EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT	**V**	**RESPONDENT**
Mr Peter Wood		**(1) Bromley College of Further and Higher Education** **(2) Mr D Jehovah-Nissi** **(3) Mr J Hunt** **(4) Ms J Southby**

Heard at: London South Employment Tribunal

On: 5, 6, 7, 8, 9, 12, 13, 14, 15 October & 3 November 2020
In Chambers on 3 November (pm) 4 & 5 November 2020 and 22 January 2021

Before: Employment Judge Hyams-Parish
Members: Ms C Edwards and Ms S Dengate

Representation:
For the Claimant: Mr S Keen (Counsel)
For the Respondent: Mr H Zovidavi (Counsel)

RESERVED JUDGMENT

The claim of automatic unfair dismissal brought pursuant to s.103A ERA fails and is dismissed.

The detriment claims brought pursuant to s.47B ERA fail and are dismissed.

The claim of wrongful dismissal fails and is dismissed.

The claim for failing to provide a s.1 ERA statement is dismissed upon

withdrawal by the Claimant.

REASONS

Claims and Issues

1. By a claim form presented to the Tribunal on 12 July 2019, the Claimant brings the following claims against the Respondents:

   (a) Automatic unfair dismissal (s.103A Employment Rights Act 1996 ("ERA"))

   (b) Protected disclosure detriment claims (s.43B ERA)

   (c) Wrongful dismissal

   (d) Failing to provide a written statement of employment particulars (s.1 ERA)

2. On the first day of the hearing, the Claimant withdrew claim (d) above, which was therefore dismissed.

3. The issues which the Tribunal needs to determine in respect of the remaining claims were agreed at a previous case management hearing and are set out at paragraphs 4-9 below.

(a) Whistleblowing dismissal and detriment

4. Was there a *disclosure of information* which in the *reasonable belief of the Claimant* was made in the public interest and *tended to show* that a person had failed, was failing, or was likely to fail, to comply with a legal obligation to which they were subject?

5. The disclosures relied on by the Claimant are as follows:

	Date	Disclosure
(i)	12/09/18	(a) The Claimant verbally disclosed to Daniel Jehovah-Nissi that he did not believe his claims regarding his employment history or that he had served in the army.
	13/09/18	(b) The Claimant verbally disclosed to Errol Ince his concerns regarding Mr Jehovah-Nissi's employment, including that he had cause to believe that Mr Jehovah-Nissi's claims of having served in the army

were false.

(ii) 25/09/18 The Claimant verbally informed Louise Wolsey that two Councillors involved in the Biggin Hill project were co-habiting.

(iii) 08/10/18 The Claimant verbally disclosed to Tracey Davis and Ms Wolsey: (a) his concerns regarding Mr Jehovah-Nissi's suspected fraudulent activity; and (b) Mr Ince's failure to investigate those concerns.

(iv) 19/11/18 The Claimant submitted a grievance in which he referred to Mr Jehovah-Nissi's identity, qualifications and safeguarding concerns, together with the First Respondent's failure to address them.

(v) 13/02/19 The Claimant repeated disclosures (i)-(iv) at his disciplinary hearing.

(vi) 09/05/19 The Claimant repeated disclosures (i)-(v) during his appeal hearing.

(vii) 30/06/19 The Claimant emailed Dr Sam Parrett repeating the above disclosures.

(viii) 10/07/19 During the appeal hearing Mary Herbert admitted she had "*grave concerns*" that the reference supplied by Mr Jehovah-Nissi was fraudulent.

6. If the Tribunal finds that all or any of the above disclosures at paragraph 5 are protected disclosures, was the reason, or principal reason, for the Claimant's dismissal the fact that he made all or any of these protected disclosures?

7. Did the Claimant suffer the following detriments?

	Date	**Detriments**
i	13/09/18	Mr Jehovah-Nissi excluded the Claimant from team meetings (e.g., 9 October 2018).
ii	13/09/18	The Claimant was placed with the lowest ability students.
iii	13/09/18	Mr Jehovah-Nissi placed the Claimant on a 120% timetable.

iv	13/09/18	Mr Jehovah-Nissi made the Claimant teach in the workshop.
v	13/09/18	The Claimant was unable to take toilet, food or refreshment breaks.
vi	13/09/18	Mr Jehovah-Nissi would come into the workshop, laugh and remark "*the white man clearing up the mess of black kids*".
vii	13/09/18	Mr Jehovah-Nissi told the Claimant he would attend all of the Claimant's line management meetings.
viii	17/09/18	The Claimant was told by Ms Wolsey to no longer have any contact with the Councillors.
ix	08/10/18	Mr Jehovah-Nissi accused the Claimant of being a paedophile.
x	08/10/18	The Claimant was told that Mr Jehovah-Nissi would attend all of the Claimant's line management meetings.
xi	09/10/18	Mr Jehovah-Nissi shouted at the Claimant "*Don't interrupt. Speak to me at the end*".
xii	09/10/18	Mr Jehovah-Nissi slammed his fist on the table.
xiii	09/10/18	Mr Jehovah-Nissi told the Claimant "*never talk in front of my staff like this*".
xiv	09/10/18	Mr Jehovah-Nissi spat in the Claimant's face.
xv	09/10/18	Mr Ince failed to investigate the Claimant's concerns.
xvi	12/10/18	Mr Jehovah-Nissi refused to talk to the Claimant.
xvii	12/10/18	Mr Jehovah-Nissi stated "*You won't be here by the end of the day*".
xviii	12/10/18	Mr Jehovah-Nissi instructed students to write statements confirming that the Claimant assaulted Student A and that Student A had merely retaliated.
xix	21/11/18	The First Respondent departed from the normal process by hearing the Claimant's grievance *after* his disciplinary hearing.

xx	07/12/18	Mr Jehovah-Nissi chose which witnesses should speak to Ms Southby as part of the disciplinary investigation.
xxi	07/12/18	Ms Southby did not speak to the students who the Claimant said were the only witnesses to the incident involving Student A.
xxii	07/12/18	Ms Southby did not allow the Claimant's union representative to attend the students' interviews with her.
xxiii	07/12/18	Student witness statements were anonymised despite the students not asking them to be.
xxiv	07/12/18	Ms Southby interviewed students as groups rather than individually, departing from the normal process.
xxv	07/12/18	Ms Southby did not allow the students to write their own witness statements.
xxvi		Mr Jehovah-Nissi threatened Mr Halliday and Mr Hamid to ensure that they did not provide evidence as part of the disciplinary investigation.
xxvii		Mr Halliday and Mr Hamid were not invited to attend the Claimant's disciplinary hearing.
xxviii	13/02/19	The Claimant's witnesses (Mr Halliday and Mr Hamid) did not attend the disciplinary hearing.
xxix	13/02/19	Mr Jehovah-Nissi threatened to resign if the Claimant was not found guilty at his disciplinary hearing.
xxx	13/02/19	Mr Hunt stated to the Claimant that the Local Authority Designated Officer ("LADO") had advised the First Respondent that Student A's school records should not be admitted as part of the disciplinary process.
xxxi	13/02/19	Ms Southby wrongly gave the impression that the two witnesses named by the Claimant were not willing to give evidence.
xxxii	13/02/19	Mr Hunt proceeded with the disciplinary hearing without first dealing with the Claimant's grievance.

xxxiii	13/02/19	Mr Hunt reported the Claimant to the Disclosure and Barring Service ("DBS").
xxxiv	09/05/19	Dr Parrett, Jackie Tiotto and Simon Graham dismissed the Claimant's appeal.
xxxv	09/05/19	Dr Parrett, Mrs Tiotto and Mr Graham failed to await the determination of the grievance before deciding the appeal outcome.
xxxvi	30/09/19	Dr Parrett did not investigate matters raised by the Claimant.
xxxvii	10/07/19	Dr Parrett blocked the Claimant's email account and stated that any further correspondence had to be via the Respondent's solicitor.

8. If the Tribunal finds that all or any of the above disclosures at paragraph 5 above are protected disclosures, did the Claimant suffer all or any of the detriments at paragraph 7 above on the ground that he had made such disclosures?

(b) Wrongful dismissal

9. Did the Claimant commit a repudiatory breach of contract entitling the First Respondent to treat the contract as at an end and dismiss the Claimant summarily? The breaches relied on by the First Respondent are as follows:

   (a) Breach of the implied term of trust and confidence

   (b) Breach of the Safeguarding and Child Protection Policy and Procedure

   (c) Breach of the Staff Code of Conduct, specifically paragraphs A, B, K and L

(c) Time limits

10. Was it reasonably practicable for the Claimant to bring his claims against the Second, Third and Fourth Respondents within the applicable time limit? If it was not, did the Claimant bring the claim within such further period as was reasonable in all the circumstances?

Practical and preliminary issues

11. This case was conducted using the HMCTS video conferencing facility called CVP. This is because, at the time of this hearing, only a limited

number of ‘in person’ hearings were being held at the Tribunal centre due to COVID19. Both parties agreed to this.

12. The Tribunal spent the first day reading witness statements and documents, as well as dealing with the following preliminary issues.

(a) Evidence of Ms Bray

13. The first preliminary issue concerned the witness evidence of Ms Bray, the mother of one of the Claimant's witnesses, Mr Andrew Williams, an ex-student of the First Respondent and a witness to an incident which has received much attention during these proceedings. Ms Bray did not witness any of the matters referred to in her witness statement; it was effectively an account of what her son, Mr Williams, had told her. The Tribunal took the view that the evidence of Ms Bray was put forward to prove the content of what she was asserting, which the Tribunal considered as hearsay. The Tribunal concluded that whilst the rules on hearsay are not as strict in the Employment Tribunal, it was not necessary to hear the evidence of Ms Bray given that Mr Williams would himself be giving evidence. The Tribunal was also concerned that there were already a large number of witnesses being called by the parties, creating a significant risk that the hearing would not be completed within the ten days allocated. The Tribunal concluded that it was not in accordance with the overriding objective to hear from Ms Bray and risk the hearing going part heard. As it happened, the timetable was extremely tight, and there was no time left to hear closing submissions within the initial listing and the Tribunal therefore had to allocate additional Tribunal time for this.

(b) Specific disclosure

14. The Tribunal considered an application by the Claimant for specific disclosure of the notes of interviews with students. The Respondent had disclosed the notes of interviews referred to, but with the names of students redacted. The Claimant could therefore not identify which student said what. The Tribunal ordered those notes be disclosed, unredacted, bearing in mind the Claimant had alleged that not all students were present and saw the incident involving Student A. The Tribunal concluded that it was necessary for a fair hearing for the Claimant to know specifically the identity of the students who were interviewed.

(c) Anonymity

15. The next preliminary matter was raised by Mr Zovidavi. He raised concerns about revealing the identity of students mentioned in these proceedings, albeit it was never entirely clear whether they were current or ex-students. The Tribunal invited Mr Zovidavi to make a Rule 50 application, but none was made. In any event, the Tribunal said that it would not identify students

(either ex-students or current students) where it was not necessary to do so; the Tribunal said that it was content to adopt the same lettering/numbering system to identify students that had been used by the Respondent during the disciplinary proceedings.

(d) Time limits

16. Finally, Mr Zovidavi said that he had noticed that claims against the Second, Third and Fourth Respondents were out of time. However, given that all of the detriment claims were being brought against the First Respondent as well as the other Respondents, the Tribunal concluded that no time would be saved by determining the time point at this stage, given that the Second, Third and Fourth Respondents would still need to attend the hearing to give their evidence, and in addition it being suggested by the Claimant that there was a continuing act. The Tribunal therefore informed the parties that the time issues would be dealt with at the end of the case. The Claimant was given leave to prepare a supplemental witness statement dealing with the reasons for submitting his claims against the Second, Third and Fourth Respondents outside the applicable time limit.

17. During the hearing, we heard evidence from the following witnesses:

For the Claimant:

	Name	Job Title	Relevance
i	Peter Wood		Claimant
ii	Andrew Halliday		Ex-colleague of the Claimant
iii	Mohammed Hamid		Ex-colleague of the Claimant
iv	Andrew Williams		Ex-student of the First Respondent
v	Tia Woolford		Ex-student of the First Respondent

And for the Respondent:

	Name	Job Title	Relevance
vi	Jo Southby	Group Executive Director of Education Standards and Safeguarding	Investigating officer

vii	John Hunt	Group Chief Financial Officer	Dismissing officer
viii	Dr Sam Parrett	Principal and CEO	Appeal officer
ix	Jacky Tiotto	Chief Executive Officer of CAFCASS, (Children and Families Court Advisory and Assessment Service)	Appeal officer
x	Errol Ince	Vice principal	
xi	Mary Herbert	College Principal	Grievance officer
xii	Daniel Jehovah-Nissi	Senior Specialist Lecturer in Mechanical Engineering	
xiii	Louise Wolsey	Chief Transformation Officer	
xiv	Amanda Smith	Group Head of Human Resources	

18. The parties had agreed a bundle of documents consisting of 1011 pages to which we were referred throughout the hearing. References to numbers in square brackets in this judgment are references to page numbers in the agreed bundle.

19. As the final witness was not completed until late on the final day of the hearing, there was insufficient time to hear closing submissions by Counsel. The proposal to rely on written submissions was canvassed with the parties. Counsel for the Claimant said that whilst he would be happy to provide written closing submissions, he would still like to attend to give oral submissions. Those oral submissions were heard on the morning of 3 November 2020 before the Tribunal retired to consider their decision in chambers for the remainder of that day and three further days.

Assessment of witnesses

20. This is a case where both parties called a number of witnesses to prove their case. There are many instances where the parties are completely at odds with each other as to their version of events. The Tribunal's assessment of the witnesses is set out below, and informed the decisions made by the Tribunal when it came to resolving disputed facts. Where the Tribunal did not accept a particular witness' account of an incident, it did not mean that all of their evidence was rejected. The Tribunal looked carefully

at internal and external credibility, plausibility, and importantly it stepped back and looked at the whole picture, when making findings on disputed fact.

