



disclosures leading to her resignation from her employment on 23 June 2009. She also brings a claim in breach of contract in respect of notice pay.

Issues

2. Prior to the commencement of the hearing each of the parties had produced a separate list of issues. On the first day of the hearing during an adjournment, the parties agreed upon a single list of issues, which was that originally produced by the Respondent with certain amendments. AA is the Claimant's daughter. The agreed list of issues was as follows:-

A. WHISTLE BLOWING

12 May 2009 (paragraph 8 of the Claimant's Particulars of Claim)

1. Did the Claimant make a complaint to Ms Letts that AA had been unlawfully physically restrained/assaulted?
2. If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject?
3. In the alternative does the complaint satisfy Section 43B(1)(d) in that the disclosure of information tended to show that the health or safety of any individual has been, is being or is likely to be endangered?
4. Did the Claimant make the disclosure in good faith in accordance with Section 43C of the Employment Rights Act 1996?
5. Is the Claimant permitted to rely on Section 43B of the Employment Rights Act 1996 on the basis that the Claimant admits that she made this complaint as a parent and not a worker?

13 May 2009 (paragraph 8 of the Claimant's Particulars of Claim)

6. did the Claimant make a complaint to Ms Letts and Susan Brown that AA had been unlawfully physically restrained/assaulted?
7. If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?
8. In the alternative does the complaint satisfy Section 43B(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?
9. Did the Claimant make the complaint in good faith in accordance with Section 43C of the Employment Rights Act 1996?

10. Is the Claimant permitted to rely on Section 43B of the Employment Rights Act 1996 on the basis that the Claimant admits that she made this complaint as a parent and not a worker?

14 May 2009 (paragraph 8 of the Claimant's Particulars of Claim)

11. Did the Claimant make a complaint to Ms Priscilla Gibbons that AA had been unlawfully physically restrained/assaulted?
12. If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?
13. In the alternative does the complaint satisfy Section 43B(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?
14. Did the Claimant make the complaint in good faith in accordance with Section 43C of the Employment Rights Act 1996?

19 May 2009

15. Did the Claimant make a complaint to Mr Nowell that AA had been unlawfully physically restrained/assaulted?
16. If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?
17. In the alternative does the complaint satisfy Section 43B(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?
18. Did the Claimant make the complaint made in good faith in accordance with Section 43C of the Employment Rights Act 1996?

20 May 2009 (paragraph 8 of the Claimant's Particulars of Claim)

19. Did the Claimant make a complaint to Rachel Hales that AA had been unlawfully physically restrained/assaulted?
20. If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?
21. In the alternative does the complaint satisfy Section 43B(1)(d) in that the health and safety of any individual has been, is being or is likely to be endangered?

22. Did the Claimant make the complaint made in good faith in accordance with Section 43C of the Employment Rights Act 1996?

21 May 2009

23. Did the Claimant make a complaint to Rachel Hales regarding the misrepresentation and/or falsification of minutes of staff?
24. If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?
25. In the alternative does the complaint satisfy Section 43(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?
26. Did the Claimant make the complaint made in good faith in accordance with Section 43C of the Employment Rights Act 1996?

28 May 2009

27. Did the Claimant make a complaint at the meeting of 28 May 2010 complaining that AA had been unlawfully physically restrained/assaulted?
28. If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?
29. In the alternative does the complaint satisfy Section 43B(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?
30. Did the Claimant make the complaint made in good faith in accordance with Section 43C of the Employment Rights Act 1996?

16 June 2009

31. Did the Claimant's grievance of 16 June 2010 satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?
32. In the alternative does the complaint satisfy Section 43B(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?
33. Did the Claimant make the complaint made in good faith in accordance with Section 43C of the Employment Rights Act 1996?

Section 47B of the Employment Rights Act 1996

34. Alleged threat not to accept AA into Class 1 on 13 May 2009 (paragraph 18 of the Claimant's Particulars of Claim)

- (a) Did the Respondent threaten not to accept AA into class 1 on 13 May 2009?
- (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
- (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?

35. Alleged threat not to accept AA into Class 1 on 13 June 2009 (paragraph 18 of the Claimant's Particulars of Claim)

- (a) Did the Respondent threaten not to accept AA into class 1 on 13 June 2009?
- (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
- (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?

