with E is therefore deemed unacceptable and not in keeping with the College's Equality and Diversity Policies, the Core Value of Valued and Respected or the Professional Standards associated with teaching professionals in the further education sector.

…"

482. Again, Mr McMillan referenced the relevant sections of the Code of Conduct, Professional Standard and College Core Values that it was asserted the Claimant had breached.

483. Mr McMillan also upheld at the allegation that the Claimant had been working on his own kitchen doors during the SDC open day and in relation to those matters, he said this:

"*…*

In relation to the allegation that you worked on your own kitchen doors during SDC Open Day held on Saturday 7 February 2015, instead of supervising learners and engaging with parents, the allegation is upheld. The reason for this decision being that having reviewed all witness statements, reviewed available CCTV footage of the event and heard your case against the allegations where you did admit to working on your kitchen doors, there is sufficient evidence that you did undertaken personal work using College property without explicit permission during the event.

It is noted, from the statements, the CCTV and your own comments during the presentation of your disciplinary case that parents were engaged with throughout the duration of the event. However, it was also clear that learner helpers and competitors were not fully supervised or supported throughout the event, in keeping with directions and requests provided by the Head of Department in previous correspondence relating to the event. Learners and

competitors are a crucial element of open days and there is a professional responsibility and duty of care to ensure that they are supervised and guided at all times when in the College environment.

It was also clear that personal work was being undertaken for periods of time during the event without first seeking the agreement of the Principal or other senior managers. This unauthorised activity during the Open Day contravened the College Code of Conduct which states that 'any facilities, equipment, tools etc provided by the College for use in an employee's duties should be used only for those duties and not for any other purposes except where the College Principal has agreed to other use. There are approved arrangements for the use of some facilities for private purposes (e.g. telephones, photocopiers) and payment must be made in accordance with the scales of charges determined by the College. Where such arrangements do not exist, employees must seek the agreement of the principal before making use of any College facilities or resources. It is clearly evident that this permission and agreement was not sought prior to the personal work being undertaken during the open day.

…"

484. Again, the letter referenced the Code of Conduct, Professional Standards and College Core Values that it was asserted that the Claimant's conduct had breached.

485. Mr. McMillan also upheld the allegation of unprofessional communication with Carpentry and Joinery students on 28th January 2015 and in this regard the relevant part of his letter said this:

"*…*

In relation to the allegation that you engaged in unprofessional communications with Carpentry and Joinery students on Wednesday 28 January 2015, the allegation is upheld. The reason for this decision being that, having reviewed all investigation evidence submitted, including witness statements from all parties concerned, and the commentary provided by you in response to these allegations during the disciplinary hearing, the evidence supports the allegations made.

It is noted that, due to the 30 day recording loop, CCTV footage was not available for this incident and that witness statements and professional discussions with individuals informed the investigation evidence.

It is clear from witness testimonies and your own case evidence that learners did not know how to use the specialist equipment they were to use and required support with this. However, given the location and nature of the exchange of dialogue that took place between yourself and the learners concerned following identification of this, and subsequent disruption caused to the other learners in the group, the exchange was unprofessional. It is recognised that challenging learners' inappropriate behaviour and attitudes is a requirement of the role, however this should have taken place in a controlled environment and at an appropriate time.

It is also clear from evidence presented and by your own submission, that you inappropriately and unprofessionally acted in response to a paedophile statement made by a learner and directed at another learner. It is noted that you disagreed the term 'paedophile' was used and referred to instead the phrase 'paedo' (a shortened term used for paedophile) being used and agreeing that this was the sort of 'banter' learners should get used to on a construction site. It is clear that the dialogue that followed, and your agreement with the paedophile comment, led to the heated exchange between you and the learners. This contravenes the College Equality and Diversity Policy, Professional Standards and College Core Values and the resulting unprofessional exchange between you and the learner is seen an improper, unacceptable behaviour and perceived by other learners in the group as intimidating conduct.

…"

486. Again, the sections of the Code of Conduct, Professional Standards and Core College Values that Mr. McMillan asserted the Claimant had breached were referenced within the letter.

487. Finally, the allegation that the Claimant had unprofessionally managed learner behaviour on 14th January 2015 was also upheld by Mr. McMillan. In this regard, the relevant section of the letter said this:

"…

In relation to the allegation of unprofessional management of learner behaviour, specifically regarding a comment made about being an 'Angry Black Man' on Wednesday 14 January 2015, the allegation is upheld. The reason for this decision being that, having reviewed the investigation evidence and heard the cases put forward by both you and the Investigating Officer during the disciplinary hearing, the evidence corroborates the allegation.

It is clear in the evidence presented that unprofessional dialogue and confrontational approach between you and the learners in the lesson led to heated discussions taking place. Your response to the learner's comment of 'you are aggressive aren't you', in front of the entire group of learners was inappropriate, unprofessional and intimidating. By replying to the learner 'are you suggesting that I am an aggressive black man?' initiated further confrontational argumentative dialogue between you and the learners.

By your own admission, based on previous experience, you stated that the term aggressive is stereotypically used to describe an 'angry black man' and you challenged the learner using the word aggressive. However, it is clear from the evidence that the learner did not make any reference to ethnicity, but made a comment about being aggressive due to the way in which you had approached the initial exchange with learners.

This exchange led to disruption of learning for the whole group and the comments made by you to learners are deemed inappropriate and unprofessional and not in keeping with the College's Equality and Diversity Police, Core Values or Professional Standards for Teachers of Further Education.

…"

488. Again, the relevant section of those standards which it was said that the Claimant had breached by his actions were highlighted by Mr. McMillan.

489. The letter from Mr. McMillan also referenced concerns that the Claimant had made in relation to the disciplinary process and he dealt with this and his conclusions in the following terms:

> "*As part of the disciplinary process, you raised your concerns regarding the investigation process and highlighted perceived failures in Due Process and Due Diligence on the part of Human Resources and the Investigating Officer to conduct a fair and proper investigation. In particular you highlighted your concerns about not receiving details of the specific allegations prior to your investigation meeting, hence being unable to initially prepare and respond to the allegations. In addition, you expressed concerns regarding the poor professional and administrative conduct of the process and the absence of crucial CCTV evidence.*
>
> *In considering this, I have reviewed the investigation process in relation to your concerns and note that you were indeed not presented with the full details of the individual allegations made prior to your first meeting with the Investigating Officer on 23 February 2015. However, it is evident and well documented that the Investigating Officer had made it clear that the initial meeting was a fact finding exercise. You were provided with the detail of the allegations and a follow up meeting arranged with the Investigating Officer on 17 April 2015 to gain your statements regarding the allegations and correct any inaccuracies you believed existed from the meeting of 23 February 2015.*
>
> *It is also clearly evident that the Investigating Officer made numerous reasonable adjustments to accommodate your statements and accounts of the allegations made, including a further follow up meeting on 30 July 2015.*
>
> *In relation to conducting a fair and proper investigation, there is no evidence to suggest that you have not received a fair and balanced investigation. In fact, this process has been elongated due to both Human Resources and the Investigating Officer making numerous adjustments to the process in order to fully accommodate your requests. All evidence submitted by you has been used to appraise the investigation and the Investigating Officer has used all evidence collated to reliably inform his investigation recommendations. As previously advised on separate occasions throughout the process, the CCTV footage of the incidents on 14 January 2015 and 28 January 2015 were unobtainable by the Investigating Officer due to the 30 day 'recording loop'. As such, in the absence of CCTV footage, witness statements were obtained to inform the investigation into the allegations on these dates; copies of which you have been provided with.*
>
> *Having carefully considered all allegations fully and having taking your explanations into account, I have concluded that as some of your actions constituted gross misconduct, you are summarily dismissed from your employment with Burton and South Derbyshire College* (sic). *The authority to dismiss has been delegated and sanctioned by Mrs. Dawn Ward CBE, Chief*

Executive and Principal of Burton and South Derbyshire College. Your summary dismissal will be with effect from 6 January 2016. Your final salary, including any accrued holiday pay, and your P45 will be issued to you in due course. You are not entitled to any notice or pay in lieu of notice.

…"

490. Given the wealth of evidence against the Claimant in respect of the allegations against him, which included his own admissions, we consider it entirely reasonable that Mr. McMillan reached the decision to terminate the Claimant's employment on the grounds of gross misconduct. The misconduct that he had perpetrated included treating a learner differently due to his ethnicity; acting in a challenging and inappropriate manner with learners and affecting their learning experiences; disregarding instructions given to him about the importance of the Open Day and working on his own project during working time and inappropriate conduct such as providing negative feedback and unfounded comment about previous teaching standards. All of those matters were serious ones which in our view seriously undermined the confidence that the Respondent could have had in the Claimant to continue in the post of Course Leader/Lecturer. He had been the subject of complaints not only from staff but also from learners and parents and had even been the reason that EV had said that he had withdrawn from the course.