(a) Claimant witnesses

21. The Claimant gave evidence himself and called four witnesses: two ex-colleagues and two ex-students of the First Respondent. The Tribunal found the Claimant credible in certain respects, but not in others. Certainly, when it came to his teaching methods (which the Tribunal considered to be somewhat unorthodox and concerning) the Tribunal considered that he spoke candidly and honestly. The Claimant was largely consistent during questioning with what he said in his witness statement. However, the Tribunal concluded that the Claimant tended to embellish his account of what happened, even deliberately misconstruing or twisting what someone said or did, in order to support his case. There were a number of allegations which he made, or accounts of a particular incident, which were not supported by any documentary evidence, but only the evidence of his witnesses.

22. The Tribunal also had concerns about, and doubted, the credibility and reliability of the Claimant's witnesses. Each of them gave evidence from a room in the Claimant's house, the Tribunal having established this by asking one of the witnesses, when giving evidence, where he was. It transpired in evidence that the Claimant had spoken with his witnesses about their evidence before the hearing. Ms Woolford told the Tribunal about a meeting at Nandos with Mr Williams and the Claimant, during which they discussed the case, and no doubt their evidence. Mr Halliday said that the Claimant read his witness statement over the phone to him, leaving the Tribunal with the impression that the Claimant had prepared the witness statements. All of the witnesses had the appearance of needing to keep to a script, each of them needing to look regularly at their witness statements in front of them when giving evidence.

23. As a witness, the Tribunal found Mr Halliday to be unreliable and not a very credible or persuasive witness. The Tribunal also found certain parts of Mr Halliday's witness statement uncannily similar to the Claimant. For example, he said about the Claimant's announcement on 13 September 2018 (paragraphs 48-50 below) that "*Pete stood up and said very loudly so that the whole staff room could hear…*". The above words were almost identical to that written by the Claimant. Another example of where the Claimant and Mr Halliday used identical wording is referred to at paragraph 66-67 below. Mr Halliday also gave detail about events in his witness statement in these proceedings which he did not provide, or could not remember, when interviewed nearer the time. For example, during an interview on 3 May 2019, conducted as part of the investigation into the Claimant's grievance, Mr Halliday was asked about the incident at paragraphs 78-79 below. He

replied that he "*vaguely*" remembered and gave a very general account of events. Yet his witness statement, which was signed by him two years after the incident in September 2020, gave very specific detail about the same incident.

24. Mr Halliday rejected much of what he is documented to have said in his investigation interview, saying that it was inaccurate. Whilst the Tribunal accepted that records of interviews may not be completely accurate in every respect, the Tribunal was not persuaded it was as inaccurate as Mr Halliday suggested. The Tribunal concluded that Mr Halliday gave his evidence at this Tribunal hearing primarily with the intention of supporting the Claimant rather than conveying what actually occurred.

25. The Tribunal was equally concerned by the evidence of Ms Woolford and Mr Williams. They did not appear to be very reliable witnesses. They seemed very uncertain about their evidence, needing constantly to read and refer to their witness statement which they seemed to treat as their script for the hearing. They gave contradictory evidence on an important matter, which was where everyone was sitting in class. The Tribunal did not find them particularly persuasive or convincing.

26. The Tribunal had the same concerns about Mr Hamid. On one piece of important evidence (paragraph 99 below) the Tribunal rejected Mr Hamid's account as being implausible.

(b) Respondent witnesses

27. Whilst the Tribunal had a number of concerns about the fairness of the process leading to the Claimant's dismissal, it still found the Respondent witnesses largely credible and reliable, the one exception being Mr Jehovah-Nissi.

28. The circumstances of Mr Jehovah-Nissi's background and previous employment played a large part of this case and he was cross examined about his qualifications, employment history, even a Tribunal claim that was brought against his previous employer, with the intention not only of proving the Claimant's case but also to discredit Mr Jehovah-Nissi. Indeed, the Claimant appears to have gone to great lengths, both during his employment with the First Respondent, and subsequently, to find out as much information about Mr Jehovah-Nissi as possible, in an attempt to show that Mr Jehovah-Nissi was a liar and a completely untrustworthy witness.

29. The Tribunal concluded that certain aspects of what Mr Jehovah-Nissi said about his past were difficult to believe. However, that by no means lead the Tribunal to conclude that Mr Jehovah-Nissi was not telling the truth at all during his evidence. The Tribunal preferred some parts of his evidence to

the Claimant's. There was documentary evidence available in respect of certain allegations that supported what he was saying.

Findings of fact

30. The following findings of fact were reached by the Tribunal on the balance of probabilities, having considered all of the evidence given by witnesses during the hearing, together with documents referred to by them. The Tribunal has only made those findings of fact that are necessary to determine the claims. It has not been necessary to determine every fact in dispute (of which there are many in this case) where it is not relevant to the legal issues.

31. The Claimant joined the British Army at aged 16 and worked his way up through the ranks, serving as a corporal, sergeant and warrant officer, until the conclusion of his army career when he served as a Senior NCO of the army workshops where he was responsible for over two hundred army and civilian employees.

32. In 2005, the Claimant decided to pursue a career in teaching and undertook his teacher training at the University of Greenwich, specialising in design and technology.

33. In February 2018, the Claimant was recruited by the First Respondent as its Director of Science, Technology, Engineering and Maths (STEM) where he had overall responsibility for both the staff and students in those departments.

34. Four weeks into his employment with the First Respondent, the Claimant was dismissed for allegedly not reporting the fact that he had received a verbal warning from a previous employer for, in the Claimant's words, "*the use of a profanity whilst breaking up a physical fight between students*".

35. The Claimant later proved that he had in fact disclosed the above warning to the First Respondent when applying for the role. His appeal was therefore upheld, albeit some months later. The Claimant was not reinstated to the same position, following his successful appeal, but was offered a different position, as Director of Aviation, which he started on 10 September 2018.

36. As part of his Director of Aviation role, the Claimant was responsible for project managing a new aviation college that was in the process of being built at Biggin Hill. He was also required to teach engineering lessons on a part time basis during the first year of his employment.

37. The teaching side of the Claimant's role was overseen by Mr Jehovah-Nissi, who was recruited by the First Respondent following the Claimant's dismissal in March 2018. Mr Jehovah-Nissi began working for the

Respondent on 23 April 2018. During the period of the Claimant's employment, Mr Jehovah-Nissi was employed as a Senior Specialist Lecturer in Mechanical Engineering.

38. Prior to joining the First Respondent, Mr Jehovah-Nissi was employed at West Suffolk College. The Tribunal was shown papers suggesting that, early on in his employment, the college was not happy with Mr Jehovah-Nissi's performance, resulting in him failing his probationary period and his employment being terminated. The Tribunal was also shown an Employment Tribunal claim form in which Mr Jehovah-Nissi claimed that he had been constructively dismissed, the particulars stating that Mr Jehovah-Nissi had in fact resigned. There was also a claim of race discrimination. The Tribunal makes no finding as to whether Mr Jehovah-Nissi was dismissed by his previous employer as that is subject to separate proceedings and it was not necessary to make such a finding for the purposes of this case.

39. Mr Jehovah-Nissi had previously worked for the First Respondent between 27 January 2007 and February 2017. Mr Jehovah-Nissi was therefore well known to, and friends with, Mr Ince. Indeed, Mr Ince was one of two referees provided by Mr Jehovah-Nissi when applying for a position with the First Respondent.

40. Given the Claimant's hybrid role involving development activity and teaching, the Claimant had a dotted reporting line into Mr Jehovah-Nissi, but otherwise formally reported into Ms Wolsey and Tracey Davis jointly. Ms Wolsey was based at Orpington, whilst Ms Davis was based at Bromley. Both were employed as Vice Principals.

41. The Claimant was contracted to teach two days each week (Thursdays and Fridays) at the Bromley Campus. The remaining days were spent at the Orpington Campus. In evidence to the Tribunal, the Claimant said that his working days at Bromley were in fact Wednesdays, Thursdays and Fridays. The Tribunal concluded that whilst he was formally timetabled to teach only on Thursdays and Fridays, it appears that an informal arrangement was reached where, in certain weeks, he would teach on the Wednesday as well.

42. The Claimant told the Tribunal that he met Mr Jehovah-Nissi on his first day at the college on 12 September 2018. As the Claimant commenced employment on 10 September 2018, the Tribunal concluded that the Claimant met Mr Jehovah-Nissi on his first day at the Bromley campus on 12 September 2018, and not on his first day of employment.

43. The Claimant described in evidence Mr Jehovah-Nissi's behaviour and demeanour towards him as "*hostile*" and "*not the warm welcome he had hoped for*". The Claimant believed Mr Jehovah-Nissi was *aware* that the

Claimant had previously been employed by the Respondent as Director of STEM and believed Mr Jehovah-Nissi might be threatened by this. During their initial conversation which took place in Mr Ince's office, Mr Jehovah-Nissi is reported to have made numerous unpleasant and antagonistic remarks towards the Claimant, such as "*don't think you are the big white man to swing your weight around here*"; also, that he knew the Claimant was there to *"spy*" on him. Mr Jehovah-Nissi accused the Claimant of wanting his job.

44. The Tribunal broadly accepted the Claimant's evidence of his encounter with Mr Jehovah-Nissi on his first day. Whether or not the hostility was intended by Mr Jehovah-Nissi or that Mr Jehovah-Nissi considered himself to have been hostile when first meeting the Claimant, the Tribunal accepts that the reception by Mr Jehovah-Nissi was not as warm and welcoming as the Claimant had expected or wanted. However, the Tribunal also concluded that the Claimant's feelings towards Mr Jehovah-Nissi were likely to have been somewhat hostile because the Claimant perceived Mr Jehovah-Nissi to be doing the job (notwithstanding the different job title) from which the Claimant had been dismissed.

45. Importantly, the Tribunal rejected the Claimant's above assertion that Mr Jehovah-Nissi made the above racist comment referring to the "*big white man*". If it had occurred as alleged, the Tribunal believes the Claimant would have reported such a serious racist comment. There is no contemporaneous record of the Claimant having complained and the Claimant made no mention of the matter in his emails to Ms Wolsey [359/362]. Mr Ince denied that the Claimant ever reported such an incident or any allegation that Mr Jehovah-Nissi had made racist remarks.

46. Still on the first day, the Claimant learned from his colleague, Mr Halliday, whilst they were sat in the staff room, that Mr Jehovah-Nissi had served in the army. The Claimant therefore walked over to Mr Jehovah-Nissi's desk, sat down opposite him, knocked on the desk and said "*Sir, I understand you were in the army. Can I sit down, please?*" The Claimant sat down and asked Mr Jehovah-Nissi certain questions about his career from which the Claimant immediately concluded that he could not have been in the army. The Claimant told the Tribunal that Mr Jehovah-Nissi said to him that he served in Nottingham, to which the Claimant replied that there was no such regiment in Nottingham. When told Mr Jehovah-Nissi had served in the Royal Engineers, the Claimant said, "*Oh you are a 'wedge head'...?"* which is the universal military nickname for someone in the Royal Engineers. The Claimant said that this question was met with a blank expression from Mr Jehovah-Nissi. The Claimant was concerned that Mr Jehovah-Nissi did not know the basics of describing the regiment and units he had served with. The Tribunal concluded that all of the Claimant's subsequent questions were intended to test Mr Jehovah-Nissi, all leading the Claimant to the conclusion that Mr Jehovah-Nissi was not telling the truth about his past, his

experience and his qualifications.

47. The Claimant then asked Mr Jehovah-Nissi where he did his degree to qualify for commission, to which Mr Jehovah-Nissi replied that he went to Cambridge University. The Claimant says that he did not believe Mr Jehovah-Nissi attended Cambridge, questioning why an army captain educated at Cambridge would be teaching at the First Respondent.

48. The Claimant said he then did the following (which is taken from his witness statement and is alleged to the protected disclosure at paragraph 5(i)(a) above [sic]:

> ***I informed Daniel, loudly for all to hear in the staff room, that I did not believe he was an officer in the army and that I was going to carry out some checks of my own. I also informed Daniel that if, as I suspected, it turned out to be the case that he had not served in the army as an officer that I would have no choice but to report this matter on the basis that it would constitute fraud.***

49. One of the Claimant's witnesses, Mr Halliday, also gave evidence of this incident. He said [sic]:

> ***I watched and listened as Pete asked Daniel about his military service. After about 5 minutes, Pete stood up and said very loudly so that the whole staff room could hear, "Sir, I do not believe you were an officer in the army. I am going to makes some checks but if, as I suspect, you are lying, I will have no choice but to report it. It is Fraud. Prove me wrong by supplying your Commission Certificate and show me the photos that you say prove you were a Captain in the Royal Engineers. I also want to see your other qualifications because I do not believe you were educated at Cambridge University."***

50. The Tribunal considered the evidence relating to the above 'announcement' very carefully, noting that the Claimant alleged that this was a protected disclosure. The Tribunal noted that there was no supporting documentary evidence of this incident and no emails sent to Mr Ince at the time reporting this conversation. Mr Jehovah-Nissi accepts that he was asked some short questions by the Claimant about whether he was in the military, including whether Mr Jehovah-Nissi had photographs that he could bring in. Mr Jehovah-Nissi denied any conversation took place in which the Claimant said he did not believe Mr Jehovah-Nissi's history or whether he had been in the army. The Tribunal considered Mr Halliday's supporting evidence, but as has already been said above, generally did not find him to be a very persuasive or credible witness.

51. Having reviewed and considered all of the evidence carefully, the Tribunal finds as fact that the Claimant did quiz Mr Jehovah-Nissi about his military background, where he had served, etc. The Tribunal also accepts that Cambridge University was discussed, and that the Claimant had been left

with the impression by Mr Jehovah-Nissi that he had been to Cambridge. The Tribunal was not persuaded by the Claimant or Mr Halliday that the Claimant stood up and announced to the staff his concerns about Mr Jehovah-Nissi as is alleged. The Tribunal considered this to be most unlikely, even for the Claimant, on what was his first day at the Bromley campus. This conversation was clearly not reported to Mr Ince and Mr Jehovah-Nissi denies it. The Tribunal rejected Mr Halliday's account of this evidence, believing his evidence was given purely in an attempt to support the Claimant rather than representing what actually occurred.