36. Alleged disciplinary action on 21 May 2009 (paragraph 10 of the Claimant's Particulars of Claim)

- (a) Did the Respondent decide to instigate a disciplinary procedure on 21 May 2009?
- (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
- (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?

37. Alleged manner of the meeting of 28 May 2009 (paragraph 11 of the Claimant's particulars of Claim)

- (a) Was the meeting on 28 May 2009 held in a hostile manner?
- (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
- (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?

38. Contract of Agreement between Claimant and Respondent (paragraph 13 of the Claimant's Particulars of Claim) (containing unfair terms (13))
- (a) Did the Respondent force the Claimant to sign the Contract of Agreement?
  - (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
  - (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?
  - (d) Did the Respondent make post agreement changes to the Contract of Agreement?
  - (e) If so, was this done on the ground that the Claimant had made a protected disclosure?
  - (f) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?
39. Claimant's grievance – 16 June 2009 (paragraph 16 of the Claimant's Particulars of Claim)
- (a) Did the Respondent fail to investigate and/or hear the Claimant's grievance?
  - (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
  - (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?
40. Alleged threat to dismiss the Claimant (paragraph 20 of the Claimant's Particulars of Claim)
- (a) Did the Respondent threaten to dismiss the Claimant during her notice period if she discussed the reasons for her resignation?
  - (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
  - (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?

41. Alleged reduction of the Claimant's notice period (paragraph 21 of the Claimant's Particulars of Claim)
- (a) Did the Respondent intimidate the Claimant into accepting a 10 week notice period?
  - (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
  - (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?
42. Alleged misrepresentation by the Respondent to Social Services (paragraphs 17 and 24 of the Claimant's Particulars of Claim)
- (a) Did the Respondent misrepresent the alleged assault of AA to Social Services on 18 June 2009?
  - (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
  - (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?
43. Alleged comment by Rachel Hales of the Respondent (paragraph 25 of the Claimant's Particulars of Claim)
- (a) Did Rachel Hales of the Respondent inform James Leeds (parent) and Victor Bense (parent) at the summer fete that the School was "better off without Jo"?
  - (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
  - (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?
44. Letter to parents dated 7 July 2009 (paragraph 26 of the Claimant's Particulars of Claim)
- (a) Was the letter of 7 July 2009 sent to parents on the ground that the Claimant had made a protected disclosure?
  - (b) Does the letter from the Respondent dated 7 July 2009 amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?

45. Alleged comment by the Administrator of the "big and terrible" event and comment made by Mr Nowell to parents dated 22 July 2009 (paragraph 27 of the Claimant's Particulars of Claim)
- (a) Did the Administrator say to a parent that the Claimant had done something "big and terrible"?
  - (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
  - (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?
  - (d) Did Mr Nowell make "professionally defamatory implications" against the Claimant within his letter dated 22 July 2009?
  - (e) If so, was this done on the ground that the Claimant had made a protected disclosure?
  - (f) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?
46. Alleged Constructive Dismissal
- (a) Was the Claimant constructively dismissed?
  - (b) If so, was this done on the ground that the Claimant had made a protected disclosure?
  - (c) Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?
- B. CONSTRUCTIVE DISMISSAL – Section 95(1) of the Employment Rights Act 1996
47. Did the Respondent commit a breach of the implied term of mutual trust and confidence in respect of the following?
- (a) Did the Respondent instigate a disciplinary process?
  - (b) Did the Respondent act in a hostile manner towards the Claimant in the meeting of 28 May 2009?
  - (c) did the Respondent misrepresent the minutes of the meeting of 28 May 2009?
  - (d) Did the Respondent falsely criticise the Claimant and accuse her of aggressive behaviour?