491. Whilst the Claimant still cannot it seems accept his wrongdoing and that his conduct and behaviour was inappropriate, we are entirely satisfied that, as with Earl Laird, Mr. McMillan had more than sufficient evidence to uphold the allegations against the Claimant that he did and that the severity of those matters rendered his decision to dismiss on the grounds of gross misconduct as entirely reasonable.

492. Mr. McMillan's letter went on to advise the Claimant as to his right of appeal and how he should exercise that should be wish to do so.

<u>The appeal process and investigation by Mr. Beaty</u>

493. The Claimant duly elected to appeal against Mr. McMillan's decision, which he did by way of a lengthy letter dated 15th January 2016 (see pages 591 – 597 of the hearing bundle). In short, the Claimant raised the following issues as the grounds for his appeal:

- The dismissal had been unfair as there was insufficient information to justify a disciplinary hearing on the grounds of gross misconduct.
- That his protected disclosures had made him the subject of victimisation, marginalisation and isolation and that he had been discriminated against when compared to white members of staff.
- That he should not have been suspended and that Mr. McMillan had approved that suspension.
- That there had been failings with regard to the conduct of Human Resources.
- There had been delay in him being provided with the allegations against him.
- He had been blocked and denied access to his personal documents to allow him to defend himself against the allegations.
- That the allegations against him had flowed only from his making protected disclosures.
- There had been falsification of documentation by Human Resources.
- That he had been treated less favourably than Mr. Brough in light of the events

of 11th December 2014.

- That additional complaints made by Paul Dace should not have been acted upon as the swearing allegation had been determined to be unfounded.
- That he stood by his actions in relation to feedback regarding JG, which was said to be accurate feedback.
- That he disputed the allegation of unprofessional communication with EV and his parents.
- That he had tried to motivate and inspire EV and that he was not treated unfairly or given a more challenging learning experience.
- That he had only worked on his kitchen doors for approximately 4½ minutes and the CCTV footage nevertheless showed his exemplary and professional conduct with visitors and learners.
- That the students on 28th January 2015 had been dangerous, disrespectful and confrontational and that other had acted inappropriately in relation to their own behaviours before learners.
- That in relation to the 14th January 2015 incident, he had been the subject of condescending profiling by the learner and that he himself had been subject to what he termed to be inappropriate questions, such as on 19th January 2015 from Mr Rowbottom.
- That he has been treated less favourably and bullied by way of implementation of the disciplinary process and this amounted to an abuse of position or power.
- That there had been a number of Human Resources failings.
- That the disciplinary hearing had been prematurely arranged.
- That there had been inappropriate questioning by the investigating officer during the course of the investigation.
- That the Respondent had failed to acknowledge its discriminatory treatment of the Claimant and had treated him differently to white colleagues.

494. In response to the Claimant's letter of appeal, he was invited by way of a letter dated 22nd January 2016 to an appeal hearing on 12th February 2016, to be heard by a panel of Governors. The letter set out the Claimant's right of accompaniment and also confirmed that the matter constituted a review of the decision on the grounds outlined in the Claimant's appeal letter of 15th January. A further copy of the disciplinary policy was provided to the Claimant and he was asked for copies of any documents which he wished to refer to during the appeal (see page 598 of the hearing bundle).

495. The Claimant replied by way of a letter dated 29th January 2016 confirming that he was unable to attend the appeal hearing on the basis of pre-planned holiday. His letter set out a number of documents that he wished the appeal panel to see as part of the process. That letter is date stamped as received on 2nd February 2016.

496. The Claimant wrote again two days later to complain that he had not received a response and requesting additional documentation to be put before the appeal panel. He did not provide any of those documents in accordance with the request which had been made in the appeal invitation letter, however.

497. Ms O'Neill acknowledged receipt of the Claimant's letters on 5th February 2016 and confirmed that she was seeking to re-arrange the meeting. She wrote again to the Claimant on 17th February 2016 confirming that it had now been re-arranged for 4th March 2016.

498. It should be noted as part of this process that the Claimant complains about a delay in the appeal being heard. We would note however that had the Claimant not indicated that he was unable to attend the first meeting on 19th February, matters would have been dealt with a lot sooner. That meeting was cancelled at his request. We accept the evidence of the Respondent that it took time to arrange diaries of the Governors, all of whom deal with College business on a voluntary basis and in addition to other outside commitments. Furthermore, there was a delay in the eventual appeal decision being communicated to the Claimant on account of a further investigation commissioned at the appeal stage to look into allegations that the Claimant had made.

499. Further protracted correspondence then took place between the Claimant and Angela O'Neill prior to the appeal hearing. We do not go into the specifics of that correspondence as it is unnecessary for the determination that we need to make in these proceedings but suffice it to say, that by the time that the appeal hearing took place on 4th March 2016 we are satisfied that the Claimant had everything which he required in order to present his case and that he was given more than sufficient opportunity to do so by the appeal hearing panel. In fact, as we shall come to in due course, matters raised by the Claimant prompted a further detailed investigation to take place and we are satisfied that that demonstrates the fact that, contrary to the apparent suggestion of the Claimant, the appeal panel took their decision seriously and this was not a "rubber stamping" exercise.

500. The Chair of the appeal panel was Everton Burke, who was also the Chair of the Board of Governors. He was accompanied by two other Governors, Adrian Argyle and Rajinder Mann. The notes of the appeal hearing, which we are satisfied are a fair and accurate record of events, appear in the hearing bundle at pages 616 – 622. The hearing itself lasted for over an hour.

501. The Claimant was again late for the appeal hearing, this time by some 20 minutes. The appeal panel waited and did not either dismiss his appeal or proceed in his absence as they could well have done if this was the "rubber stamping" exercise that the Claimant contends it to be.

502. In fact, the Claimant was provided with significantly leeway, not only at the appeal stage but also in the earlier disciplinary hearing where he had also been significantly late by some 45 minutes as we have already observed.

503. We should say that we find it somewhat astonishing that the Claimant was late to hearing as important as these and where he was fighting for his job. In our view, this reinforces the Claimant's somewhat laissez faire attitude towards timekeeping and other procedural matters. The Claimant remains, even to date, unable and/or unwilling to recognise that timekeeping was important and that the Respondent was entitled to expect him to be on time.

504. At the close of the meeting, Mr. Burke indicated that the panel would make a decision and subsequently advise the Claimant of the outcome of the hearing.

505. However, the panel determined that it was necessary for there to be a further investigation about matters that the Claimant had now raised at the appeal stage for the first time, which was that his dismissal had been motivated by protected disclosures which he had made and/or because of his race. Those had not been issues which had been considered by Mr. Laird or indeed by Mr. McMillan as the

Claimant had not raised those particular issues during the course of the investigatory or disciplinary proceedings.

506. It is in our view a measure of how seriously the panel took the task of dealing with the appeal that a further investigation in relation to those issues was commissioned. That was undertaken by John Beaty and his detailed report appears at pages 625 – 634 of the hearing bundle. We deal with that further below.

507. In the meantime, the Claimant made a freedom of information request in relation to a number of documents that he sought regarding, amongst other things, the ethnic mix of the Respondent's staff generally, staff within the Construction Department and complaints against HR investigating officers or those within the Construction Skills Department. The Claimant received a response to that request on 4th May 2016 (see page 634a of the hearing bundle) and we deal further with the information provided below.

508. We should observe again that not all of the documentation which was provided in this respect to the Claimant was included within the hearing bundle before us and rather oddly, the Claimant made reference only to that position during the latter stages of his cross-examination of Mr. Beaty. Again, we consider that was something of a red herring by the Claimant given that he had had all of the documents previously and despite that he could not confirm whether or not there was likely to be anything of relevance in the documents which had been apparently omitted from the hearing bundle. The Claimant had the ability to consider those matters overnight and to review the relevant documents but did not take matters further the following day.

509. Turning back to the investigation which was undertaken by Mr. Beaty, as we have already indicated his investigation report features at pages 625 - 634 of the hearing bundle. It is notable that Mr. Beaty did not interview the Claimant as part of that process and that may in our view have been more sensible in order to fully understand the points that he was seeking to raise. However, we are satisfied with Mr. Beaty's explanation for why he did not do so on the basis that he considered himself already to have sufficient information from the detailed investigation undertaken by Mr. Laird and the fact that he also had the notes of the disciplinary and appeal hearings to consider.