52. The Claimant then embarked on an investigation of his own into the background of Mr Jehovah-Nissi. On 12 September 2018 he telephoned the Territorial Army unit in Nottingham where Mr Jehovah-Nissi claims to have been a captain and was informed by the chief clerk, someone who the Claimant said had served at that unit for thirty-three years, that he had no record or recollection of Mr Jehovah-Nissi being stationed at that unit. The Claimant also spoke to other former military colleagues, including four Senior Non-Commissioned Officers, as well as two retired Officers in Command, who all shared the Claimant's concerns about Mr Jehovah-Nissi, according to the Claimant, and his lack of basic military knowledge. The Claimant also carried out a search on the London Gazette for Mr Jehovah-Nissi and found no trace of him. The Claimant said that his suspicions had been confirmed.

53. The next day on 13 September 2018, the Claimant said in evidence that he met with Mr Ince and reported his belief that Mr Jehovah-Nissi was (i) impersonating an army officer, which he considered amounted to fraud; and (ii) had not been educated at Cambridge University. This is the protected disclosure referred to at 5(i)(b) above. The Claimant said he asked Mr Ince where Mr Jehovah-Nissi had worked prior to joining the First Respondent, to which Mr Ince replied that he had worked at West Suffolk College. He said he asked Mr Ince to check Mr Jehovah-Nissi's references and ensure that details regarding his experience and qualifications were correct.

54. The Claimant then telephoned West Suffolk College himself and spoke to someone in HR. The Claimant told the college that he was interviewing one of their former employees, Mr Jehovah-Nissi, and he was struggling to work out the name of the referee. Upon hearing Mr Jehovah-Nissi's name, the Claimant said that the lady on the other end of the phone gasped and stuttered "*we would not have given a reference for Mr Jehovah-Nissi. Please can you email me a copy of the referee's details. I need to report this*."

55. The Claimant told the Tribunal that after his last lesson, he went to find Mr Ince and told him that West Suffolk College had said that they would not have given Mr Jehovah-Nissi a reference. The Claimant reported Mr Ince as replying: "*He has an outstanding reference from West Suffolk College. I*

have seen it." The Claimant said he told Mr Ince to "*double check this now, please, because something is very wrong. Only staff who have been fired, do not get a reference. If they [West Suffolk College] say a reference was not issued, but you have seen it, where did this reference come from and was it checked? This is potentially more fraud*". The Claimant said he could see from Mr Ince's expression that his concerns were not being taken seriously. Yet he did not take matters further or report his concerns to anyone more senior than Mr Ince.

56. In his witness statement, Mr Ince said the following [sic]:

> ***The Claimant has referred to an incident that took place on 13 September 2018 where it is alleged that the Claimant raised concerns with me around Mr Jehovah-Nissi's background and qualifications. I cannot recall precisely what, if any, conversation I had with the Claimant around this time. Had the Claimant raised the concerns that he is alleging as part of his claim I would have taken this further.***
>
> ***I genuinely cannot remember precisely what the Claimant said to me at the time but he seemed to be querying Mr Jehovah-Nissi's background and qualifications and that he was not who he says he was. However, the Claimant has indicated that he followed up with me on numerous occasions about this and I deny that this ever took place. Had the Claimant raised these concerns on a number of occasions I would have recalled those concerns and taken appropriate action. They were never raised with me and had they been raised then I would have taken the matter further.***

57. During questioning, when asked about this conversation, Mr Ince said [sic]:

> ***My recollection is that I had one conversation about the army with the Claimant. The Claimant was quite animated at the time. It was never raised with any high importance. It was almost as if it was his opinion. Had he raised it, I would have looked into it.***

58. The Tribunal accepts that the Claimant spoke to Mr Ince twice on 13 September 2018. On the balance of probabilities, the Tribunal finds that during the first conversation, the Claimant told Mr Ince that Mr Jehovah-Nissi had not been in the army or been to Cambridge, as Mr Jehovah-Nissi had suggested. Mr Ince responded that he had seen some military photos. During the second conversation, the Claimant asked Mr Ince whether he had checked and verified Mr Jehovah-Nissi's reference. The Tribunal does not find that the Claimant informed Mr Ince during the second conversation that he had contacted West Suffolk College because that would have alerted Mr Ince to misconduct on the part of the Claimant, given that he had seemingly given the college the impression that he had the authority to ring them.

59. On the evening of 13 September 2018, the Claimant emailed a friend who had worked in the Engineering Department at Cambridge University for 30

years to ask him whether he knew whether Mr Jehovah-Nissi had either taught or studied at the university. The Claimant provided his friend with Mr Jehovah-Nissi's current and former name. The following day, the Claimant's friend responded saying that there were no records on the system of Mr Jehovah-Nissi having taught or studied at the university. His friend recommended that the Claimant report the matter as soon as possible.

60. The Claimant told the Tribunal that after he had reported his concerns about Mr Jehovah-Nissi to Mr Jehovah-Nissi and Mr Ince, he began to be bullied by Mr Jehovah-Nissi on a daily basis.

61. The Claimant said that he was excluded from team meetings that he should have attended. He said that meetings were supposed to be held on a Wednesday, at Bromley, but Mr Jehovah-Nissi moved them to a Monday/Tuesday, when the Claimant worked at the Orpington campus. The Tribunal was not satisfied that the Claimant was deliberately excluded from meetings. The Claimant did not raise any such concerns at the time with Mr Jehovah-Nissi. There was no evidence from which the Tribunal could conclude that this was anything other than an operational decision by Mr Jehovah-Nissi who had to take into account many different factors in scheduling meetings. Mr Jehovah-Nissi was somewhat surprised to hear that the Claimant had a complaint at all about these meetings.

62. The Claimant told the Tribunal that Mr Jehovah-Nissi assigned him very difficult groups of students to teach, who tended to be the lowest ability students, which had a knock-on effect on the Claimant's results as their teacher. He said that his timetable was changed numerous times, without notice, and he was used by Mr Jehovah-Nissi to fill in for teachers who wanted or needed a free period. The Tribunal accepts that the Claimant taught students mainly, but not exclusively, at level 1, and that he requested more classes at Level 3. The Tribunal accepts that timetables change for many reasons. Again, there was no evidence from which the Claimant could conclude such actions were deliberately taken by Mr Jehovah-Nissi against the Claimant to bully him.

63. The Claimant complained that Mr Jehovah-Nissi gave the Claimant a much busier timetable than any of his colleagues in the Engineering department, effectively giving him a 120% timetable. The Claimant complained that he ought to have been given six teaching sessions over his two days, to allow for adequate preparation time, whereas he was given eight sessions. In an email to the Claimant replying to the Claimant's concerns, Mr Jehovah-Nissi conceded that the Claimant's timetabled teaching exceeded his contracted 0.4 commitment but that Mr Jehovah-Nissi would arrange to have two lessons taken off him. There was nothing in the email in which the Claimant suggested he was being bullied or that Mr Jehovah-Nissi was acting as he did because of any protected disclosures alleged to have been made by the Claimant.

64. The Claimant said that his heavy workload was intensified by the fact that Mr Jehovah-Nissi made the Claimant teach mostly in the workshop, which required tidying up following all lessons. However, the Claimant also accepted in evidence that teaching in the workshop was part of his job.

65. The Claimant said he spent most of his break times following lessons clearing up the workshop, before going straight back to teaching without any time for refreshments. The Claimant told the Tribunal that he very rarely had time for food, refreshments or a toilet break during his whole working day. He would have just one cup of tea before and after work. The Tribunal rejected this evidence. Contrary to what is said by the Claimant, there was evidence that he went to the canteen, went for cigarette breaks and had the opportunity to go to the toilet if he wanted to.

66. In late September 2018, the Claimant said that he was putting some tools away after a lesson when Mr Jehovah-Nissi suddenly entered the room and said, "*look at the white man clearing up after the black kids*". As Mr Jehovah-Nissi walked out of the room, he allegedly muttered "*racist twat*" under his breath. Mr Halliday also wrote about this incident in his witness statement which read as follows [sic]:

> ***I heard the door of TG26 open, but out of sight of me. I could hear Daniel start to speak, and as I stepped towards the open doorway, heard Daniel say to Pete, "look at the white man clearing up after the black kids". I distinctly remember Pete muttering "racist twat," as Daniel left. I also saw Pete just shaking his head in disbelief as he continued putting the tools away. But Pete and I never talked about it.***

67. The Tribunal noted once again the similarity between the evidence of Mr Halliday and the Claimant, even to the extent that the same words were used in quotation marks. The Tribunal considered this to be a serious, blatantly racist, comment which it was satisfied the Respondent would not have tolerated from any member of its staff. Yet the Claimant did not complain about such a serious matter, and neither did Mr Halliday. Given that the Claimant, on his own evidence, clearly felt comfortable complaining that Mr Jehovah-Nissi did not have appropriate qualifications and had not been in the army, the Tribunal concluded that had the comment been made, the Claimant would have done something about it. The Tribunal concluded that this was a further example of the Claimant embellishing his evidence to support his case. The Tribunal was not satisfied that this incident occurred.

68. On 25 September 2018 the Claimant reported to Ms Wolsey that two councillors involved in the Biggin Hill project, HG and CH were romantically involved. At the time, both councillors were working with the First Respondent to assist with planning applications for the new college being built at Biggin Hill. CH disclosed to the Claimant that he was going through a separation and did not want his employer (Biggin Hill Airport) or Bromley

Council to know that he was living with HG "*because it was all a bit political and sensitive*". CH informed the Claimant that he and HG were "*just about to go on holiday together, somewhere really sunny*". The Claimant discovered that the relationship between HG and CH was not declared on the Council's Register of Members' interests as he believed they were required to do under the Council's Code of Conduct. The Claimant said that his concern was that the councillors had a conflict of interest and if details of the relationship came out, it might affect the building project. The Claimant said Ms Wolsey asked him not to speak to any colleagues about the matter because the two individuals were so central to the success of the project and an imminent planning application was to be made for the new college. The Tribunal preferred the evidence of Ms Wolsey who said that she commented that the allegations were irrelevant gossip and that nothing needed, or should be done, about such information.

69. The Claimant also told the Tribunal that Ms Wolsey instructed the Claimant to have no further contact with the two councillors and that he could not visit Biggin Hill without being accompanied. The Tribunal was not satisfied that the Claimant's allegations were supported by the evidence. The Tribunal concluded that what Ms Wolsey was concerned about was the Claimant adopting appropriate protocols before arranging visits. The email at page 350 of the bundle is evidence of Ms Wolsey's concerns about the way he had gone about inviting HG to the campus, without first consulting her. Although the Claimant referred to a text message which he said was evidence of Ms Wolsey's instruction not to have contact with the councillors, he did not produce that text in evidence.

70. The Claimant told the Tribunal that on 2 October 2018, Mr Jehovah-Nissi reported to Mr Ince and Ms Davis that the Claimant was a "*paedophile*". The Claimant said he (the Claimant) asked all aeronautics students if any of them would be willing to volunteer to appear on the Biggin Hill College's website and in pamphlets and adverts etc. He told the students to send him one hundred words about how they were enjoying their studies and what their career ambitions were. The Claimant informed students that those chosen would have their photos taken by the College photographer. The Claimant said Mr Jehovah-Nissi attempted to twist an innocent request for photos and conflated it with his request to Mr Jehovah-Nissi for photographs of Mr Jehovah-Nissi in his uniform. In fact, the Tribunal concluded that Mr Jehovah-Nissi informed Mr Ince and Ms Davis that he had concerns about the Claimant's request for photos from a safeguarding perspective. The Claimant was subsequently questioned by Ms Davis regarding why the Claimant was asking students for photos of themselves.

71. The Tribunal considered the allegation at paragraph 70 above and concluded that the Claimant misconstrued an email at page 185 of the bundle. That email was from Mr Jehovah-Nissi to Ms Davis in which Mr Jehovah-Nissi registered his concerns about the Claimant having asked

students to send their photos to him without parental consent. The Tribunal is satisfied that Mr Jehovah-Nissi's concerns were legitimate safeguarding and data protection concerns. Mr Jehovah-Nissi did not accuse the Claimant of being a paedophile; the word "paedophile" was not even used. The Claimant accepted this in his oral evidence to the Tribunal.

72. On 8 October 2018 the Claimant attended a probation meeting with Ms Wolsey and Ms Davis. At this meeting, he said that he wanted to make an official complaint about Mr Jehovah-Nissi's suspected fraudulent activity. This is the protected disclosure referred to at paragraph 5(iii) above. This followed on from a discussion during which it became clear that Mr Jehovah-Nissi had made an allegation against the Claimant that he was gambling with students by offering to buy them a Chinese meal if they won a race to saw through a piece of metal and telling the students they would each pay the Claimant the sum of £1.00 if they lost. The Claimant explained that he was teaching students how to saw through a piece of metal in a straight line. He introduced a competitive element to his lesson by saying that he would race with one student to find out who could cut the metal quickest. He told students that if he lost, he would buy everyone a slice of pizza, but if he won, the students could donate £1.00 to their favourite charity. At the meeting, the Claimant said he also complained about Mr Jehovah-Nissi's treatment of him.

73. The Tribunal noted that the Claimant only chose to say anything about Mr Jehovah-Nissi in response to the complaints Mr Jehovah-Nissi had reported about the Claimant. The Claimant said the following in his witness statement [sic]:

> ***I informed Tracey and Louise that, further to my previous conversation with Errol, I wished to make an official complaint about Daniel's suspected fraudulent activity. I insisted it was recorded in the minutes of the meeting. I explained that I believed Daniel had lied about his background and his qualifications when applying for his role at the College and asked them to record that as a case of suspected fraud and a potential safeguarding concern. I told Tracey and Louise that I had already reported this to Errol and had urged Errol to check Daniel's work history and records accordingly but as far as I was aware, this had not been done to date. I was very troubled and uneasy about the information I had gathered as part of my own investigations concerning Daniel's history and felt I had no option but to therefore raise this with someone else within the College in the hope that they would take action.***

74. The Tribunal noted that the only record of the meeting between the Claimant and Ms Wolsey and Ms Davis is an email sent to the Claimant at 9.51pm on the same day, which in effect was a summary of what was discussed. The only reference to the complaint the Claimant said he made about Mr Jehovah-Nissi was the following [sic]:

> ***We discussed your working relationship with Daniel the Head of Faculty***

> ***which is not as good as it should be for you both to thrive in your roles. To address this and for clarity of communication the HOF will now attend your meetings with TD to discuss curriculum development. TD will take forward separately the matters you have raised regarding qualifications of teaching staff in the department.***

75. The Claimant responded as follows:

> ***Dear both***
>
> ***I really appreciate your time and support. Wishing you smooth skies for tomorrow, Louise.***
>
> ***Pete***

76. Seeing that the full discussion, as alleged by the Claimant, was not reflected in Ms Wolsey's email or contained in any minutes (which there were none) the Tribunal were surprised that the Claimant did not take the opportunity to place the conversation on record, given his apparent insistence at that time. The Tribunal concluded that the Claimant had mentioned his concerns about the qualifications of Mr Jehovah-Nissi in general terms and that in all likelihood the comments were made in passing. The Tribunal was not satisfied that information was relayed as alleged at paragraph 5(iii) above. Having told the Tribunal that he made the comments about Mr Jehovah-Nissi at the meeting and wanted them placed on record, the Tribunal believes that had this been correct, the Claimant would have followed this up further when Ms Wolsey's above email clearly did not record the conversation at all.