- (e) Did the Respondent force the Claimant to sign the Contract of Agreement in respect of AA?
  - (f) Did the Respondent amend the contract of Agreement in respect of AA after it had been signed by both the Claimant and Respondent?
  - (g) Did the Respondent require the Claimant to work unfair contractual hours?
  - (h) Did the Respondent reject the Claimant's grievance without holding a grievance meeting?
  - (i) Did the Respondent fail to properly report the allegations made by the Claimant regarding AA treatment by the Respondent?
  - (j) Did the Respondent misreport the allegations made by the Claimant regarding AA's treatment by the Respondent?
  - (k) Did the Respondent threaten not to accept AA into Class 1?
  - (l) Did the Respondent threaten the Claimant on 24 June 2010 by stating that if she discussed the reasons for her resignation it would fire her for professional misconduct?
  - (m) did the Respondent compel the Claimant to accept a shorter notice period than her contractual notice period?
  - (n) Did the Respondent seek to persuade the Claimant to dishonestly characterise her resignation as for "personal reasons"?
  - (o) Did the Respondent misrepresent the alleged assault of AA to Social Services?
  - (p) Did the Respondent inform a parent of the School that the School was better off without the Claimant?
  - (q) Did the Respondent subject the Claimant to a hostile working environment?
48. If the Tribunal finds that the Respondent acted in any of the ways described in (a) to (q) above, does such conduct, whether considered collectively or individually, amount to a breach of the implied term of mutual trust and confidence?
49. If so, did the Claimant resign in response to the fundamental breach of contract?

Section 103A of the Employment Rights Act 1996

50. Was the reason or the principal reason for the Claimant's dismissal because the Claimant made a protected disclosure in accordance with Section 103A of the Employment Rights Act 1996?

C. WRONGFUL DISMISSAL

51. Was the Claimant paid 10 weeks notice?
52. If so, was the Claimant entitled to 13 weeks notice as opposed to 10 weeks notice?

**Evidence**

3. Although this case was listed for sevens days, unfortunately due to lack of judicial resources, it had to be completed in six. The hearing commenced on 25 March 2011 and on day one, with the agreement of the parties, the Tribunal read in advance the witness statements of all witnesses and the documents in the bundle that were referred to by page number in the witness statements.
4. We heard evidence from the following witnesses:
  - 4.1. For the Claimant:
    - 4.1.1. The Claimant herself
    - 4.1.2. Mr Anthony Sawfoot (Claimant's father)
    - 4.1.3. James Leeds (parent of a child attending the Respondent school).
  - 4.2. For the Respondents we heard from:
    - 4.2.1. Sandie Tolhurst (School administrator/development officer)
    - 4.2.2. Anna Letts (kindergarten teacher)
    - 4.2.3. Rachel Hales (school volunteer, personnel assistant)
    - 4.2.4. Charlotte Duffield (school volunteer, personnel advisor)
    - 4.2.5. Jacqui Armour (kindergarten assistant)
    - 4.2.6. Jeremy Nowell (teacher)
    - 4.2.7. Dr David Vernon Jones (chair of trustees of the Respondent school)
    - 4.2.8. Susan Brown (kindergarten teacher)
    - 4.2.9. Priscilla Gibbons (afternoon care supervisor)
    - 4.2.10. Carol Ainsworth (afternoon care assistant)

5. Although we had before us a witness statement from a Chris Mitchell, school trustee, he was not called to give evidence.
6. We had before us a properly paginated and indexed bundle of documents running to page number 451. Various documents were added to the bundle with the agreement of the parties as the case progressed.

### The Law

7. The right not to be unfairly dismissed is contained within the Employment Rights Act 1996 (ERA). The right is provided for at section 94.
8. What amounts to a dismissal is defined at section 95 and includes at 95(1)(c) where:-

*"The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate without notice by reason of the employer's conduct."*

9. That is what is known as constructive dismissal. The seminal definition of what amounts to constructive dismissal was set out by Lord Denning in the case of Western Excavating (ECC) Limited v Sharp [1978] ICR 221:

*"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."*

10. The Tribunal's function in looking for a breach of contract is to look at the employer's conduct as a whole and determine whether it is such that the employee cannot be expected to put with it, see Browne-Wilkinson J in Woods v WM Cars Services [1981] ICR 666.
11. The actions of the employer must entitle the employee to terminate without notice; that does not mean that the employee has to actually terminate without notice, as Lord Denning said in the case of Western Excavating:

*"The employee is entitled... to leave the instant without giving any notice at all, or alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave."*

12. The breach of contract relied upon by the Claimant in this case is the Respondent's breach of the implied term of mutual trust and confidence. The leading authority on this is now Mahmud & Malik v BCCI [1997] IRLR 462 in which Lord Steyn adopted the definition which originated from

Woods v WM Car Services namely that an employer shall not, without reasonable or proper cause, conduct itself in a way calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee.