510. The Claimant is again critical that Mr. Beaty was not independent so as to undertake any investigation of the nature which he did. Again, we do not agree. All that Mr. Beaty had been involved in previously was the meeting with the Claimant to try and move matters along when the situation had stalled at his failure to agree the notes of the investigatory meeting on 23rd February 2015. The Claimant had not mentioned to Mr. Beaty any issues of race of whistleblowing, nor was he otherwise involved in the investigation or the disciplinary stages of the process. There was therefore nothing to prevent Mr. Beaty from undertaking the investigation that he did in relation to this matter.

511. Mr. Beaty went through in his investigation report the evidence that was before him and we are satisfied that he conducted a reasonable review of matters in order to reach the conclusions which he did. Those conclusions in brief terms were thus:

> "*There is no evidence to support the suggestion that the outcome of the disciplinary investigation hearing was affected and/or initiated as a result of*

concerns raised by PA. I also feel that PA had significant opportunity to understand the College's PID whistleblowing procedure and would have understood this process and did not follow this in raising any concerns. I also feel that his limited disclosures did not influence any third party to negatively sway or influence any part of the investigation.

To conclude this point, there is no evidence to suggest that the concerns PA raised were protected disclosures for the purposes of whistleblowers' protection.

Relationship with DB and wider team

DB and PA clearly started with a good relationship. DB had disclosed to PA about his personal loss and had felt as though PA had begun to use this against him. It is also clear that DB was suffering from some stress at this time and there was an incident where he had raised his voice and acted out of character within the workshop. Transcripts of the original investigation highlight that the incident with DB did take place however differed from what actually happened. I believe that this incident is not directed at PA but was the reaction of someone who had suffered a personal tragedy and this was affecting his ability to cope with some aspects of his work. DB was also being supported by his line management and his OH report had commended this. None of this evidence suggests that anyone was at risk from this outburst. MR's[14] comments to PA were driven from the fact that PA was trying to change a process agreed in practice by the SDC, who felt that this did not need to change. This is not that they were reluctant to change or oppose new ideas, but they felt that there was a lot to do in the area to get the learners to pass and that changing things in year would cause more problems and are clearly did not mean to upset PA and apologised afterwards.

The evidence above leads me to conclude that PA's relationship with the team was strained and that PA's behaviour was a major contributing factor to this. I can see no evidence of any racial discrimination driving responses from SDC staff and learners to PA and cannot see any evidence of PA being discriminated against because of his race. In order to ensure that my investigation was as impartial as possible, as part of my investigation I spoke to a new member of staff TM (who was not involved in previous investigations regarding PA) about Health and Safety/culture at SDC. Whilst he has clearly had an altercation with a learner (this will happen when dealing with young people) this was not a personal issue with him it was a reaction to his approach to a learner. He also commented positively about the Health and Safety Culture of BSDC and states that our learners are similar to other colleges he has worked at. He also states that he has been made to feel welcome and that he has been welcomed into the team."

512. The investigation report was we accept sent to Mr. Burke shortly before he finalised the panel's decision in relation to the Claimant's appeal. That outcome dated 12th May 2016 appears at pages 635 – 638 of the hearing bundle and the relevant parts of that letter said this:

"…

[14] A reference to Mick Rowbottom.

In summary, following the appeal hearing, having carefully considered the evidence and your representations at the appeal hearing and subsequent correspondence, the appeal panel has decided to uphold the original decision that you should be dismissed summarily on the grounds of gross misconduct.

In summary, your grounds of appeal were as follows:

- *there were insufficient information/evidence to justify dismissal on the grounds of gross misconduct;*
- *there were procedural errors during the disciplinary process;*
- *that you have been treated less favourably as a result of "protected disclosures" and have been the victim of racial discrimination.*

On behalf of the appeal panel, I respond to each of these points turn (sic).

Insufficient information/evidence to justify dismissal on the grounds of gross misconduct.

Having considered the evidence available, including your representations made at the appeal hearing, the appeal panel considers that there was sufficient evidence to justify your dismissal on the grounds of gross misconduct. In making its decision, the appeal panel considered whether there was another possible sanction available to the College. However, due to serious nature of the allegations and the evidence to support these allegations, the appeal panel considered that summary dismissal was the only appropriate sanction in the circumstances.

The appeal panel considered that you failed to provide any new evidence that supported your contention that there was insufficient evidence to justify your dismissal. I refer to each allegation in turn below.

Allegation 1 – this was not upheld in the original decision, so has not been considered on appeal.

Allegation 2 – That you provided unprofessional and inaccurate academic feedback to JG's parents during the BSDC Parents review held on Wednesday 11 February.

No new evidence was presented to contest the original decision that you have provided unprofessional and inaccurate academic feedback during the BSDC Parents review. There was also no evidence to suggest that this decision was made unreasonably and/or was unsubstantiated.

Allegation 3 – Unprofessional communication with EV and his parents.

In your appeal letter you stated that the original decision disregards responsibilities laid upon you as cited in your job description to perform to the highest standards and to promote and motivate learners. When discussing this part of your appeal at the hearing you specifically stated that you would treat students differently based upon their race. This is both highly unprofessional and wholly inconsistent with the College's Code of Conduct and Values. With both your comments at the appeal hearing (see pages 621 – 622) *and the evidence available to the appeal panel, it considers that the*

original decision was correctly reached.

Allegation 4 – Working on your own kitchen doors during the SDC Open Day held on Saturday 7 February 2015, instead of supervising learners and engaging parents.

The evidence supports the findings in respect of the allegation above and the appeal panel considers that there is no new evidence to suggest that this finding was reached incorrectly.

Allegations 5 & 6 – unprofessional communications with carpentry and joinery students on Wednesday 28 January 2015 and unprofessional management of learner behaviour specifically regarding a comment made about being an 'Angry Black Man' on Wednesday 14 January 2015.

The appeal panel considers that there was no new evidence presented by you to suggest that these findings were reached incorrectly.

Procedural Errors

Whilst the matter has clearly been ongoing for a number of months now, the appeal panel considered that there was no evidence to suggest that the College has failed to follow its disciplinary procedure, nor that any delay has prejudiced in any way. Furthermore, the evidence suggests that delays in the process have largely been as a result of your conduct during the process.

The appeal panel considers that the explanation as to why you did not receive full details of the allegations against you prior to your initial meeting with the Investigating Officer is fair and reasonable and in accordance with the College's disciplinary policy as this was simply a fact finding exercise. There is no evidence to suggest that this was a way to build evidence against you, as you allege.

There is also no evidence to support your allegation that the Investigating Officer was not independent and the appeal panel considers that there is not evidence of bias or evidence that documents had been falsified during the process, as you suggested in the appeal hearing. Furthermore, there is no evidence to suggest the Investigating Officer's questioning of interviewees was leading and closed.

Allegations of Less Favourable Treatment

Having considered the evidence available and your representations made by you at the appeal hearing, the appeal panel considered that there was insufficient evidence to suggest that disciplinary proceedings had been commenced against you following apparent disclosures of information made by you and/or that the original investigation was influenced by concerns raised by you. Furthermore, there was no evidence presented that supported your allegation that you had been treated less favourably because of your race and/or been treated differently from your white colleagues.

The appeal panel accepts that you may have raised concerns during your employment about other staff members and/or issues about the running of the

department, but there is no evidence to suggest that these concerns were raised at the time in order to raise matters of concern in the public interest nor that there is a connection between the allegations made against you (and subsequent disciplinary proceedings) and the concerns that you raised.

The appeal panel considers that the evidence suggests that these allegations were only raised by you following the commencement of disciplinary proceedings and were not issues that you had raised prior to this. That said, given the potential serious nature of your allegations in this regard, and in order to ensure that your allegations had been fully investigated, an independent investigation has been carried out by John Beaty, Vice Principal. A copy of the report is enclosed. In summary, the outcome of the report is that there is no evidence to suggest that you have been treated less favourably and/or that the disciplinary proceedings have been influenced by concerns raised by you. Furthermore, the College does not consider that the concerns you raised were "protected disclosures" for the purposes of whistleblowers protection and/or that you have been subjected to any detriment. The appeal panel is therefore satisfied that you have not been the victim of discrimination and/or that you have been victimised and/or treated less favourably.

The appeal panel is further satisfied that the College has acted fairly and reasonably during the disciplinary process and the College was justified in reaching its original conclusion.

This decision is now final and there is no further right of appeal.

…"

513. The Claimant contends that there was unnecessary delay in deciding his appeal. Whilst there was of course a delay between the Claimant having appealed in January 2016 to the eventual outcome being sent to him in May of that year, we are entirely satisfied that there was good reason behind that. Specifically we note that there was a delay of one month after the Claimant had indicated that he could not attend the original appeal hearing as scheduled. That had required the hearing to be re-arranged and the diaries of the Governors dealing with the appeal had had to be taken into account. There was also a delay caused by the closure of the Respondent College over the Easter break which fell during the course of the appeal process.