77. As is clear from the above email, Ms Wolsey also informed the Claimant that for the sake of clarity of communication between Mr Jehovah-Nissi and the Claimant and in order for them both to thrive in their respective roles, that Mr Jehovah-Nissi would attend all of the Claimant's meetings for the purpose of curriculum development. This is alleged by the Claimant to be a detriment (paragraphs 7(viii) and (x) above.

78. On 9 October 2018, the Claimant said he attended a staff meeting during which he questioned a decision made by Mr Jehovah-Nissi. In response to this, the Claimant said Mr Jehovah-Nissi immediately 'snapped' and shouted, "*shut up*" and to not interrupt him and speak to him at the end of the meeting if the Claimant had any questions. The Claimant said everyone looked at their feet and he just kept quiet for the rest of the meeting.

79. The Claimant told the Tribunal that he stayed behind after the meeting, when all other staff had left, apart from Mr Halliday, in order to discuss the matter further with Mr Jehovah-Nissi. The Claimant then alleged that Mr Jehovah-Nissi angrily strode over and in front of the Claimant, so as to intimidate him, and banged on the table with his fists repeatedly whilst he said, "*you will never talk in front of my staff like this!*" The Claimant asked

Mr Jehovah-Nissi to sit down and remain calm and could not understand why he was so furious when all he had done was try to explain why he had questioned Mr Jehovah-Nissi. The Claimant said that Mr Jehovah-Nissi continued to shout at the Claimant. The Claimant told the Tribunal that he then said to Mr Jehovah-Nissi "*Sir, is this because I have uncovered your secret*". The Claimant told the Tribunal that Mr Jehovah-Nissi was raging so loudly that he had spittle flying out of his mouth towards him. The Claimant told Mr Jehovah-Nissi that his spittle was going on him, and in response, Mr Jehovah-Nissi spat in the Claimant's face. The Claimant said he was physically shaken by Mr Jehovah-Nissi's behaviour.

80. Mr Halliday gave the following account of the incident in his witness statement [sic]:

> ***I also saw Daniel spit at Peter's face. Daniel was very sly about it. I watched Daniel curl up his tongue, dipped his head down slightly then lifted it up and launched spittle at Pete. It was very subtle but I definitely saw Daniel spit at Pete, which hit his face near his eye.***

81. During the investigation into the Claimant's grievance, Mr Halliday was asked about the above meeting between Mr Jehovah-Nissi and the Claimant. In it he mentions nothing about spitting, which the Tribunal found surprising, given the detailed account Mr Halliday now provided to the Tribunal. The note of the investigatory meeting [570] records Mr Halliday as saying the following [sic]:

> ***SH:*** ***Introduction of the meeting, regarding PW grievance. Will be asking you questions in regards to part of a conversation and your recollection and to see what's relevant. Refers to the department meeting in October that DJN chaired where there was a meeting and a discussion.***
>
> ***Do you recall?***
>
> ***AH:*** ***Vaguely, yes. DJN and PW are both alpha characters and don't get on very well. PW joined the department and needed information on teaching and the requirements. I had given work for him to read, an electronic copy the morning of the meeting.***
>
> ***DJN asked about the information and PW had said to DJN the copy had just been sent. I stayed behind after the meeting and I felt compelled to stay. There was a heated conversation. PW said Sir a lot which seemed patronising and DJN was domineering. It got louder between them.***
>
> ***[AH thinks DJN was standing over PW.]***
>
> ***SH:*** ***Did anyone talk to you about the argument, specifically Errol?***
>
> ***AH:*** ***Not that I can recall***

SH: ***Within the department with PW and DJN were there any concerns or witnesses regarding the protected characteristics?***

AH: ***DJN had previously reference to female 'typical of a woman' PW had used the words 'Blik' which I raised with him.***

SH: ***No more questions and thanks***

82. The Tribunal accepted that the Claimant and Mr Jehovah-Nissi did not get on well, and indeed most likely antagonised each other. The Tribunal accepts that there was a heated argument between both Mr Jehovah-Nissi and the Claimant which due to the distance between them, may well have resulted in the Claimant feeling spittle coming from Mr Jehovah-Nissi's mouth as he spoke loudly. However, the Tribunal rejected the suggestion that Mr Jehovah-Nissi launched spit at the Claimant in the way described by the Claimant and Mr Halliday. Had such a memorable event occurred, the Tribunal believes that Mr Halliday would have said so during the above interview.

83. On 11 October 2018, the Claimant was scheduled to have two lessons with students in the morning. Mr Hamid was due to shadow the Claimant as part of his training. During the first lesson, Mr Hamid was present, as well as Mr Halliday. After the first break, Mr Hamid asked whether he and Mr Halliday could prepare some resources for lessons they were scheduled to teach the following week. The Claimant was due to have a teaching assistant with him, but she did not turn up. Mr Hamid and Mr Halliday asked the Claimant whether he was still comfortable taking the class on his own as there were a significant number of students with special needs present. The Claimant confirmed there was no need for them to stay and they should go to the workshops in order to prepare the resources that were discussed. The Claimant kept the classroom door open just in case, which he said he preferred to do in any event so that passing colleagues and visitors could see what a good lesson looked like.

84. Approximately one hour into the lesson, the Claimant noticed that one student (referred to during the Tribunal hearing as Student A) was pretending to sleep at his desk. The Claimant called Student A's name two or three times and told Student A to sit up, focus and, in the Claimant's words, "*be an engineer*". However, Student A did not move. The Claimant said he walked over to Student A's desk, tapped his left shoulder and said "*come on mate, sit up. Someone with your good looks should be proud to show off that face of yours*". The Claimant turned around and walked back to the front of the classroom, but Student A did not sit up. The Claimant walked back to Student A. The Claimant demonstrated to the Tribunal how he went over to Student A, knocked under the desk and with his left hand and made a chopping motion next to the student's head with his right hand. The knocking sound was intended to be the sound of Student A's head

hitting the desk. The Claimant said he did not actually touch Student A. He then asked Student A, as a joke, if his "*beats and brains were ok*".

85. Those students closest to Student A who saw what the Claimant had done, began to laugh. Other students, the majority of whom were on the far side of the classroom and could not see what had happened, asked why the others were laughing. One of those students was Mr Williams, who said, "*Sir pretended to bash Student A's head off the desk*." At that point there was more laughter. Student A thought that the students were laughing at him and so he shouted at the class to stop laughing, stood with his arms in a fighting stance and said, "*do you know who I am?".* The rest of the students told him to be quiet and sit down. The Claimant asked him to sit down but Student A responded by saying "*fuck this, I am going*!" and went to leave the room. The Claimant blocked his exit from the room because he was concerned about where Student A would go and what he would do. The Claimant said that Student A was so angry, he was concerned that something bad would happen to him if he left the room.

86. By this time, some of the other students were shouting at Student A to sit down. Student A screamed and swore at the Claimant, put him in a headlock and pulled him to the floor. Mr Williams, Ms Woolford and two or three others, ran over and attempted to pull Student A off of the Claimant. The Claimant said Student A continued to punch him in the back of his neck and on his ear and strangled him to the point that he was losing consciousness.

87. Following the incident, the Claimant was helped up off the floor. Student A was upset and crying and so the Claimant put his hands on either side of his shoulders and walked him back to his seat with two students who were holding Student A's arms. The Claimant told him everything would be ok. Student A then stood up and shouted at the Claimant, saying "*don't ever touch me again with your filthy stinking white hands, you white cunt*". The Claimant told him not to be racist because he was already in trouble, in response to which Student A apologised. The Claimant carried on with the remainder of the lesson, and with 10 minutes to go he said to the students that the incident between the Claimant and Student A should not be shared with other class groups. The Claimant said in evidence that this was not an attempt to conceal the incident but rather an attempt to stop students gossiping about the incident. He said that he gave Student A the option of going to the principal, with the likelihood he would be suspended; alternatively, the Claimant would attempt to deal with it himself with the aim of avoiding Student A being excluded. The Claimant said that if the students spoke about the incident with other groups, this could make his job more difficult. The above two options were put to Student A after class when the Claimant kept him behind in order to speak to him. Mr Williams and Ms Woolford also stayed behind and were present during this conversation. Mr Hamid and Mr Halliday entered the classroom during this time to enquire whether the Claimant needed assistance, but the Claimant signalled to

them that he wanted to speak to Student A alone. During his conversation with Student A, the Claimant also confirmed that he would not call the police.

88. After the lesson, which was lunchtime, the Claimant said he attempted to locate Mr Jehovah-Nissi to inform him what had happened but could not find him. He said he asked those in the staffroom if they had seen Mr Jehovah-Nissi, but no-one could tell the Claimant where he was. The Claimant then saw Mr Hamid and they walked to the canteen together. When they left the canteen, the Claimant went to find Mr Jehovah-Nissi once again but could not find him so returned to the staffroom where he saw Mr Halliday and Mr Hamid. The Claimant asked them to check his face and neck to see whether there were any injuries or marks. Mr Halliday told him there were no visible marks, but Mr Hamid said he could see some bruising on his neck and his eyes were blood shot. As the Claimant was due to teach again in the afternoon, he asked Mr Halliday if he could try to find Mr Jehovah-Nissi and report the incident. Mr Halliday did not want to report it to Mr Jehovah-Nissi because he did not get on with him, so he told Mr Ince that something happened in the Claimant's classroom during the lesson before lunch where the Claimant was assaulted by Student A. Mr Halliday told Mr Ince that the Claimant did not want it to become common knowledge. Mr Ince told Mr Halliday that he would go to see Student A to speak to him.

89. During the Claimant's afternoon class, Mr Ince visited and asked the Claimant to accompany him. He told the Claimant that he wanted to discuss department matters for a meeting he was due to attend that evening. Mr Ince asked the Claimant for his opinion on how to improve the department. They also discussed a minor incident that had occurred that morning but according to the Claimant, Mr Ince did not raise with him the incident involving Student A. The Tribunal finds that the Claimant did not raise the matter with Mr Ince either. After that discussion concluded, the Claimant saw Mr Hamid and Mr Halliday again and asked them whether they had seen Mr Jehovah-Nissi because he still needed to speak to him. However, they had not.

90. The Claimant went home that evening without having spoken to Mr Jehovah-Nissi, but he told the Tribunal he wrote an incident report detailing what had happened with Student A which the Claimant says was updated following his suspension.

91. On 11 October 2018 Mr Ince saw Student A as he was leaving the main building on his way to the Tech Block and said that he wanted to speak to him. Student A was then interviewed about the incident by Caralyn Betts from the Safeguarding Team. A written statement was taken by Ms Betts which was read back to Student A who agreed it as an accurate record of what happened. In the statement, Student A said that the Claimant came over to him, told the class to look away, and then held his head with two hands and banged it on the table twice. Student A grabbed the Claimant

and pushed him to the floor. Student A then said that he was pinned to the wall by another student who said "*are you stupid? Do you want me to beat you?*". Student A said that the Claimant started to tease him again and Student A called him a "*dumb white pig*". Student A said that he was given two options by the Claimant: report it, in which case the Claimant would get fired; or keep quiet. Student A was asked how he got on with the Claimant to which he said that previously he had got on with him ok but that "*he cusses other people's mothers*"

92. The next morning, on 12 October 2018, the Claimant said he attended work as normal and immediately went to Mr Jehovah-Nissi's desk and left a copy of the incident report he had written, with a soft copy on a memory stick. He then left to have a cigarette and bumped into the teaching assistant that was scheduled to be in the classroom when the incident with Student A occurred, Deborah Rothery, who informed the Claimant that an investigation had commenced into the incident involving student A. The Tribunal was not persuaded that the Claimant had left both a hard copy of a report and a further copy on a memory stick for Mr Jehovah-Nissi. The Tribunal concluded that the Claimant had left a written report, but not a memory stick.

93. Shortly afterwards, the Claimant said he saw Mr Jehovah-Nissi and told him that he wanted to discuss the incident (with Student A) before he read the report that was left on his desk, because he wanted Student A dealt with leniently. The Claimant said that Mr Jehovah-Nissi refused to speak to him but remarked "*you will not be here by the end of the day*". The Claimant said he responded by asking "*is this because I have spoken to army staff at Chetwynd Barracks who have confirmed you are a fraud and were never an officer?*" to which Mr Jehovah-Nissi replied "*so the white man still thinks he is in charge…not for long*" and walked off smiling.

94. Mr Jehovah-Nissi denied the above allegation. The Tribunal noted that in the Claimant's "feelings statement" [229] the Claimant said he wanted to speak to Mr Jehovah-Nissi on the morning of 12 October 2018 and Mr Jehovah-Nissi replied "I don't have time now" [233]. The Tribunal finds as fact that Mr Jehovah-Nissi did not refuse to speak to the Claimant but that simply he did not have time at the precise point that the Claimant asked to speak to him.

95. The above comment about the Claimant not being there by the end of the day was also denied by Mr Jehovah-Nissi. The Tribunal finds that it is more probable than not that something was said by Mr Jehovah-Nissi but that it has been given a certain gloss by the Claimant. However, even if the comment was as the Claimant states, this was the day after the incident with Student A and the day the Claimant was actually suspended. By that stage Mr Jehovah-Nissi may well have been consulted about the Claimant's proposed suspension or aware of the possibility of the Claimant being

suspended. If so, the above comment could be viewed as a simple statement of fact.

96. The Claimant said he saw Mr Ince on his way to his first lesson when he informed Mr Ince that he was aware that there was an investigation taking place. Mr Ince told the Claimant that a complaint had been made against him. The Claimant asked Mr Ince whether he should continue to teach his first lesson. Mr Ince agreed for him to do so but fifteen minutes into that lesson Mr Ince arrived at the classroom and asked to meet with him. The Claimant went with Mr Ince and asked to wait in Ms Davis' office. He described being locked in on his own and made to feel like a prisoner. The Tribunal did not accept that the Claimant was locked in the room. It would have been a serious matter to have locked someone in a room without their consent and had the Tribunal concluded that had this happened as the Claimant alleged, he would most certainly have complained about it.

97. The Claimant was later joined by Amanda Smith (formerly known as Amanda Savage) and Dith Banbury (Group Head of Safeguarding). He was asked to provide a verbal statement on what had happened the previous day. The Claimant asked to speak to his union. Ms Smith then left the room for a few moments, returning with Mr John Hunt who informed the Claimant that he was being suspended for a safeguarding issue.

98. Following his suspension, the Claimant prepared a second statement detailing his thoughts and feelings, referred to in the hearing as a "*feelings statement*" concerning the incident with Student A [229].

99. Mr Hamid told the Tribunal that on the morning of 12 October 2018, the following occurred, quoting from his witness statement [sic]:

> ***The next day, Friday the 12th October, I had my tutor group for the first lesson. I had just finished the register when Student A walked in, about 5 minutes late, accompanied by Daniel. Daniel looked extremely flustered and angry. I thought that I was in trouble. He told the Teaching Assistant (Debbie) to go and wait for him in his office. When she had left, Daniel told everyone to sit down.***
>
> ***20.Daniel said, "You all know why I am here. I will not have a teacher beating my students. I have kicked him out and he will not be returning." A couple of students raised their hands, but Daniel would not allow them to speak, saying "I have not finished talking. Just listen." Daniel was speaking loudly and was clearly irate. He then said, "You are all going to spend the rest of this lesson writing a statement. I want you to say how Mr Wood beat Student A's head off the desk until he was nearly unconscious."***
>
> ***21.A student who has special needs and rarely, if ever, spoke a word, stood up and shouted, "No, No, NO!!!!!!" Some of the students started applauding this student. A female student called Tia Woolford shouted, "That's not what happened." Another student said, "I'm not writing***

anything. Especially when it is bullshit." Some of the students started shouting at Student A and called him a liar. Student A just sat there and said nothing. He kept looking at the ground.

22.Daniel told the class to sit down and then asked me to hand out pens and paper to the students "so they can write their statements." I said, "Sir, I can't do that. This is not how an investigation should be run. You have just told the students what to write – and that can't be right."

23. Daniel told me, "You will do as I say. This is not up for discussion." I said, "Sir, I think you should leave and go and get Errol. I am having nothing to do with this without his authorisation."

24.Daniel then said, "I want everyone to write down that Mr Wood beat Student A and that he only retaliated because Mr Wood provoked him. I will be back at the end of the lesson to collect the statements." He then looked at me and said, "Understand?" I just shook my head, no, but said nothing.

25.DJN then called Almamon Khalaf to accompany him, walked out and he slammed the classroom door shut. Students immediately started to tell me that what Daniel had said was not true. Students asked if Mr Wood had said anything to me. Some were clearly worried that Mr Wood would not be coming back and would be sacked. It took me a few minutes to restore order. I then explained to the class that the college may ask you to write a witness statement. I told them "You should only write down what you actually saw and not what you have just heard, here. Just tell the truth" Some of the students were angry with Student A and called him a liar. One student shouted, "It's you that should have been kicked out, not Mr Wood. We've now lost the only decent teacher we had because of you."

26.A couple of students again asked me if I knew what had happened. I replied "I don't know anything and even if I did, I can't say anything because it sounds like there will be an investigation." Some of the students tried to tell me that Student A had strangled Pete. I stopped the class and said, "No one is to talk about this, until Senior Leadership says so."

27.The Teaching Assistant came back into the classroom about 30 minutes later. She sat next to a group of students who told her what had just happened, and what had happened the day before – including that Pete had not once touched Student A. The Teaching Assistant said, "I don't believe Mr Wood would have hit any student – and I am sure it will all blow over." I asked the TA to say nothing more, as it could prejudice any investigation. After about 5 minutes, the TA left the classroom and did not return.

100. The Tribunal considered this evidence by Mr Hamid very carefully as it is alleged as a detriment by the Claimant. However, the Tribunal concluded that Mr Hamid's account was not credible or plausible, mainly for the following reasons:

- There is no physical evidence of any such statements written by the students. The Tribunal concluded that there would be some evidence of the statements, had this occurred.

- The Tribunal considered it unlikely that the students would not have discussed it with each other outside the lesson and picked up by another teacher and reported. The Tribunal also considered it likely that one of the students would have reported it themselves had it happened in the way described.

- When Ms Rothery returned to the classroom she sat down with the students. Had Mr Jehovah-Nissi acted in the way alleged, the Tribunal considers that at least one of the students would have reported it to Ms Rothery, so soon after it happened, and she would have referred to it in her statement. In fact, two students gave accounts of the incident on 11 October 2018 which tended to support Student A's account.

- It is not credible that Mr Hamid would have allowed this incident to happen without reporting it to another member of staff. What is more, he does not mention it in his investigatory interview with Ms Southby when there was the perfect opportunity to do so

101. The Tribunal also noted that Mr Hamid referred to Mr Jehovah-Nissi as "*Sir*" which is a term the Claimant used frequently. Again, the Tribunal were left doubting how much of this evidence was Mr Hamid's and how much of it was the Claimant's.

102. On 12 October 2018 a formal notification was made to the LADO regarding the Student A incident. The LADO requested all planned interviews with students be suspended pending her own investigation.

103. On 9 November 2018, the Claimant attended Sidcup Police Station, accompanied by Bill Wheeler (UCU Legal Representative), and was questioned under caution by the police in relation to an allegation of ABH against Student A on 11 October 2018. The Claimant was informed by the police that Student A was alleging that he had been assaulted by the Claimant. The Claimant co-operated in answering questions about the incident.

104. On 14 November 2018, the Claimant was informed by the police that no further action was being taken in respect of the allegations of assault against Student A.

105. Following notification by the police, the Claimant asked Ms Smith if he could return to work but he was informed that an internal investigation needed to

be concluded and a decision made whether the college would take any further action.

106. By a letter from Thorunn Sigurdardottir (HR Business Partner) to the Claimant dated 15 November 2018, the Claimant was required to attend a disciplinary investigation interview on 21 November 2018 to discuss the following four matters:

- Using physical contact/assault against a student in the classroom
- Using phrases in the classroom contradictory to safe and professional practice
- Failure to report a safeguarding incident in the classroom
- Inappropriate use of female toilet facilities.

107. The above meeting was postponed to 26 November 2018 due to the fact that the Claimant's representative was unavailable on 21 November 2018.

108. On 19 November 2018, the Claimant raised a formal grievance [268]. This is the protected disclosure referred to at paragraph 5(iv) above. In it, he said [sic]:

> ***My concerns are the following:***
>
> ***Daniel claims to have been a Captain in the Royal Engineers, based in Nottingham, and allegedly served from 2003 to 2008. This should have been declared on his job application paperwork, as it is a paid position. Having spoken to Daniel, as I am a former soldier myself, I do not believe he served in the army, as a Captain. If correct, this amounts to fraud, and is classed by LSEC as an act of gross misconduct. Daniel has shown various staff members photographs, purporting to show his time in the military. But, despite me asking several times to see these photographs, Daniel has refused to show them to me. I had declared to him that, as someone who served in the Army for many years, I would like to see his Commission certificate. Daniel has refused to show me a document he should be proud of.***
>
> ***Daniel claims to be a Chartered Surveyor. Again, this should have been declared on his job application paperwork. Daniel is not on the published list of Chartered Surveyors using either of his identities.***
>
> ***At a Parents Induction evening in October, Daniel stood on the lectern and told parents that he had qualified at Cambridge University. Daniel does not appear on any Cambridge University Alumni, using his latest name (or the name for which he was previously known).***
>
> ***Daniel does not appear on UK Electoral Registers, prior to 2008, using either of his names.***

> ***I am concerned, therefore, that one or more of his qualifications and titles, used to secure a position (and/or which should have been declared on his job application) at LSEC, are suspect and possibly bogus. If confirmed, this is a Safeguarding concern.***
>
> ***I have declared the above, informally, to Tracey Davis and Louise Wolsey at my one-month probation meeting. I also declared the same to Errol Ince, the day before I was suspended.***
>
> ***I have received no feedback from either parties, in the allotted time frame, stated in the Grievance Policies.***
>
> ***Daniel has accused me of asking students for photographs of themselves. He reported his 'concerns' to my line managers. To back up his 'concerns' he then handed over an email, written by me, in which I had stated I was looking forward to "seeing the photos." This was done maliciously as Daniel knew that the only reference I had ever made, with regard to photos, was to see images which proved he had been in the military. This matter, much to my distress, was discussed openly at my one-month probation meeting.***
>
> ***In addition, I reported to Errol Ince that I had been assaulted by Daniel Jehova-Nissi (he spat in my face) and that I have been subjected to bullying, racial remarks, and harassment by this colleague. Daniel shouted at and threatened me, telling me he was going to get rid of me on more than one occasion. Errol was given, by me, the names of witnesses to verify Daniel's behaviour and promised to investigate.***

109. On 26 November 2018, the Claimant attended a disciplinary investigation interview with Ms Southby [276]. He said in evidence that at the outset of the meeting he read from a prepared statement. Ms Southby could not recall the Claimant reading from such a statement when asked in cross examination. In the statement the Claimant said he denied assaulting Student A and described his account of what happened.

110. On 27 November 2018, the Claimant emailed Ms Southby and asked that a union representative be present as a silent witness at the investigative interviews she was due to conduct with students [288]. This request was refused by Ms Southby.

111. Between 27 November and 12 December 2018, a number of interviews of staff and students were conducted by Ms Southby as part of the investigatory process.

112. The Claimant was invited to a further investigative interview by letter dated 30 November 2018 [385]. This interview took place on 12 December 2018.

113. On 18 December 2018, Ms Southby produced a report of her findings [391]. Amongst the facts established, Ms Southby found that the Claimant had used physical contact and knocked Student A's head on the table and did not report the incident formally at the time. Ms Southby also found that the

Claimant had put pressure on Student A not to share information regarding what had happened by suggesting that he would lose his college place, thereby harming future educational opportunities.

114. As part of his claim to this Tribunal, the Claimant complains that Mr Jehovah-Nissi chose which witnesses gave evidence to Ms Southby in order to unfairly influence the process. The Tribunal concluded that the evidence in fact did not support this allegation. Ms Southby said in her evidence that Thorunn Sigurdardottir, not Mr Jehovah-Nissi, provided her with a list of students to interview as part of the investigation. The Tribunal was not satisfied that Mr Jehovah-Nissi did anything more than try to assist identify the students present. The Tribunal did not conclude that the evidence supported the kind of manipulation by Mr Jehovah-Nissi that the Claimant invited the Tribunal to believe. As it turned out, Ms Sigurdardottir was able to obtain a class list from the College's systems during an investigation meeting, without help or assistance from Mr Jehovah-Nissi, who was not present at the time [282].

115. The Claimant also claimed that Ms Southby failed to speak to the two students, Mr Williams and Ms Woolford, who the Claimant said were present throughout the entire incident on 11 October 2018. In evidence, it was clear that Ms Southby was aware of the significance of their evidence, because they were present during the incident involving Student A and were the two students who had stayed behind with him. The Tribunal accepts Ms Southby's evidence that she was told that they were not present on the day. The Tribunal further accepted her evidence that she had understood several attempts were made to contact them in order that they could attend but such attempts were unsuccessful. Attempts were also made to contact their parents, again without success.

116. On 3 January 2019, the Claimant was sent a letter dated 20 December 2018 [411] informing him that there was a case to answer and that he was required to attend a disciplinary hearing on 13 February 2019. This letter confirmed that he was required to answer the following allegations of gross misconduct (i) using physical contact against a student in a classroom, (ii) using phrases in the classroom contradictory to safe and professional practice, and (iii) failure to report a safeguarding incident in the classroom. With the letter were various statements from eight students who had allegedly witnessed the incident with Student A and two members of staff. The statements from the students were anonymised. The students had been interviewed as a group, rather than individually.

117. The Claimant said in evidence that he later became aware that prior to the disciplinary hearing on 13 February 2019, Mr Jehovah-Nissi threatened Mr Halliday and Mr Hamid to ensure that they did not provide evidence as part of the disciplinary investigation on the basis that he knew at that point that their evidence would set out the truth of what had happened and support

the Claimant's version of events. He said that Mr Halliday and Mr Hamid were subsequently not invited to attend the disciplinary hearing.

118. The above allegation was denied by Mr Jehovah-Nissi. The Tribunal concluded that the allegation was not credible. Both attended an investigatory interview with Ms Southby. The Tribunal concluded from this that they would have attended the disciplinary hearing had they wanted to. Of course, not all the information given to Ms Southby was helpful to the Claimant and both have to some extent sought to distance themselves from those interviews. The Tribunal rejected the allegation that they were threatened. As for the allegation that they were not invited to the disciplinary hearing, this was factually incorrect. They were both invited but they declined to attend.

119. The disciplinary hearing was a lengthy and thorough hearing during which the Claimant was able to question witnesses. The meeting was recorded, and a transcript provided. The Claimant told the Tribunal that at the beginning of the hearing, he made a statement to Mr Hunt that he did not think he would be facing charges of gross misconduct had he not raised whistleblowing concerns about Mr Jehovah-Nissi and about the Bromley Councillors. This is the protected disclosure referred to at paragraph 5(v) above. He said that he wanted it placed on record that he had made these disclosures. However, there is no record of him having made that statement at the beginning of the hearing and the Tribunal therefore concluded, given that it was recorded, that such a statement was not made because if it had been, it would have been reflected in the notes.