514. Thereafter, there was a delay whilst Mr. Beaty undertook an investigation in relation to the additional issues of discrimination and detriment which had been raised by the Claimant for the first time at the appeal stage. Whilst that inevitably caused a delay, it was necessary in the circumstances for that investigation to be undertaken so that Mr. Burke and the panel could make a proper decision on all of the issues of concern which had been raised by the Claimant during the appeal process. The appeal was concluded swiftly after receipt of Mr. Beaty's report.

515. We have no doubt that had Mr. Burke and the panel not taken that step, then the Claimant would have complained about that position as evidence of a lack of thoroughness of approach. Therefore, any delay was reasonable given the circumstances of the matter and the Claimant's own delays to the process.

516. In all events, even if there had been any unreasonable delay in dealing with matters, this was clearly not influenced in the slightest by the disclosures upon which the Claimant relies or his race. In relation to the latter, Mr. Burke is also of African Caribbean ethnicity, insofar as he sees it relevant to describe himself with regard to his race. In this regard, Mr. Burke's evidence was that he preferred not to label himself simply with reference to his race or ethnicity and we are satisfied that he did not and would not view the Claimant, or indeed anyone else, differently because of that particular protected characteristic. It simply does not feature as an important issue on his radar.

517. We also do not accept the Claimant's apparent assertion that Mr. Burke would have more of an affinity with white people than black people and that he, like was alleged of Mr. Laird, would tend to side with white members of staff against the Claimant. Again, quite simply there was absolutely nothing in that argument.

518. It also appeared to be the Claimant's case that he was suggesting that Mr. Burke and others would wish to bury his allegations but nothing in fact could be further from the truth in reality given that Mr. Burke was the one, along with the remainder of the appeal panel, to commission the investigation by Mr. Beaty into those precise issues. If he wanted to cover them up, this was an unusual way of going about the matter.

519. Therefore, it is entirely clear that the delay in the appeal being concluded was neither unreasonable and nor did it have anything to do with the Claimant's race or him having raised the disclosures upon which he relies as protected disclosures.

520. We turn then to the substance of the decision itself, an act which the Claimant also contends to be an act of discrimination and detriment on the grounds of having made protected disclosures. There is nothing at all unsurprising or unreasonable about the decision which was reached in relation to the appeal. The matter was to be dealt with as a review and there is nothing at all within the information that the Claimant raised at the appeal stage which was such to suggest that the decision made by Mr. McMillan to terminate his employment on the grounds of gross misconduct had been wrong or unreasonable.

521. We have already observed the wealth of information and documentation that was before Mr. McMillan which led to him making that decision and given that position, we are entirely unsurprised by the appeal outcome. Particularly, had this been an "ordinary" unfair dismissal claim, we would have had no hesitation in concluding that both the decision to dismiss and the appeal outcome fell within the band of reasonable responses open to a reasonable employer. There was therefore nothing unfair or unreasonable about either the disciplinary outcome for the reasons that we have already stated or the appeal outcome which followed.

522. Following rejection of his appeal, the Claimant presented the complaints that now come before us for determination.

<u>Respondent College attitude to race</u>

523. The Claimant's overarching contention is that the Respondent is institutionally racist and prejudiced against ethnic minorities. He essentially complains in this regard that everyone (not just confined to the Respondent) is inherently prejudiced and influenced by matters of race. There is a certain irony to that position given that

the Claimant himself accepted giving a more challenging learning experience to EV – which in turn caused him to leave the course – on account of his ethnicity. When it was asked of the Claimant in cross examination whether he contended that any decision about him was influenced by race he had replied in the affirmative. That fundamental belief, albeit one rooted in no fact, is essentially at the heart of this case.

524. There is, quite simply, no evidence whatsoever to support the Claimant's contention that there was any inherent prejudice at the Respondent College, whether against black people or otherwise. He complains that race was not celebrated or championed but in point of fact that overlooks the fact that the Respondent had a clear Single Equality Policy to which we have been taken, students had presentations made to them in respect of equality matters, there were posters along walls in the College and in the canteen regarding diversity issues and staff in the Department had been asked to promote equality and diversity in their lessons.

525. Moreover, there was clearly nothing in the Claimant's argument that the Respondent did not want black people in positions of authority given that both Everton Burke and Earl Laird are of the precise same race as the Claimant and both held relatively senior positions within the Respondent College. Moreover, there are 16 other Black African Caribbean staff at the Respondent College, many of whom have lengthy service (see page 253 of the hearing bundle).

526. As to the Department itself, we accept the evidence of Mr. Vanes-Jones that in addition to there being a black African member of staff in the Department, since the Claimant's dismissal another black African-Caribbean employee has now been taken on who has been in post for a year and who has generated no complaints from either staff or students. That, of course, was in marked contrast to the Claimant and serves only to reinforce our view that the reason that the Claimant was complained about and eventually dismissed was not because of his race but simply because of his conduct.

<u>CONCLUSIONS</u>

527. Insofar as we have not already done so within our findings of fact above, we deal here with our conclusions in respect of each of the complaints made by the Claimant.

528. We begin firstly with consideration as to whether the Claimant made a protected disclosure or disclosures.

529. The first disclosure relied upon by the Claimant is the conversation between himself and Ian Vanes-Jones relating to the incident of 11th December 2014 involving David Brough. As we have already found above, the gist of what was said during this discussion is that the Claimant had told Mr. Vanes-Jones that Mr. Brough had been "in a rage" in a night school session, that students had been put at risk and that Mr. Brough should not be teaching. We did not accept that the Claimant went further than that and particularly we were not satisfied that he had told Mr. Vanes-Jones that Mr. Brough was shouting and swearing and throwing shovels and tools in the workshop. That was not put to Mr. Vanes-Jones by the Claimant in cross examination.

530. We are satisfied that the Claimant was, in what he told Mr. Vanes-Jones, making a disclosure of information which showed or tended to show that Mr. Brough

was not complying with a legal obligation to which he was subject in relation to the requirement to treat students with dignity and respect as required under the Respondent's Code of Conduct in that he had had exhibited a loss of temper with the learners in question and had acted inappropriately. At that stage, we accept that the Claimant had a reasonable belief in those matters and that he was raising what he saw at that time as legitimate concerns. However, those matters then took on a new significance in the latter parts of his employment and in the course of initiating these proceedings. We are also satisfied that the disclosure was made in the public interest, concerning as it did the treatment and conduct towards students in a further education setting.

531. We are ultimately satisfied, therefore, that what was said by the Claimant to Ian Vanes-Jones on 12th December 2014 was a protected disclosure.

532. The second disclosure on which the Claimant relies is his conversation with Angela O'Neill on 29th January 2016. We have accepted the account of Ms. O'Neill that all that was said during this conversation was that the Claimant did not feel supported by his manage and that he felt overshadowed by the stature of some students because they were taller than him. That, quite evidently was not a disclosure of information which showed or tended to show, as the Claimant contends, that there was a breach of a legal obligation, that health and safety was being endangered or that there was a deliberate concealment of either of those matters.

533. The third disclosure on which the Claimant relies is his "Statement of Experiences" of 30th January 2016. We have considered the sections of text from the document that the Claimant relies upon both individually and when read as a whole.

534. With regards to learners not meeting the bench mark, there is no legal obligation identified by the Claimant that anyone could reasonably have been said to have been breaching. Equally, clearly this element did not suggest an endangerment with regard to health and safety nor concealment of either of those matters. This was simply a matter of the Claimant expressing an opinion. It is clearly not, either singularly or with any other part of the "disclosures" relied upon by the Claimant, a protected disclosure.

535. The section relating to "Shelley" and the reference to "fuck safety" at worst shows that a learner was rude and dismissive. It does not demonstrate a breach of any legal obligation, that health and safety was being endangered or that there was concealment of those matters. It is clearly not, either singularly or with any other part of the "disclosures" relied upon by the Claimant, a protected disclosure.

536. The section relating to Owen is, in our view, the only part of the email that can sensibly be described as a protected disclosure. The information conveyed showed or tended to show that the Claimant had raised concerns about Stanley knives being brought into the College and that a student had sustained an injury in relation to those matters. In our view that was information that showed or tended to show that the health and safety of students had been endangered. However, there is nothing at all to suggest that that brief reference was anything of concern to the Respondent and, particularly, we accept that when the Claimant had raised his concerns about the use of Stanley knives in the Respondent College, the Respondent had banned them from being brought in. Far from ignoring the Claimant, the Respondent had acted immediately upon his concerns.