120. During the hearing the Claimant denied any physical contact or assault between him and Student A. He drew a diagram for Mr Hunt of the layout of the classroom and explained what had happened. He accepted that he may have made inappropriate remarks during his teaching but explained that these were in good humour, particularly given the situation at hand that he was trying to diffuse, and denied the specific allegations of language, including racist and homophobic language that some of the students and staff had said that the Claimant had used. He accepted that he used humour in his teaching and may have, on reflection, overstepped the mark on a few occasions and that, whilst he did not believe it constituted gross misconduct, he would take it on board as a training point going forwards.

121. The Claimant denied failing to report a safeguarding concern and explained that he left his incident report and memory stick on Mr Jehovah-Nissi's desk first thing in the morning of 12 October 2018. He explained that he had also verbally reported the allegation at lunch time to a number of colleagues and that he had such a busy teaching timetable there was no time in between lessons for him to be able to formally report the matter that day. He said that Mr Halliday reported it to Mr Ince on his behalf and Mr Hamid emailed and notified Ms Banbury of the same that very same day.

122. During the hearing the Claimant gave his account of the incident on 11 October 2018 and said that he had a number of concerns about the process. When Mr Jehovah-Nissi attended to give evidence, Mr Jehovah-Nissi threatened to resign if the Claimant was found 'not guilty' by Mr Hunt, which the Claimant suggested to the Tribunal was designed to put pressure on Mr Hunt to reach the outcome that he did.

123. At the hearing, the Claimant said that he asked Mr Hunt to allow Student A's school records to be admitted and considered but that Mr Hunt had been advised by LADO that they should not be admitted. The Claimant told the Tribunal in evidence that he had since discovered, after speaking to the LADO on the telephone, that she had advised that the Claimant should not have been allowed access to the records but did not comment on their use at the disciplinary hearing. The Tribunal finds as fact that it had been brought to the LADO's attention that the Claimant had contacted Student A's former school, without parental consent and without having had any teaching responsibility for Student A, and therefore the LADO believed the Claimant had no right to receive information about Student A from those schools. During the hearing, the use of Student A's records and the advice given by LADO was discussed. Mr Hunt said at the hearing, after making a statement about the above, "*on the basis of that, any evidence or information you try to introduce today from that won't be allowed in the hearing today*". The Tribunal is not clear what Mr Hunt was referring to when he said, "*on the basis of that*". In the absence of an express statement by the LADO, which the Tribunal could not find in the evidence, the Tribunal concludes that Mr Hunt inferred from the advice from LADO that the Claimant would not be able to admit such evidence. The Tribunal further concluded that it was a reasonable inference to draw, namely that if the LADO did not think the Claimant should have had access to the records, it was a reasonable assumption that she would also not want them used at a disciplinary hearing.

124. The Claimant told the Tribunal that during the disciplinary hearing the Claimant had been led to believe by Ms Southby that Ms Woolford and Mr Williams had not been willing to give witness statements saying what happened on 11 October 2018. The Claimant said that he had since become aware that they were never asked; indeed, Mr Williams was offered a bribe by Mr Jehovah-Nissi to give a false account of what had happened. The Tribunal was not persuaded that they were bribed. They did not attend the investigatory, and neither did they attend the disciplinary hearing, despite being invited.

125. By letter dated 20 February 2019, the Claimant was dismissed for gross misconduct. An extract of that letter [532] providing the reasons for dismissal, said as follows [sic]:

Allegation 1
Using physical contact against a student in the classroom

From the allegation made by Student A, and Student B's subsequent statement it is apparent that you hit Student A's head on the table. This is further corroborated by the statements signed by 8 other students.

In addition, during your first investigatory meeting with Jo Southby on 26th November 2018 you refer to holding Student A's hand on page 2 and told him to look at you. I do not consider your actions were a gesture of comfort and someone of your teaching experience should know it is inappropriate to act in this way, as this may potentially cause more distress.

Further, you stated during the hearing that you "guided" Student A back to his chair and that you didn't touch his head. I n your statement to Jo Southby on 12th December 2018 you admit to putting your hands on his shoulders and asking if he was ok.

In the statement that you completed at home, you made reference to Student A apologising and "We shook hands and I continued to hold his hand". This is a cause for concern as you continued to hold his hand for longer than would be perceived necessary intervention. At page 4 of the investigatory meeting statement on 26th November 2018 you state "But I know you are not to touch kids. I tap them on the shoulder if they are doing well'. You have stated in the hearing and in your statement that you put your hands on his shoulder.

After careful consideration of all the facts raised during the hearing and the supporting documentation, whilst it is not suggested that you banged Student A's head to cause significant harm, there is enough evidence to suggest this physical contact occurred. Therefore, I confirm that on the balance of probabilities you did use physical contact against a student in a classroom and this allegation has been proven.

Allegation 2
Using phrases in the classroom contradictory to safe and professional practice

You admitted during your presentation at the hearing that you use humour a lot and had used the word 'blick'. You stated you did not know it was a derogatory word that you had used it during a discussion with a student and had apologised to the student.

During the hearing, you admitted using humorous comments and some inappropriate language.

In your own statement, you state that you "gently knocked the desk 3 or 4 times near to his right ear. You proceeded to turn to the rest of the class and said smiling "Let that be a lesson to all of you. We have to get you all a distinction". According to your statement, all the students were laughing and you were grinning, too. You state in your statement that Student A's face clouded over and he stood up, grabbed his coat and bag and went to leave the classroom. It is my opinion that in such circumstances Student A would have been humiliated in front of his peers. In Student A's investigatory meeting statement dated 30th

November 2018 he states that you 'blocked' him from leaving the classroom and this is not a recommended action for a teacher to take unless a student is believed to be endangering themselves or others, which does not appear to be the case. Student A admits his behaviour when he was interviewed and told Jo Southby that you told the students to keep it a secret.

You confirmed that students were told not to discuss the incident with other students, and even if this was the case, it appears been interpreted by those students as being told not to discuss the matter with anyone. In either case, I consider this to be contradictory to safe and professional practice and a breach of the College Safeguarding Policy. On Page 2 of your investigatory statement dated 26th November 2018 you outline that when another student commented to student A that Mr Wood could have had you thrown out, you replied "that could still happen". I consider that it is inappropriate of you to comment on potential repercussions for Student A with other students and your actions that day were systematic of coercive behaviour.

As confirmed in staff statements in relation to interaction with students, there is additional evidence that you used inappropriate language, innuendos and sexual comments in front of students.

I therefore consider that there is significant evidence that this allegation is proven.

Allegation 3
Failure to report a safeguarding incident in the classroom

During the hearing, you made reference that CCTV footage would collaborate your version of events and I agreed that I would investigate this matter. My enquiries have revealed that the College CCTV footage is retained for 30 days and therefore I am unable to review CCTV footage to confirm that you did/or did not speak to Daniel Jehovah Nissi (Head of Faculty Engineering) in the corridor or were carrying a report and memory stick into the shared office where his desk is.

HR have confirmed that you completed your online WRAP training on 9th September 2018, online Safeguarding training on 10th September 2018 and read Keeping Children Safe in Education 2018 ("KCSIE") on 25' September 2018. Therefore, as you completed KCSIE I have reasonably concluded that you saw the College Safeguarding and Child Protection Policy and Procedure contained in the main body of the document.

Clarification has also been sought from Tracey Davis about your probation review and she was signing off that you had completed your online Safeguarding/WRAP and KCSIE training. Tracey Davis was not confirming that you had completed your face-to-face Safeguarding training. The College policy is that all new staff attend face-to-face training once they commence employment with the College, ideally within 42 working days.

As part of my enquiries after the hearing, I wanted to confirm what Safeguarding training you had undertaken and how you were notified of these mandatory training courses. Judith Ubom sent an email on 7th September 2018 containing your Offer Letter and various new starter

forms and documents. Attached to the email was 'A quick guide to Safeguarding at LSEC' document and this contained the links to the online WRAP (Prevent) and Safeguarding training. The document also includes the KCSIE document and the College Safeguarding and Child Protection Policy and Procedure which outlines how to report an incident/disclosure and Safeguarding Officer contact details.

Given the physical altercation outlined in your statement and confirmed by Student A, I would consider this a serious safeguarding matter and should be reported to a designated safeguarding lead or senior manager on the same day. Based on the information available, there is no evidence that this incident was reported. During the hearing, you referred to teaching for over 14 years and I would expect someone with your teaching experience to understand and appreciate the importance of reporting any incident.

In addition, due to your length of teaching experience I would expect you to understand the importance of protecting yourself and others and to report an incident at the earliest opportunity, which would have been at lunchtime. According to your own statement you met your colleague Mohammed Hamid and you both went to the canteen to get lunch. This would have been your opportunity to report the incident to either a Safeguarding Officer, Duty Manager or a Senior member of staff.

Whilst I have heard that you wrote a report, there is no evidence of this and on the balance of probabilities I do not consider that you followed the College's safeguarding policy. Therefore, this allegation is proven.

The College has a responsibility to ensure that every student attends the College in a safe learning environment and that the College has an obligation to safeguard students from potential harm. This is in addition to the College upholding the rights of all staff and learners and to be seen by staff, its learners and members of the public to do this.

I conclude that you have not acted professionally, and your behaviour/actions could potentially bring the College into disrepute and/or to cause a loss of public or professional confidence in an individual or the College. There is evidence that you have caused emotional harm and potentially pose a risk of harm to a learner, which constitutes a violation of the College's rules in relation to Safeguarding.

I consider that due to the severity of the allegations proven, your actions constitute gross misconduct and my decision following the hearing is that I have decided that you should be summarily dismissed without notice and/or payment in lieu of notice with effect from the date of this letter. Your P45 will be issued in due course.

126. On 1 April 2019, the Claimant attended a grievance hearing chaired by Stephen Horn. The grievance was not upheld.

127. On 28 March 2019, the Claimant appealed against his dismissal. The hearing was held on 9 May 2019. The decision to dismiss the Claimant was upheld. One of the appeal officers was Mrs Tiotto, who at the time of giving her evidence was not employed by the First Respondent but was the Chief

Executive Officer of CAFCASS (the Children and Families Court Advisory and Assessment Service). The Tribunal considered her to be knowledgeable and experienced in safeguarding matters. In her evidence, what came across clearly was that she was deeply concerned about how the Claimant had dealt with the Student A incident as well as his teaching practice generally. Indeed, the Tribunal concluded that she better explained the First Respondent's concerns about the Claimant and the matters for which he was dismissed, in a clearer and more compelling way compared to Mr Hunt.

128. In their outcome letter they wrote the following about the Student A incident [649] [sic]:

> ***….Even if your version of events was accurate, the act of banging a desk close to a student's head would in any event be wholly inappropriate, something which the panel considered to be intimidating behaviour and contrary to what we would expect from a lecturer at LSEC. This is a professional teaching environment, and this course of conduct would simply be unacceptable. Arguably, this conduct would cause unnecessary humiliation and distress to a student.***
>
> ***Furthermore, regardless of whether you struck the student or not your actions created a situation that meant the student felt he needed to leave the classroom. A t this point you physically ensured this was not possible. Whilst no further action was taken against you by the police it is clear to us that your actions are in breach of the LSEC Staff Code of Conduct and from a safeguarding perspective, extremely poor practice. You appealed for "wriggle room" for potential leniency but the panel did not consider this to be appropriate. The panel considered from the information you provided and the inference about the student's previous behaviour that you felt the College could have done more to protect you from the student. Whilst the panel took this into consideration as a mitigating factor it considered that there had been no breach of the duty of care owed to you in this regard…***

129. In response to allegations of using phrases in the classroom contradictory to safe and professional practice, they said as follows [sic]:

> ***As part of the appeal you indicated that you used humour in the classroom and that on occasion your comments "sailed close to the wind" using certain engineering terminology that may raise a smile. In the hearing you confirmed to using sexual innuendo and that the " students love it". You gave an example of a joke which went along the lines of " I used to have a pair of shoes like that...until my dad got a job". The panel concluded that some individuals may find these sort of comments insulting or demeaning depending on their background and circumstances and were therefore insensitive and disrespectful to the students' economic and/or personal position.***
>
> ***You also appear to dispute the term "keep it a secret" and preferred to describe your advice to students to "keep it quiet", in a way which was designed to protect the students so as not to cause trouble or get them excluded. T h e panel noted that whether your intentions as described in***

> ***the hearing were true or not, this was not your decision to make and could be interpreted as threatening and intimidatory. The panel considered whether your behaviour as you explained it could be interpreted as your form of humour and whether this was acceptable behaviour in a teaching environment. The panel concluded that it was not. Language can be interpreted in different ways and as a Lecturer you should have been aware of and attuned to this possibility and not used this strategy in the classroom, especially at this moment. LSEC has robust policies and procedures in place to control safeguarding activities and you should have followed those. In short, it was not within your gift to request that any incident be "kept (sic) quiet" .. The panel does not consider this form of behaviour to be either appropriate or what we would ordinarily expect from a Lecturer and considers this could again be interpreted as intimidating.***

130. Finally, in relation to the allegation of failing to report a safeguarding incident in the classroom, they said the following [sic]:

> ***LSEC's policy on safeguarding is very clear. I n the event that a potential safeguarding incident occurs staff should report it to the appropriate individuals within the organisation. The panel noted that you completed your internal safeguarding training on 10 September 2018 and that you read the Department's "Keeping Children Safe in Education" document on 25 September 2018. I n these circumstances, you should or ought reasonably to have understood your responsibility to report the incident in the classroom as soon as i t happened. Yo u chose not to do so. Yo u said that you put a written report on your manager's desk but the investigation found no evidence of this***

131. On 30 June 2019 the Claimant wrote a detailed email to Dr Parrett [680] setting out his concerns about how he had been treated. The first paragraph, which sets the tone for the letter, reads as follows [sic]:

> ***You might be surprised to be receiving this email. I am going against all advice received, by writing to you. My reason? While I am unhappy and still angry about the way that you and LSEC have treated me, I honestly believe you, personally, are ignorant of the cover-up that is happening at Bromley College. While decisions which you (and others) have made has completely ruined my career, I do not believe that your career and the reputation of LSEC should be sullied by the fraudster and liars in your midst.***

132. The letter ended with the following:

> ***If you don't respond, then I will send a copy of this to every governor, by recorded delivery. I will then proceed with an Employment Tribunal — you now know some of what I have to work with, and good luck to you.***

133. Dr Parrett passed this letter to the First Respondent's lawyers given its content.

Law

134. The term "*protected disclosure*" is defined in section 43 of the ERA as follows:

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

135. A disclosure of information must be one that conveys facts rather than simply makes an "*allegation*" or "*mere assertion*". That said, it is important not to draw a rigid distinction between them as they are not mutually exclusive concepts. Importantly, the disclosure of information has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in s.43(B)(1).

136. It is important to emphasise that s.43(B)(1) ERA requires that the disclosure of information must "*in the reasonable belief of the worker……tend to show*" one of those matters at s.43(B)(1)(a)-(f). The worker is not required to show that the information disclosed led him or her to believe that the relevant failure was established, and that the belief was reasonable — rather, the worker must establish only reasonable belief that the information tended to show the relevant failure. It is a subtle but important distinction.

137. A worker does not therefore have to prove that the facts or allegations disclosed are true, or that they are capable in law of amounting to one of the categories of wrongdoing listed in the legislation. The wording of S.43B(1) ERA indicates that some account is to be taken of the worker's individual circumstances when deciding whether his or her belief was reasonable. Thus, the focus is on what the worker in question believed rather than on what a hypothetical reasonable worker might have believed in the same circumstances. This introduces a requirement that there should be some objective basis for the worker's belief. As long as the worker subjectively believes that the relevant failure has occurred or is likely to occur and their belief is, in the Tribunal's view, objectively reasonable, it does not matter that the belief subsequently turns out to be wrong, or that the facts alleged would not amount in law to the relevant failure.

138. In determining public interest, a tribunal has to determine (a) whether the worker subjectively believed at the time that the disclosure was in the public interest and (b) if so, whether that belief was objectively reasonable. There might be more than one reasonable view as to whether a particular disclosure was in the public interest, and the Tribunal should not substitute its own view. The reasons why a worker believes disclosure is in the public interest are not of the essence, although the lack of any credible reason might cast doubt on whether the belief was genuine. However, since reasonableness is judged objectively, it is open to a Tribunal to find that a worker's belief was reasonable on grounds which the worker did not have in mind at the time.

139. Section 103A ERA states:

> ***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.***

140. As the Claimant has insufficient length of service to bring an ordinary unfair dismissal claim, the burden of proving that the reason for the dismissal is because the Claimant made a protected disclosure, in a claim brought under s.103A, is on the Claimant: ***Smith v Hayle Town Council 1978 ICR 996, CA.***

141. Section 47(B) ERA states the following

> ***(1) 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.***
>
> ***(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—***
>
> ***(a) by another worker of W's employer in the course of that other***

> ***worker's employment, or***
>
> ***(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.***

142. Section 48 ERA states the following:

> (***2) On a complaint under subsection (1), (1ZA), (1A) or (1B) it is for the employer to show the ground on which any act, or deliberate failure to act, was done.***
>
> ***(2A) On a complaint under subsection (1AA) it is for the temporary work agency or (as the case may be) the hirer to show the ground on which any act, or deliberate failure to act, was done.***
>
> ***(3) An employment tribunal shall not consider a complaint under this section unless it is presented—***
>
> ***(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or***
>
> ***(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.***

143. The burden of proof in a s.47B claim is different and is expressly provided for in the ERA. Here, it is for the employer to show the ground on which any act, or deliberate failure to act, was done (S.48(2) ERA). Where a claim is brought against a fellow worker or agent of the employer under S.47B(1A), then that fellow worker or agent is treated as the employer for the purposes of the enforcement provisions in s.48 and s.49, and accordingly bears the same burden of proof as the employer. It does not of course mean that, once the Claimant asserts that he or she has been subjected to a detriment, the Respondent must disprove the claim. Rather, it means that once all the other necessary elements of a claim have been proved on the balance of probabilities by the Claimant — i.e., that there was a protected disclosure, there was a detriment, and the Respondent subjected the Claimant to that detriment — the burden will shift to the Respondent to prove that the worker was not subjected to the detriment *on the ground that he or she had made the protected disclosure*. In other words, the Respondent must show, if it is to avoid liability, that the detrimental treatment was "*in no sense whatsoever*" on the ground of the protected disclosure.

Wrongful dismissal

144. Cases involving repudiatory breaches of contract by employees typically rely on serious misconduct by the employee, such as dishonesty, intentional disobedience or negligence. They often speak of 'gross misconduct' and

'gross negligence', but the underlying legal test to be applied by a Tribunal is whether it amounts to a repudiation of the whole contract.

145. The Tribunal must be satisfied, on the balance of probabilities, that there was an actual repudiation of the contract by the employee. It is not enough for an employer to prove that it had a reasonable belief that the employee was guilty of gross misconduct. This is a different standard from that required of employers resisting a claim of unfair dismissal, where reasonable belief may suffice.

146. In this case the First Respondent relies on, *inter alia*, a breach of the implied term of mutual trust and confidence. This term is breached where either party *"without reasonable or proper cause, conducts themselves in a manner calculated or likely to destroy or seriously harm the relationship of trust and confidence between employer and employee*": ***Malik v BCCI [1997] ICR 606.*** The test of whether there has been a breach of the implied term of trust and confidence is objective: the question is whether the conduct relied on as constituting the breach, when looked at objectively, is likely to destroy or seriously damage the degree of trust and confidence the employer is reasonably entitled to have in his employee, and vice versa.

Submissions

147. Both parties provided detailed and very helpful written submissions which were supplemented by oral submissions at the hearing on 3 November 2020. The Tribunal returned to these submissions during their deliberations and gave them careful consideration before reaching its decision.

Analysis, conclusions and associated findings of fact

Did the Claimant make protected disclosures?

Disclosure (i)(a)[1]to Mr Jehovah-Nissi on 12 September 2018

148. The Tribunal relies on its findings of fact at paragraphs 46-51 above. The Tribunal did not accept the Claimant's account of what he claims he said to Mr Jehovah-Nissi on 12 September 2018. The Tribunal concluded that the Claimant did not disclose sufficient information to Mr Jehovah-Nissi which tended to show, in the Claimant's reasonable belief, that Mr Jehovah-Nissi had failed or was failing to comply with a legal obligation, had committed a criminal offence, or was concealing any of the above. For this reason, the Tribunal concluded that what the Claimant said to Mr Jehovah-Nissi on 12 September 2018 was not a protected disclosure within the meaning of s.43B ERA.

[1] Each of the disclosures refer back to paragraph 5 above

Disclosure (i)(b) to Mr Ince on 13 September 2018

149. The Tribunal relies on its findings of fact at paragraphs 53-58 above. The Tribunal did not accept the Claimant's account of what he claims he said to Mr Ince on 13 September 2018 (paragraphs 53 and 55 above). The Tribunal concluded that the Claimant did not disclose sufficient information to Mr Ince which tended to show, in the Claimant's reasonable belief, that Mr Jehovah-Nissi had failed or was failing to comply with a legal obligation, had committed a criminal offence, or was concealing any of the above. For this reason, the Tribunal concluded that what the Claimant said to Mr Ince on 13 September 2018 was not a protected disclosure within the meaning of s.43B ERA.

Disclosure (ii) to Ms Wolsey on 25 September 2018

150. The Tribunal relies on its findings of fact at paragraphs 68-69 above. The Claimant informed Ms Wolsey that the two councillors were involved in a personal relationship. At most, the Tribunal concluded that the Claimant referred to there being a conflict of interest which he said ought to have been declared, but nothing more than that. The Tribunal concluded that the disclosure was not a disclosure of information within the meaning of s.43B. The information disclosed to Ms Wolsey did not tend to show, in the Claimant's reasonable belief, one of those matters at s.43B(1). Had the disclosure met the other conditions under s.43(B) the Tribunal was satisfied that it would have been a disclosure made in the public interest.

Disclosure (iii) Ms Davis and Ms Wolsey on 8 October 2018

151. The Tribunal relies on its findings of fact at paragraphs 72-76 above. The Tribunal is not satisfied that the Claimant disclosed sufficient information about Mr Jehovah-Nissi which tended to show, in the Claimant's reasonable belief, that Mr Jehovah-Nissi had failed or was failing to comply with a legal obligation, had committed a criminal offence, or was concealing any of the above. For this reason, the Tribunal did not consider this to be a protected disclosure. The Tribunal further concluded that the Claimant did not inform Ms Wolsey or Ms Davis that Mr Ince had failed to investigate; neither did he disclose sufficient information to Ms Wolsey or Ms Davis about such failure which in the reasonable belief of the Claimant tended to show that Mr Ince had failed to comply with a legal obligation.

Disclosure (iv) in his written grievance on 19 November 2018

152. The Tribunal relies on its findings of fact at paragraph 108 above. This is the first disclosure that the Claimant committed to writing and is the grievance which he submitted on 19 November 2018. The Tribunal concluded that the written grievance contained much more detail about the allegations against Mr Jehovah-Nissi, referring *inter alia* to breach of

safeguarding. The Tribunal was satisfied that the disclosure, in the reasonable belief of the Claimant, tended to show a breach of a legal obligation or a criminal offence, there being sufficient concerns raised that Mr Jehovah-Nissi was not who he said he was. The Tribunal concluded that his grievance was a protected disclosure. The Tribunal was also satisfied that the disclosure had sufficient public interest. There was no reference in the grievance to the disclosure about the councillors (paragraph 5(ii)).

Disclosures (v) at the disciplinary hearing on 12 February 2018

153. The Claimant said the following in his witness statement:

> ***At the start of the disciplinary hearing, I read an opening statement and expressly told those present at the meeting that I would not be in the position I had found myself in had I not raised the complaints and concerns that I had, although this is not referred to in the minutes. I specifically said that I would not be facing disciplinary action but for the fact that I had "made whistleblowing concerns about Daniel and in relation to the Bromley Councillors co-habiting." I confirmed that I wanted this to be put on record that I had made whistleblowing disclosures about Daniel and that his evidence would be tainted by that and should be dismissed on that basis***

154. Having looked through the transcript of the disciplinary hearing, which was recorded, the Tribunal could find no evidence that the Claimant did make the above statement at the beginning of the disciplinary hearing. The Tribunal therefore finds as fact that it did not happen. That said, in the disciplinary hearing the Claimant is reported to have said the following later on in the hearing:

> ***….And also, to say from day one, right, I worked out that this man was lying right, and I went to my line managers and said this guy, this is safeguarding Sir. I reported it and I actually said I feel really uncomfortable about this to Tracey and if you bring her in she will say the same thing. Right, and I did not even tell her for the first week. If someone's credentials weren't correct as in their teaching qualifications, background, whatever, should it be reported and she said absolutely it is a safeguarding issue….***

155. The Tribunal concluded that this was a protected disclosure in so far as the Claimant repeated and referred back to the protected disclosure he made in his written grievance. There was no reference to the disclosure about the councillors (paragraph 5(ii)).

Disclosure (vi) at the appeal hearing on 9 May 2019

156. This disclosure is said to have been made at the appeal hearing. In his witness statement the Claimant said:

> ***The minutes of the appeal hearing, which I had to chase on a number of***

> ***occasions as I had to do with the minutes of the disciplinary hearing, had glaring holes in them and key issues that I had raised were not referred to in this, such as my whistleblowing disclosures and the failure for key witnesses to appear (including Louise). I raised this following the hearing and received a response from Amanda that informed me the College would no longer be communicating with me directly (pages 635 — 646 of the hearing bundle). I wanted to be absolutely sure that everything I had raised during the appeal hearing was taken into account given that this was my final opportunity to get my much-loved job back and therefore raising this was a perfectly reasonable thing for me to have done.***

157. The Claimant told the Tribunal that he repeated his protected disclosures at the start of the appeal hearing. Yet there is no reference to this disclosure in the appeal minutes. The Tribunal accepts that the notes of the appeal hearing may not have included everything said at the meeting. But it does not accept that the Claimant made a disclosure of information to those at the appeal hearing, which in the reasonable belief of the Claimant tended to show one of the matters at s.43B(1) ERA. The Claimant also made no reference to his disclosure about the councillors (paragraph 5(ii) above).

Disclosure (vii) to Dr Parrett by email on 30 June 2019

158. On 30 June 2019, the Claimant wrote to Dr Parrett in a four-page letter setting out in detail his disclosures about Mr Jehovah-Nissi and the two Bromley Councillors. The Tribunal accepted that these were protected disclosures in that they contained sufficient information for Dr Parrett to understand that the Claimant reasonably believed that they tended to show either that a criminal offence had been committed, or that the Respondent was failing to comply with a legal obligation to which it was subject. In his submissions, Mr Zovidavi conceded that the disclosures made to Dr Parrett on 30 June 2019 fell within the definition of a disclosure within the meaning of s.43B ERA.

Disclosure (viii) to Ms Herbert on 10 July 2019

159. The Tribunal noted that Mr Keen did not appear to have pursued this as a protected disclosure in his closing submissions (his detailed chronology provided with his written closing submissions not referring to it at all). At the outset of the case, it was alleged that this disclosure was made to Mary Herbert on 10 July 2019, which pre-dated the dismissal and alleged detriments. In any event, on the evidence, no disclosure was in fact made to Ms Herbert.

Did the Claimant suffer the following detriments on the ground that he made a protected disclosure?

160. As the Tribunal has made a finding of fact that the first protected disclosure was not made until 19 November 2018, the detriments numbered (i)-(xviii)

at paragraph 7 above, and listed below, must fail as they cannot have been acts, or deliberate failures to act, done by the Respondent because of a protected disclosure which pre-dated them. Notwithstanding this, the Tribunal went on to determine them in any event.