537. The section relating to senior craft students, again, focuses almost entirely on the attitudes of students. Akin to the "Shelley" observation it did not demonstrate a breach of any legal obligation, that health and safety was being endangered or that there was concealment of those matters. It is not, either singularly or with any other part of the "disclosures" relied upon by the Claimant, a protected disclosure.

538. The reference to staff stress and swearing conveyed no more than the Claimant repeating (albeit we accept somewhat inaccurately) what he said that he had told Mr. Vanes-Jones on 12th December. It is perhaps notable that he made no mention at all within this section of what he contends that he told Ms. O'Neill just the day previously which was that he contended that he had been subjected to detriment since the point of making that disclosure. Again, that is demonstrably absent as is the "stabbing" incident.

539. The references to trade experience and equality and diversity did not identify any legal obligation that the Claimant contends that the Respondent (or someone else) was in breach of. At best, it was an opinion expressed by the Claimant but one that he could not have had a reasonable belief in given that the Respondent College, as we have already identified above, did a significant amount to promote equality and diversity in the College environment. The passages, whether alone or taken as a whole, clearly did not show or tend to show that health and safety was being endangered or that there was any concealment of matters. The clear intention behind this section of the Statement of Experiences is perhaps clear from the final sentence – *"It is with these considerations and against such a back drop of resistance that any judgment on the outcomes of my performance in a teaching and learning context need to be made*" – which reinforces our view that the Claimant realised that issue might be taken with his conduct and performance and was seeking to raise a pre-emptive strike.

540. We turn then to each of the allegations of discrimination and detriment of which the Claimant complains. We refer to each of them in the way that they were numbered by Employment Judge Camp in his Order of 25th August 2016 (see page 152 to 155 of the hearing bundle).

Allegation 1

541. The first allegation relates to the sending by Mr. Brough of his email of 17th December 2015. This email was not a detriment to the Claimant. It did not, as he contends, sour the relationship between him and Mr. Bramhall and Mr. Vanes-Jones. There is simply no evidence of that and, in all events, the content of the email was a true account of how the Claimant had come to make Mr. Brough feel.

542. Moreover, this email had nothing at all to do with the disclosure which the Claimant had made to Mr. Vanes-Jones on 12th December 2015 given that we have accepted that Mr. Brough was completely unaware of it.

543. The email equally had nothing at all to do with the Claimant's race. That was of no consequence to Mr. Brough and the Claimant has not taken us to anything at all, other than his continue and unsupported assertion, to suggest to the contrary or that race had any bearing of Mr. Brough's sending of the email. The reason why the email was sent was because of the way that the Claimant had acted and the impact that that had had on Mr. Brough.

Allegation 2

544. This allegation relates to the contention that from 17th December 2015 Mr. Brough ceased to have one to ones with the Claimant and was abrupt and critical of his work. As we have found above, there were no formal arrangements for one to ones that ceased at this point or at any other but we accept that Mr. Brough perhaps did begin to distance himself from the Claimant on account of the fact that the Claimant wanted to do things his way and would not be persuaded to the contrary. Mr. Brough therefore gave up.

545. That state of affairs was not to the Claimant's detriment as was accept that he took no notice of what Mr. Brough was telling him anyway and simply used such discussions as an opportunity to seek to debate with Mr. Brough about unconnected matters such as health and safety. Moreover, the withdrawal of Mr. Brough was nothing to do with the Claimant's disclosure to Mr. Vanes-Jones because he knew nothing about it nor, again, has the Claimant taken us to anything which suggests that race played a part in that. Again, the reason why this state of affairs occurred was because of the Claimant's own conduct.

Allegation 3

546. This allegation is that Ian Vanes-Jones failed to provide the Claimant with a copy of Mr. Brough's email and a copy of the complaints or grievance procedure. For the reasons that we have already set out in our findings of fact above, there was no need for the Claimant to have been provided with a copy of the email at this stage and to do so would simply have made matters worse. He equally had no need of a copy of the complaints or grievance procedure.

547. This was not to the detriment of the Claimant and to any degree that he may genuinely have been aggrieved about that, that is plainly in the circumstances an entirely unjustified sense of grievance.

548. Moreover, the failure to provide the email and grievance procedure at that stage had nothing at all to do with the disclosure that the Claimant had made to Mr. Vanes-Jones. Mr. Vanes-Jones was not in any way vexed with the Claimant about that and had simply seen it at the time as the Claimant expressing concern for a colleague.

549. The situation also plainly had nothing to do with the Claimant's race and again he has taken us to nothing at all to even begin to suggest to the contrary. The reason why the email was not provided was because the matter was to be dealt with informally and there was no reason to provide either it or a copy of the grievance procedure.

Allegation 4

550. This allegation concerns the discussion between Mr. Brough and Mr. Vanes-Jones and Mr. Bramhall on 15th January 2015. The Claimant contends that he was unfairly criticised in that conversation. For the reasons that we have given above, we are entirely satisfied that the Claimant was not unfairly criticised and the concerns raised by Mr. Brough were fair comment.

551. Moreover, on that basis and given that there the comments were not unfair, the Claimant was not subjected to detriment by that discussion and any contention to the contrary is again simply an unjustified sense of grievance. Again, the conversation had nothing to do with the disclosure that the Claimant had made on 12th December to Mr. Vanes-Jones because Mr. Brough was not aware of it.

552. The conversation also had nothing to do with the Claimant's race and again the Claimant has not taken us to anything at all to suggest to the contrary or that race had any bearing on matters. The reason for the discussion was simply because of the Claimant's conduct.

Allegation 5

553. This allegation relates to Mr. Brough's sending of his email of 15th January 2015.

554. The Claimant contends that the purpose of this email was to belittle or devalue him and to seek to remove him from the Respondent College. Clearly, as we have already found above, that was not the case as all that Mr. Brough was doing was suggesting a different mentor for the Claimant. The content of the email was, again, fair comment given the behaviour of the Claimant and the way in which Mr. Brough was made to feel.

555. For those reasons, it is clear that the Claimant was not subjected to detriment by that email and again any contention to the contrary is again simply an unjustified sense of grievance. Furthermore, the email had nothing to do with the disclosure that the Claimant had made on 12th December to Mr. Vanes-Jones because Mr. Brough was not aware of it.

556. The email similarly had nothing to do with the Claimant's race and again the Claimant has not taken us to anything at all to suggest to the contrary or that race had any part to play in the sending of the email. The reason for that was again because of the Claimant's conduct.

Allegation 6

557. This is an allegation that after 16th January the Claimant was "segregated" in that other members of the team had conversations that he was not part of and suggestions that he made were ignored. There is no evidence that the Claimant has been able to take us to of conversations being had behind his back and to any extent that he was in any way excluded by members of the team not mixing with him, for the reasons that we have given that was entirely of his own making as a result of his behaviour and awkward and argumentative manner.

558. Again, as that situation was of the Claimant's making there can be no reasonable suggestion that it was a detriment to him and to any extent that he was irked by it, that was again an unjustifiable sense of grievance. There is, furthermore, again nothing at all to link the matters of which the Claimant complains to his disclosure to Mr. Vanes-Jones. The remainder of the team working alongside him, Mr. Brough included, were not aware of it. Equally, the Claimant has again taken us to nothing to suggest that his race played any part.

559. Insofar as the Claimant's suggestions being ignored is concerned, that is demonstrably not the case. They may not have been immediately put into place as the Claimant appears to contend that they should have but they were certainly not ignored. This part of the allegation is simply entirely factually inaccurate.

Allegation 7

560. This allegation concerns the fact that the Claimant contends that after 17th January 2015 the number of "team teach" sessions that he had with Mr. Brough were significantly reduced.

561. As we have found above, to any extent that the team teach position had diminished, we are satisfied that that was as a result of Mr. Brough's anxiety and the state of his relationship with the Claimant. That relationship by that stage was of the Claimant's own making and was nothing whatsoever to do with the disclosure to Mr. Vanes-Jones - of which again Mr. Brough had no knowledge - or the matter of the Claimant's race and the Claimant has again adduced nothing to suggest to the contrary. It is also difficult to see how this could be a matter of detriment to the Claimant given that he took no notice of what Mr. Brough told him in all events.

Allegation 8

562. This allegation concerns alleged criticism made of the Claimant at the clear the air meeting on 19th January 2015 and the failure to address matters via a Personal Development Review (PDR"). The only criticism of which we have heard any evidence that occurred at the 19th January meeting was the comment of Mr. Rowbottom to which we have already referred above. The reason that that comment was made was simply out of frustration – a frustration shared not only with Mr. Brough but also other members of the team – that the Claimant did not appear to want to comply with the established processes within the Respondent College. He apologised to the Claimant and again any angst that the Claimant feels over this issue is not a detriment but an unjustified sense of grievance.

563. The comment cannot be connected to the Claimant's disclosure to Mr. Vanes-Jones because like Mr. Brough, Mr. Rowbottom was unaware of it. The comment similarly had nothing to do with the Claimant's race and again he has taken us to nothing to begin to suggest to the contrary. The reason why the comment was made was plain – Mr. Rowbottom was justifiably frustrated with the way in which the Claimant was conducting himself.

564. We address the PDR issue in the context of allegation 10 below.

Allegation 9

565. This allegation relates to the tool box talk on 19th January 2015 and the Claimant's assertion that it should have been impressed upon the learners specifically to treat him with respect. As we have already found above, Mr. Vanes-Jones did reinforce standards of behaviour during the talk as the Claimant's own Statement of Experiences records. There was no need to specifically single out the Claimant, particularly as other staff were also experiencing problems with learner behaviour – Mr. Brough for example.

566. Again, to any degree that the Claimant contends that he experienced angst over the failure to make particular mention of him by name that is an unjustifiable sense of grievance. It also had nothing at all to do with either the disclosure which the Claimant had made on 12th December or race. The reason why the Claimant was not specifically mentioned to the learners was because there was no need to.

Allegation 10

567. This allegation relates to the failure to hold a PDR with the Claimant after the meeting of 19th January. The Claimant did not ask for a PDR and one was not due at that stage. That would have been attended to later had the Claimant not been suspended.

568. It is difficult to see how this was to the Claimant's detriment. Given that even now he cannot accept any shortcomings in his conduct or behaviour it is difficult to see what holding an earlier PDR would actually have achieved. The reason that a PDR was not held at that time was because one was not due – that would come later in the probationary process – and we are satisfied that this had nothing at all to do with either the disclosure to Mr. Vanes-Jones or the Claimant's race. Neither matter was of concern to him and again we have not seen anything that suggests to the contrary.

Allegation 11

569. This allegation relates to an alleged failure by Mr. Vanes-Jones to take up suggestions made by the Claimant in his email of 26th January 2015 relating to a proposed tool board in the workshop. We have already dealt with this matter under the second half of allegation 6 above and we need not therefore repeat the same matters here.

Allegation 12

570. This allegation relates to the thematic walk and the feedback given to the Claimant thereat. Whilst we have not heard from Mr. Bramhall, the type of feedback that he gave to the Claimant was not inconsistent with Mr. Brough's observations and the other evidence that we have before us. We are satisfied that the observation did not produce any unfair criticism but that it was in fact justified and the comment about not giving a weeks notice was not, as the Claimant contends, designed to make him resign.

571. The feedback was therefore accurate and designed, as was the observation with Steve Darby, to allow the Claimant to improve. Again, any angst that the Claimant has in respect of this matter is an unjustified sense of grievance relating to his inability to accept any shortcomings on his part. There was no detriment and, furthermore, the reason for the feedback was as a result of what had been observed and nothing at all to do with the Claimant's disclosure to Mr. Vanes-Jones or his race. We have been taken to nothing to suggest to the contrary.

Allegation 13

572. This allegation relates to the incident on 28th January 2015 and that the Claimant contends that he was set up to fail by Mr. Vanes-Jones to teach a disruptive class without support and that he had to take time off work as a result because of the stress.

573. For the reasons that we have already given in our findings of fact above, we accept that this allegation is simply factually inaccurate.

Allegation 14

574. This allegation relates to the sending by Mr. Brough of his email of 3rd February 2015.

575. The Claimant contends that the use of the word “aggressive” within the email stereotyped him. That contention is in precisely the same terms as he contends that the learner had stereotyped him during the “angry black man” incident on 14th January 2015. That is simply not the case. The word “aggressive” was used because that was the perception of Mr. Brough as to how the Claimant acted and he was not alone in that. The remainder of the email similarly, we accept, simply sets out Mr. Brough’s perception of the Claimant and it did not amount to unfair criticism.

576. Like allegations 1 and 5, the reason why the email was sent was because of the Claimant’s conduct. It was not because of race or any disclosures that the Claimant had made.

Allegation 15

577. This allegation concerns the failure to Mr. Vanes-Jones to discuss with the Claimant the content of Mr. Dace’s email of 4th February 2015 regarding EV withdrawing from the course. As we have found above, we accept the evidence of Mr. Vanes-Jones that he did not recall discussing the email with the Claimant but that his primary concern would be for losing the learner. If anyone needed to discuss the email with the Claimant then it would have been Mr. Vanes-Jones because he was the Claimant’s line manager.

578. The Claimant’s case is that the email devalued him because of his race and the disclosures that he had made but that is clearly inaccurate given that all that the email was doing was setting out what Mr. Dace had been told by EV’s mother.

579. It is difficult to see how the failure to provide a copy of the email to the Claimant at that stage amounted to detriment. That is particularly so given that it was raised at a later stage in the disciplinary process and the Claimant did have the opportunity to discuss and address it. However, even if there was any detriment to the Claimant we are satisfied that that was because the emphasis of Mr. Vanes-Jones was on losing the learner and it had nothing to do with the disclosures or the Claimant’s race. Again, there is nothing to suggest to the contrary.

Allegation 16

580. This allegation is that Mr. Dace persuaded EV’s mother to make the complaints about the Claimant that had been referred to in his email. For the

reasons that we have already given in our findings of fact, we are satisfied that this allegation is factually inaccurate and therefore we need say no more about it save as to say that the Claimant had accepted that there was no evidence at all that Mr. Dace was aware of the disclosures that he relied on and so even had we accepted the substance of the allegation, it could not possibly be on account of "Whistleblowing".

Allegation 17

581. This allegation relates to the assertion that Mr. Dace had made an unfounded complaint about the Claimant's conduct during the Open Day on 7th February 2015.

582. The basis of this allegation is entirely factually incorrect given the Claimant's own admission, the other complaints made by people other than Mr. Dace and on the basis of the CCTV footage. We need therefore say no more about it.

Allegation 18

583. This allegation relates to the content of Mr. Dace's email of 9th February 2015 dealing with further complaints which had been made by EV's mother regarding the Claimant having telephoned EV's father and the content of that call.

584. The Claimant contends that the record of the complaint was inaccurate. As set out in our findings of fact above, the content of the email was not inaccurate and the statement given to Earl Laird by EV's parents (see pages 406 and 407 of the hearing bundle) were entirely consistent with the content of that communication. Mr. Dace was not in that meeting to prompt anyone.

585. The basis of the Claimant's contention that the content of the email was unfounded when this was dealt with in cross examination is that EV's mother had not put the complaint in writing and therefore what she had told Mr. Dace could not constitute a complaint. In the Claimant's words "it was a conveyance of information that cannot be verified". The Claimant would only accept that what EV's mother had reported was a complaint if it was contained in a letter, email or document that she had sent to the Respondent. It was on that basis that Mr. Dace's email was said to be an unfounded accusation. That is clearly a nonsense. The content of the email was accurate and there was no unfounded allegation therefore made by Mr. Dace.

586. Even had we found to the contrary, however, then this allegation would still have failed for precisely the same reason as allegation 20 below has.

Allegation 19

587. This allegation relates to the complaint made about the Claimant by Sean Foran on or around 11th February 2015. Insofar as it is said by the Claimant that this complaint was also unfounded, that is clearly factually inaccurate given the independent corroboration from JG's mother on the topic of the complaint, the Claimant's own admissions before us and the content of a separate complaint made by Elaine Gallear. Therefore, again there was no detriment and any angst that the Claimant may feel in respect of the content of this complaint was merely an unjustified sense of grievance.

588. Moreover, as we have found above there is nothing at all to support any suggestion that Mr. Foran was aware of disclosures that the Claimant relies upon or that he would be remotely influenced by them or the Claimant's race.

Allegation 20

589. This allegation relates to Mr. Dace's complaint that the Claimant had told him to "fuck off" during the Open Day. The Claimant says that that was a lie. We have made no finding on that given our concern about the Claimant's credibility and the fact that we have not heard from Mr. Dace. Earl Laird did not, of course, conclude that it was a lie despite the spin that the Claimant seeks to put on that part of his investigation report.

590. However, even assuming that the complaint might have been untruthful, as we have referred to in respect of allegation 16 above, the Claimant had accepted that there was no evidence at all that Mr. Dace was aware of the disclosures that he relied on and so even had we accepted the substance of the allegation, it could not possibly be on account of "Whistleblowing". Equally, the Claimant has taken us to nothing whatsoever to suggest that any complaint was made because of his race. We have of course dismissed his overarching contention that everything that happened was because of race and that all, Mr. Dace included, were inherently prejudiced in their actions towards him.