Detriment (i) Exclusion from team meetings

161. The Tribunal relies on its findings of fact at paragraph 61 above. The Tribunal concluded that whilst this could properly be considered a detriment, it was satisfied that the reasons for the scheduling of the meetings were operational and were in no sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (ii) Placed with lowest ability students

162. The Tribunal relies on its findings of fact at paragraph 62 above. The Tribunal concluded that being asked to do his job, which involved teaching students of any ability, could not properly be considered a detriment. In any event, the Tribunal concluded that the reason the Claimant was asked to teach particular students was for operational reasons and in no sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (iii) Placed the Claimant on a 120% timetable

163. The Tribunal relies on its findings of fact at paragraph 63 above. Although the Tribunal concluded that this could properly be considered a detriment, it also concluded that the reasons for this were operational and in no sense whatsoever on the ground of any protected disclosure made by the Claimant. The Tribunal further noted page 351 of the bundle in which the Claimant wrote the following "*I have, as a favour, been teaching a 130% timetable, with no planning time, to date*".

Detriment (iv) Made to teach in the workshop

164. The Tribunal relies on its findings of fact at paragraph 64 above. The Tribunal did not consider this to be a detriment as it was part of the Claimant's duties to teach in the workshop. Even if it was a detriment, the Claimant concluded that being made to teach in the workshop was not in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (v) Unable to take toilet, food or refreshment breaks

165. The Tribunal relies on its findings of fact at paragraph 65 above. The Tribunal did not accept that the Claimant was unable or not allowed to take, toilet, food or refreshment breaks.

Detriment (vi) White man clearing up all the mess comment

166. The Tribunal relies on its findings of fact at paragraphs 66-67 above. The Tribunal rejected the Claimant's allegation that this comment was made as alleged or at all.

Detriment (vii) and (x) Mr Jehovah-Nissi invited to attend meetings

167. The Tribunal relies on its findings of fact at paragraph 77 above. The Tribunal was not satisfied that this was a detriment and concluded in any event that such decision was not in any sense whatsoever made on the ground of any protected disclosures made by the Claimant.

Detriment (viii) Told not to have contact with councillors

168. The Tribunal relies on its findings of fact at paragraph 68-69 above. The Tribunal concluded that the Claimant was not told that he should not have contact with the councillors, as he alleged.

Detriment (ix) Accused of being a paedophile

169. The Tribunal relies on its findings of fact at paragraph 70 above. The Tribunal concluded that Mr Jehovah-Nissi did not accuse the Claimant of being a paedophile.

Detriment (xi)-(xiv) Complaint about Mr Jehovah-Nissi's behaviour at the meeting on 9 October 2018, including being spat at

170. The Tribunal relies on its findings of fact at paragraphs 78-82 above. The Tribunal concluded that this was an argument between Mr Jehovah-Nissi and the Claimant in which the Claimant played his part by antagonising Mr Jehovah-Nissi. Mr Halliday referred to the Claimant patronising Mr Jehovah-Nissi in his interview as part of the investigation into the Claimant's grievance, by using the word 'sir' constantly. The Tribunal finds as fact that Mr Jehovah-Nissi did not act in the way he is alleged to have done because the Claimant had made any protected disclosures. The Tribunal concluded that the spitting incident did not occur as alleged.

Detriment (xv) Mr Ince failed to investigate the Claimant's concerns

171. Mr Ince denied ever having agreed to investigate Mr Jehovah-Nissi. As such, this allegation was denied by the Respondent. There is no basis upon which the Tribunal can conclude that his actions in this respect were in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xvi) Mr Jehovah-Nissi refused to talk to the Claimant

172. The Tribunal relies on its findings of fact at paragraph 93-94 above. This did not happen as the Claimant alleged.

Detriment (xvii) Mr Jehovah-Nissi said "you won't be here by the end of the day"

173. The Tribunal relies on its findings of fact at paragraph 93 above. This did not happen as the Claimant alleged. In any event the Tribunal concluded Mr Jehovah-Nissi's actions on the day were not in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xviii) Mr Jehovah-Nissi instructed students to write witness statements confirming that the Claimant had assaulted Student A

174. The Tribunal relies on its findings of fact at paragraphs 99-101 above. This incident did not happen as the Claimant alleged, or at all.

Detriment (xix) Respondent heard disciplinary before grievance

175. The Tribunal concluded that this was a route that was entirely open to the First Respondent. As far as the First Respondent was concerned, they were dealing with two separate issues: the Claimant's complaints about Mr Jehovah-Nissi on the one hand, and what the First Respondent considered to be serious safeguarding issues on the other. The First Respondent completed a process under both procedures and the Claimant received an outcome. The Tribunal was not satisfied that this was a detriment or that the decision was in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xx) Mr Jehovah-Nissi chose which witnesses should be spoken to as part of the investigation

176. The Tribunal relies on its findings of fact at paragraph 114. The Tribunal was not satisfied that Mr Jehovah-Nissi chose who should speak to Ms Southby, as alleged.

Detriment (xxi) Ms Southby did not speak to the only students that witnessed the incident involving Student A

177. The Tribunal concluded that there was good reason for this. Attempts were made to invite Ms Woolford and Mr Williams to speak to Ms Southby. The Tribunal refers to its findings of fact at paragraph 115 above.

Detriment (xxii) Ms Southby did not allow the Claimant's union representative to attend interviews with students.

178. The Tribunal considered this entirely appropriate. It would not have been normal practice to have allowed a representative to attend such a meeting. The Tribunal did not consider this to be a detriment and neither did the Tribunal believe this decision was in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xxiii) Student witness statements were anonymised despite them not asking to be anonymised.

179. The Tribunal accepts that this could be viewed as a detriment. However, Ms Southby adopted a practice which preserved the confidentiality of students. The Tribunal was satisfied that this decision was in no sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xxiv) Ms Southby interviewed students as groups

180. Ms Southby told the Tribunal that she would have preferred to have interviewed the students individually, but she did not have much success in doing so due to an issue with communication of the interview times with the eight students. Accordingly, Ms Southby made the decision on an impromptu basis, to meet with the students in two groups, asking to see them by withdrawing from their learning sessions without prior notice. The Tribunal did not consider this to be a detriment and neither did the Tribunal believe this decision was in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xxv) Ms Southby did not allow students to write their own statements

181. This was a matter of judgment for Ms Southby. The Tribunal did not consider there to be any absolute right or wrong in either approach open to her. The Tribunal did not consider this to be a detriment and neither did the Tribunal believe this decision was in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xxvi) Mr Jehovah-Nissi threatened Mr Halliday and Mr Hamid to ensure they did not provide evidence to the investigation

182. The Tribunal rejected the allegation that they were threatened. The Tribunal refers to its findings of fact at paragraphs 117 and 118 above.

Detriment (xxvii) Mr Hamid and Mr Halliday were not invited to attend the disciplinary hearing

183. The Tribunal rejected this allegation. It refers to its findings of fact at paragraphs 118.

Detriment (xxviii) Mr Halliday and Mr Hamid did not attend the disciplinary hearing

184. The Tribunal repeats what is said at paragraph 183 above.

Detriment (xxix) Mr Jehovah-Nissi threatened to resign if the Claimant was not dismissed

185. There is no doubt that Mr Jehovah-Nissi was unhappy with the Claimant's performance. The Tribunal accepts that Mr Jehovah-Nissi stated his intention to resign if the Claimant continued to work at the college. In Mr Jehovah-Nissi's interview with Ms Southby, he said the following:

> ***The way he works, teaches, running down the department. Parent's evening is a concern. Saying negative things to parents such as "machines are old". Parents get confused. Email from parents. I told Errol this man needs to be spoken to. It was hell. If PW comes back I will resign. He doesn't listen, gets away with what he wants. I don't want to work with someone like that.***

186. The Tribunal finds as fact that the reason Mr Jehovah-Nissi was unhappy with the Claimant was because of his performance, and this is why he did not want the Claimant to remain in his job. The Tribunal is not satisfied that stating his intention to resign was a detriment, but if it was, it was not in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xxx) LADO had advised that school records should not be part of the disciplinary process

187. The Tribunal relies on its findings of fact at paragraph 123 above. Mr Hunt reasonably believed that to be the advice received from the LADO. The Tribunal did not consider this to be a detriment and neither did the Tribunal believe Mr Hunt's actions in following the advice of the LADO to be in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xxxi) Ms Southby gave the impression that Mr Williams and Ms Woolford were not willing to give evidence

188. The Tribunal is not satisfied that Ms Southby did give such an impression. They were in fact invited to attend the disciplinary hearing and a slot had

been reserved for them, but neither attended. The Tribunal did not consider this to be a detriment and neither did the Tribunal believe this decision was in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xxxii) Mr Hunt dealt with the disciplinary before grievance

189. The Tribunal decided this claim should fail for the same reasons as those provided at paragraph 175 above.

Detriment (xxxiii) Mr Hunt reported the Claimant to DBS

190. The Tribunal concluded that this was normal procedure in circumstances where a teacher is dismissed for the type of reasons the Claimant was dismissed for. The Tribunal considered it to be a detriment but there was good reason to do so. The decision was in no sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xxxiv) The appeal against dismissal was not upheld

191. The Tribunal relies on its findings of fact at paragraphs 127-130 above. The Tribunal was satisfied that the reasons for not upholding the appeal were fully set out in their letter. It was apparent from Mrs Tiotto's evidence that she was extremely concerned about the Claimant's teaching methods and about the safeguarding concerns. Certainly, she was in no doubt that dismissing the Claimant in those circumstances was absolutely the right thing to do. The Tribunal concluded that the decision the appeal officers reached was in no sense whatsoever on the ground of any protected disclosures made by the Claimant. The Tribunal concluded that Mrs Tiotto knew very little about the disclosures in any event.

Detriment (xxxv) The appeal officers did not wait for the grievance outcome before determining the appeal

192. This was a route open to the appeal officers. The claim fails for the same reasons as provided at paragraph 175 above.

Detriment (xxxvi) Dr Parrett did not investigate matters raised

193. The Tribunal is satisfied that Dr Parrett considered the threat of legal action to be sufficient to pass it on to the First Respondent's lawyers. In her opinion the internal processes had been exhausted and there was nothing more that the First Respondent needed to do. The Tribunal did not consider this to be a detriment and neither did the Tribunal believe this decision was in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Detriment (xxxvii) Dr Parrett blocked the Claimant's email account

194. The Tribunal is satisfied that the First Respondent considered the tone of the Claimant's correspondence aggressive and bullying. They did not consider that the Claimant continued to need his work email account in the circumstances. The Tribunal did not consider this to be a detriment and neither did the Tribunal believe this decision was in any sense whatsoever on the ground of any protected disclosures made by the Claimant.

Was the reason (or principal reason) the Claimant was dismissed because he made a protected disclosure?

195. The Tribunal concluded that the reason, and only reason, for the Claimant's dismissal was the Claimant's conduct as set out in Mr Hunt's outcome letter at paragraph 125 above. The Tribunal was struck by the apparent lack of priority given to dealing with the concerns that Claimant said he raised. From the Respondent's perspective, they appeared to be somewhat puzzled and bemused by what they considered to be an 'excitable' employee concerned that a fellow employee had not been in the army as he was alleging. The Respondent did not attach the importance to it that the Claimant is suggesting there should have been. Hence when it came to the investigation, disciplinary and appeal hearings, the Tribunal was satisfied that those involved were completely focussed on what they considered to be unorthodox and unacceptable teaching methods of practice, together of course with what they considered to be a serious breach of safeguarding.

196. There were a number of areas of unfairness which, had the Claimant been pursuing a claim of unfair dismissal, may have resulted in a successful claim purely on procedural grounds. But that was not the case here. Any failings by the First Respondent's regarding process did not affect their core reasons for the dismissal, which the Tribunal considered them to be genuinely held.

197. In his submissions, Mr Keen invited the Tribunal to accept that the case of ***Royal Mail v Jhuti [2020] I.R.L.R. 129*** was applicable in this case. This is on the basis that if we accept that the reasons for the dismissal, or indeed the detriments, in the mind of the decision maker, Mr Hunt, were not the protected disclosure, then we should consider the reasons held by Mr Jehovah-Nissi on the basis that he manipulated the process and allowed the Claimant to be dismissed, or subject to other treatment, for apparently legitimate or fictitious reason.

198. Ultimately the **Jhuti** case does not change the law. It still requires the Tribunal to consider the *real* reason for dismissal or treatment of the Claimant by Respondent. There were a number of people involved in the dismissal process. In fact, the Tribunal concluded that Mr Jehovah-Nissi's role was very much on the periphery. He did not manipulate the process,

and neither was there a fictitious reason for dismissal. The Tribunal did not consider that the real reason for dismissal was connected with, or in fact had anything to do with, any protected disclosures made by the Claimant.

Was the First Respondent entitled to summarily dismiss the Claimant?

199. The Tribunal accepted as fact the reasons for the Claimant's dismissal as set out in the dismissal letter, and repeated in the appeal letter, as being the real reasons for the Claimant's dismissal. In particular, the Tribunal finds as fact that:

- The Claimant behaved in a way towards Student A that he knew would draw attention to him, which it did in the form of laughter, and which clearly humiliated Student A, resulting in him attacking the Claimant.

- The Claimant did physically touch Student A's head and at the very least mimicked banging his head on the table.

- The Claimant did not report the incident promptly but instead attempted to deal with the matter by agreement with Student A which was contrary to safe procedure. He should have reported the incident the same day and ensured that the Respondent received his report. The Tribunal did not accept there was good reason for the Claimant not to have done this.

- The Tribunal was alarmed at some of the teaching practices of the Claimant and can well understand why the First Respondent was deeply concerned. The Tribunal concluded that the Claimant used sexual inuendo during his lessons in a deliberate and unnecessary way. The Tribunal was concerned about the level of personal information he relayed to his students and the expressions used (e.g., blick). The Tribunal considered there to be a serious problem with the Claimant respecting professional boundaries.

200. The Tribunal was satisfied that the Claimant acted in a way which was likely, and did, damage the First Respondent's trust and confidence in him as a teacher. The Tribunal rejected any suggestion by the Claimant that he had reasonable and proper cause to behave in the way he did. In these circumstances, the Tribunal accepts that the First Respondent was fully entitled to dismiss without notice.

Were the claims brought against Respondents 1-4 within the applicable time limit?

201. The Tribunal concluded that, in light of its above findings, it did not need to consider the question of time limits.

202. For all the above reasons, all of the claims brought by the Claimant against all of the Respondent's fail and are dismissed.

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Employment Judge Hyams-Parish
25 January 2021