Allegation 21

591. This allegation relates to the content of the email sent by Ian Vanes-Jones on 12th February 2015. That again related to the kitchen doors incident and therefore like allegation 17, the basis of this allegation is entirely factually incorrect given the Claimant's own admission, the other complaints made by people other than Mr. Vanes-Jones and on the CCTV footage. We need therefore say no more about it.

Allegation 21A

592. This allegation relates to the Claimant's overarching case that the instigation of disciplinary proceedings and the outcome of the disciplinary process were acts of detriment and discrimination.

593. That is clearly not made out. The Claimant's suspension and the subsequent investigation were an entirely reasonable and understandable reaction to the complaints alleged against the Claimant. Similarly, the decision that was reached by Mr. McMillan to dismiss the Claimant was not remotely unfair or unreasonable and there is simply no evidence at all that this had anything to do with the disclosures upon which the Claimant relies or the matter of his race. The Claimant has shown nothing at all to that effect. The reason for the dismissal and the instigation of the disciplinary process was the Claimant's own conduct.

Allegation 22

594. This allegation relates to the suspension of the Claimant. For the reasons set out in our findings of fact above, we are entirely unsurprised that the Claimant was suspended. There is simply nothing to suggest that this was done for any reason other than to investigate the complaints that had been made against him. Whilst the Claimant relies upon the fact that David Brough, Ian Vanes-Jones and Paul Dace

were not suspended, for the reasons that we have already given that is comparing apples with oranges.

595. There is nothing at all to suggest that the Claimant was suspended because he had made the disclosures that he relies upon nor has he shown anything other than the overarching contention that race was at the heart of everything to suggest that the fact that he is black or of African-Caribbean ethnicity had anything at all to do with it. He was suspended because of his conduct and the need to investigate that.

Allegation 23

596. This allegation is that Earl Laird was not independent and was appointed for improper reasons so as to bring about his dismissal.

597. For the reasons that we have already set out in our findings of fact above, this allegation is simply factually inaccurate and therefore we need say no more about it.

Allegation 24

598. This allegation relates to the fact that the Claimant contends that he was not provided with sufficient information ahead of the investigatory interview with Mr. Laird. Whilst we have found that details of the allegations were not provided to the Claimant ahead of the interview, we have also found that there was an innocent explanation for that.

599. It was not of detriment to the Claimant given that the situation was remedied by April 2015 and he did not attend a disciplinary hearing until December of that year. He had more than ample time therefore to prepare. Moreover, Mr. Laird had specifically agreed not to finalise his investigation report until such time as the Claimant had had the opportunity to provide all evidence he wanted to. Mr. Laird did just that and so the Claimant was not in any way disadvantaged.

600. It is equally clear, and the Claimant has adduced nothing in support, that the failure to initially provide him with details of the allegations at an earlier stage had anything at all to do with his race or, indeed, any of the disclosures upon which he relies.

Allegation 25

601. This allegation relates to the failure to gather evidence such as CCTV footage, training records, tracker sheets and evidence from Eugene Smyth and Dawn Moss. For the reasons that we have given in our findings of fact above, the only part of this allegation that is made out is in respect of the CCTV footage. The reason why that footage could not be obtained was as a result of the 30 day loop and the fact that Mr. Laird was not able to view it before it was wiped.

602. There was therefore a perfectly logical and reasonable explanation as to why the CCTV was not secured. It appears to us doubtful that the failure to secure the CCTV was to the Claimant's detriment given that there was a wealth of other evidence as to what had occurred on 28th January but, even assuming that it was, we are entirely satisfied that this was nothing at all to do with the disclosures that the Claimant relies upon – it was simply a result of the 30 day CCTV loop.

603. We are equally satisfied that there is nothing at all to begin to suggest that the failure to secure the CCTV was in any way related to the Claimant's race.

Allegation 26

604. This allegation relates to the contention that the Respondent had failed to secure the Claimant's personal notes and records. As we have observed in our findings of fact above, we are satisfied that there is nothing factual within this allegation and we therefore need say no more about it.

Allegation 27

605. This allegation relates to the assertion that the Claimant was not provided with a copy of the "formal complaint" referred to in the suspension letter.

606. Given that the Claimant had the report of Mr. Laird with all of the relevant appendices which covered all of the complaints made, this allegation is factually inaccurate and therefore we need say no more about it.

Allegation 28

607. This allegation relates to failing or refusing to act on the Claimant's grievances in April and May 2015 and to follow a formal grievance process.

608. For the reasons that we have already given in our findings of fact above, the Claimant did not raise any grievances (or any matters that could sensibly be said should have been viewed in that way) and so the basis of this allegation is also factually incorrect. That is particularly the case given that the concerns that the Claimant raised about the disciplinary process were the subject of a lengthy meeting with John Beaty in an attempt to resolve the concerns that the Claimant had raised.

609. The allegation is therefore factually inaccurate and we need say no more about it.

Allegation 29

610. This relates to the alleged falsification by Angela O'Neill of the letter sent to the Claimant dated 12th March 2015. As we have found above, this was simply the replacing of a letter that had been sent out with the incorrect address on it. There can be no credible suggestion that the letter was deliberately, or as the Claimant terms it fraudulently, doctored to suggest that he had received it when he had not. This was simply an example of the Claimant seeing conspiracy when in reality there was none.

611. The reason why the letter was amended was because it had had the incorrect address on it, there is nothing at all to suggest that this was because of the disclosures that the Claimant relies upon or anything at all to do with his race. In respect of the latter, the Claimant has shown nothing at all to suggest that race was an issue in respect of this allegation or in relation to any of the decisions or actions of Ms. O'Neill generally. We accept her position that race simply did not come into it.

Allegation 30

612. This allegation relates to the fact that the Claimant contends that Mr. Beaty should have suspended the disciplinary process to investigate procedural failings when he met with the Claimant on 30th July 2015.

613. As we have already set out above, here was nothing that warranted suspension of the disciplinary process against the Claimant and the Claimant never asked for that. The purpose of the meeting was to address and rectify the things that could be rectified and those that could not would not be helped by investigating further.

614. In all events, Mr. Beaty was not aware of the disclosures upon which the Claimant relies until he was asked to undertake an investigation at the appeal stage by Mr. Burke. That was of course some time after the time when the Claimant says that Mr. Beaty should have suspended the process. The Claimant has nothing to gainsay Mr. Beaty's evidence that he had no idea about those matters at the time other than a general feeling that he would have known given that, at some juncture, he was Angela O'Neills line manager. We accept that he did not know and therefore, even if the process should have been suspended (and we have not found that it should) clearly the issue of the Claimant's disclosures could not have been the operative cause of that.

615. That leaves the suggestion that race was the reason why the process was not suspended. Whilst we are satisfied that the reason that it was not is that there was no need to, we would observe that in respect of this allegation the Claimant's own evidence was far from certain that even he believed that there was any element of race discrimination in respect of Mr. Beaty's dealings with him. That evidence was, however, in marked contrast to his later cross examination of Mr. Beaty and again evidences the shifting sands nature of the Claimant's claim.

616. The Claimant relies upon Mr. Brough as a comparator for the purposes of this allegation. Given that Mr. Brough was never suspended and was not the subject of any disciplinary action, he clearly therefore never had any disciplinary action against him suspended by Mr. Beaty or anyone else. This aspect of the complaint therefore made very little sense.

Allegation 31

617. Allegation 31 relates to the Claimant's contention that Mr. McMillan should have suspended the disciplinary process to investigate his grievance raised in November/December 2015. Firstly, the Claimant did not raise a grievance in November/December 2015 any more than he had in April or May of that year. The matters referred to were simply the rehashing of earlier concerns that he had raised about perceived procedural failings. As we have found above, there was no more reason for Mr. McMillan to suspend the process than there had been Mr. Beaty and that was the reason that that did not take place. The disclosures relied upon by the Claimant and his race had nothing to do with matters.

Allegation 32

618. Allegation 32 relates to the allegations of unfairness that the Claimant relies upon within the disciplinary hearing. We have dealt with the substance of those

allegations at paragraphs 449 to 471 above. For the reasons given, we are satisfied that they are factually inaccurate and, again, therefore we need say no more about them here.

Allegation 33

619. Allegation 33 if the matter of the Claimant's dismissal. As we set out further below in respect of the Claimant's complaint under Section 103A Employment Rights Act 1996, the reason for that dismissal was conduct.

620. The Claimant has not taken us to anything to suggest that race played any part in the decision of Mr. McMillan to dismiss him other than, again, his overarching position that race was at the heart of everything. The reason why he was dismissed was not his race but his conduct and the Claimant has not been able to take us to anything to begin to suggest that a white member of staff who had attracted the same catalogue of serious complaints in such a short period of time would not also have been dismissed. His reliance on comparators such as Mr. Brough, Mr. Dace and Mr. Vanes-Jones is again comparing apples with oranges.

Allegation 34

621. This allegation relates to what the Claimant contends to be unnecessary delay in deciding his appeal. For the reasons that we have set out above, that had resulted from the Claimant seeking to postpone the first date for the appeal meeting, difficulties in arranging diaries for a new date and the investigation that was commissioned into matters that the Claimant had raised for the first time on appeal.

622. There was no unreasonable delay, therefore, and the allegation is factually inaccurate. We need therefore say no more about it.

Allegation 35

623. This allegation relates to the outcome of the Claimant's appeal. He raises this as a complaint of detriment only. We are satisfied that there is nothing at all to suggest that the appeal outcome was influenced in any way by the disclosures that the Claimant relies upon. Indeed, far from seeking to "bury" those matters Mr. Burke and the panel commissioned the investigation by Mr. Beaty.

624. The reason that the appeal was not upheld was on account of the evidence against the Claimant, the severity of the issues and the fact that there was nothing new that cast doubt on the decision that Mr. McMillan had taken. We are satisfied that the disclosures that the Claimant relies upon had no bearing on that.

625. The Claimant's complaints of direct race discrimination and of detriment contrary to Section 47B Employment Rights Act 1996 therefore fail and are dismissed.

Complaint under Section 103A Employment Rights Act 1996

626. This leaves the complaint under Section 103A Employment Rights Act 1996. We are satisfied that the reason for dismissal was the Claimant's conduct. The dismissal was clearly for a conduct reason and we are satisfied that that was what was operative in the mind of Mr. McMillan when he made his decision. The Claimant

has not shown anything to suggest that the disclosures that he relies upon played any part, let alone that they were the reason or principle reason for dismissal.

Jurisdiction

627. Although not strictly necessary as a result of the findings of fact that we have made, we turn finally to consider whether, if we had found any of the complaints to have been made out which were not presented within the relevant statutory time limit, we would have extended time to allow them to proceed. We deal with this matter only very briefly, however, on the basis that we have dismissed all of the Claimant's complaints on their merits.

628. We deal firstly with the detriment complaints and remind ourselves that time could only be extended if we were satisfied that it was firstly not reasonably practicable for the complaint to be made within the relevant time limit – i.e. that it was not reasonably feasible because of a physical or mental factor impeding the Claimant from presenting the claim in time - and, secondly, that it was then presented in a reasonable period of time thereafter.

629. The Claimant essentially relies upon a lack of knowledge of time limits in Tribunal proceedings as being causative of any failure to present any complaint in time. We found ourselves quite simply unable to accept that on the basis that we considered the Claimant's evidence on that point to be unsatisfactory and lacking in credibility given that he has experience of not only previous Tribunal proceedings but of having claims (albeit for race discrimination) being struck out on jurisdictional grounds. He had neglected to mention any such matter in his original evidence on the point and until recalled and provided with a copy of the relevant Judgment by Mr. Bromige. It cannot therefore have failed to register with the Claimant on this occasion, and irrespective of what he now says, to exercise caution with regard to time limits. Moreover, the Claimant had the benefit of legal advice even before his dismissal and there is nothing at all to suggest that he was ignorant of time limits or, even if we had accepted his evidence on that point, that that was reasonable given the fact that he was in touch with solicitors before his dismissal and the wealth of available evidence to potential Claimant's from ACAS, the internet, local advice centres and the like.

630. It was therefore entirely reasonably practicable for all complaints made by the Claimant to have been presented in time and had we found on the merits of the complaints that an earlier act or act was made out but had presented out of time, we would not have permitted it to proceed on jurisdictional grounds.

631. We turn then to the discrimination complaints and, again, consider if we had found any complaint to be made out that had been presented "out of time" whether we would have permitted it to proceed. We are satisfied that we would not. Whilst we have considered all of the factors set out in Section 33 Limitation Act 1980 (see **British Coal Corporation v Keeble [1997] IRLR 336**) ultimately the Claimant has advanced no good reason why he could not have presented any of the earlier complaints which are on the face of it out of time, within the relevant statutory time limit. We did not of course accept the Claimant's evidence – for the reasons given immediately above – that he was unaware of the existence of time limits in Tribunal proceedings. Following the recalling of the Claimant, his position somewhat changed and whilst still essentially contending, despite parts of the previous claim being struck out on jurisdictional grounds, he had a lack of knowledge of time limits he then he

contended that he had been relying on there being a continuing act of discrimination. Again, that was wholly unsatisfactory given that the importance of time limits must have been implanted firmly given the previous decision to strike out his race discrimination claims on the basis that they were out of time. Quite simply, the Claimant had not provided any credible or convincing evidence as to why any of the earlier on the face of it out of time complaints had not been presented in time and therefore we would have also rejected them on jurisdictional grounds.

632. For all of the reasons that we have given, the claim is dismissed in its entirety.

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Employment Judge Heap

Date: 3rd April 2018

JUDGMENT SENT TO THE PARTIES ON

4 April 2018..

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FOR THE TRIBUNAL OFFICE

Note:

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

RESERVED **Case No: 2601059/2016**

MR. P ABRAHAMS

Claimant

v

BURTON AND SOUTH DERBYSHIRE COLLEGE

Respondent

LIST OF ISSUES

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1. Public interest disclosure

1.1. The Claimant relies upon the following as protected disclosures for the purposes of his claims under Section 47B and Section 103A Employment Rights Act 1996 (see paragraph 1(iv) (a) to (c) of the Order of Employment Judge Camp of 20th September 2016 ("The Order"):

1.1.1. An oral disclosure on 12th December 2014 between the Claimant and Ian Vanes Jones of the Respondent regarding the actions of David Brough on 10th December 2015;

1.1.2. An oral disclosure of 29th January 2015 to Angela O'Neill of the Respondent regarding an incident of 28th January 2015 involving students breach of health and safety;

1.1.3. A written disclosure of 30th January 2015 entitled "Statement of Experiences".

1.2. In any or all of these, was information disclosed which in the Claimant's reasonable belief tended to show one of the following?

1.2.1. There had been a failure to comply with a legal obligation; or

1.2.2. The health or safety of any individual had been put at risk; or

1.2.3. that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

1.3. If so, did the Claimant reasonably believe that the disclosure was made in the public interest?

2. Detriment complaints

2.1. If a protected disclosures or disclosures are proved by the Claimant, was the Claimant, on the ground of any protected disclosure found, subject to detriment by the employer or another worker in respect of all or any of complaints 1 to 32 inclusive and complaints 33 and 34 set out at paragraph 2 of the Order.

2.2. The burden will initially be on the Claimant to prove on the balance of probabilities that:

2.2.1. He made a protected disclosure;
2.2.2. There was a detriment (some disadvantage) caused to him; and
2.2.3. That the Respondent (or one of it's employees) subjected him to that detriment.

2.3. If the Claimant does so, does the Respondent prove that the Claimant was not subject to the detriment on the grounds that he had made a protected disclosure or disclosures (i.e. that the disclosures did not materially influence the treatment of the Claimant).

3. Unfair dismissal complaint

3.1. Was the making of any proven protected disclosure the reason or principal reason for the dismissal?

3.2 It is common ground that the Claimant does not have sufficient continuous employment to bring an "ordinary" unfair dismissal claim and therefore the burden is on the Claimant to show jurisdiction and therefore to prove that the reason, or if more than one, the principal reason for the dismissal was the protected disclosure.

4. Section 13: Direct discrimination because of the protected characteristics of race:

4.1. Has the Respondent subjected the Claimant to the following treatment falling within section 39 Equality Act, namely*:*

4.1.1. Dismissing the Claimant (allegation 33 of paragraph 2 of the Order)?

It is not in dispute that the Respondent terminated the Claimant's employment.

4.1.2 Subjecting the Claimant to the treatment complained of at complaints 1 to 32 and complaint 34 as set out at paragraph 2 of the Order.

4.2. Has the Respondent treated the Claimant in dismissing him and as treating him as complained of at 4.1.2 above less favourably than it treated or would have treated an appropriate comparator or comparators (either actual or hypothetical)?

4.3. If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic of race.

4.4. If the Claimant has proved facts from which the Tribunal is able to draw an inference of discrimination on the grounds of race and the Claimant has therefore reversed the burden of proof, what is the Respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?