13. The test is objective, Lord Steyn commented in the same case that:

*"The motives of the employer cannot be determinative or even relevant... if conduct objectively considered is likely to cause or seriously damage the relationship between employer and employee, the breach of the implied obligation may arise."*

14. Individual actions taken by an employer which do not in themselves constitute a fundamental breach of any contractual term, may have the accumulative effect of undermining trust and confidence, thereby entitling the employee to resign and claim constructive dismissal, see again Woods v WM Car Services (Peterborough) Limited.

15. Dyson LJ observed in Lewis v Motorworld Garages [1986] ICR 157:

*"Although the final straw may be relatively insignificant, it must not be utterly trivial...the quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to the breach of the implied term...its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence."*

16. The employee must prove that the effective cause of his or her resignation was the employer's fundamental breach. However, the breach does not have to be the sole cause, there can be a combination of causes, provided the effective cause of the resignation is the breach, see Jones v F Sirl & Son (Furnishers) Limited [1997] IRLR 49.

17. Even if an employee is able to show dismissal by way of constructive dismissal, it is still open to the employer to demonstrate to the Tribunal that the dismissal was in any event, fair. The Tribunal must go on to apply the test of fairness set out in the ERA at section 98. Firstly, the employer must show that the reason for the dismissal was one of six potentially fair reasons set out at section 98(1) and (2). If the employer is able to show that the reason for dismissal was one of those reasons, the Tribunal must then go on to apply the test of fairness set out at section 98(4) which is:

*"Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) -*

*(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

*(b) shall be determined in accordance with equity and the substantial merits of the case."*

18. Notwithstanding the provisions of section 98, a dismissal shall automatically be unfair if, in accordance with section 103A:

*"the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."*

19. In this case, the Claimant asserts that she made protected disclosures, as a result of which she was subjected to detriments and as a result of those detriments, she resigned. The provisions relating to protected disclosures and the prohibition of a detriment being inflicted as a consequence, are also set out in the ERA.
20. A "protected disclosure" is defined at section 43A as a qualifying disclosure, as defined by section 43B, made by a worker in accordance with sections 43C through to 43H.
21. Section 43B defines a qualifying disclosure as a disclosure of information (not a disclosure of allegations) which tends to show one or more of:

*"...(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 the health and safety of any individual who has been, is being or is likely to be endangered."*

22. A "legal obligation" includes any statutory requirement, common law obligation and any legal obligation contained in a worker's contract.
23. In accordance with section 43C, the disclosure must be made in good faith to his employer. The key phrase here is, "good faith". The burden of proving bad faith lies with the employer, see Brachnak v Emerging Markets Partnership (Europe) Limited UK EAT 0288/05. This means more than that the discloser must have a reasonable belief in the truth of the information disclosed, it means that the disclosure is made without ulterior motive; an ulterior motive must not be the dominant or predominant purpose of making the disclosure, see Street v Derbyshire Unemployed Workers Centre [2004] IRLR 687 CA.
24. It follows that if a worker makes a purported disclosure which the worker does not reasonably believe to be true, that is a factor which is likely to be relevant in determining whether or not the disclosure was made in good faith. However, this does not amount to a requirement that the facts disclosed are in fact, true. Section 43B makes reference to the disclosure of information which, *"in the reasonable belief of the worker making the disclosure tends to show..."* Thus the requirement is that the worker must reasonably and genuinely believe in the truth of what is disclosed. The determination of the factual accuracy of the allegation is likely to be an important aspect in determining whether the worker's belief was reasonable. Nonetheless, the reasonableness of belief is to be assessed

based on the facts understood by the worker, not as actually found to be the case by the Tribunal, see Darnton v University of Surrey [2003] IRLR 133.

25. Section 47B provides that a worker has the right not to be subjected to any detriment on the ground that the worker has made a protected disclosure (although that provision does not apply where the act of detriment is dismissal, because of course that eventuality is covered by section 103A). A "detriment" arises where a reasonable worker might take the view that she is disadvantaged in the circumstances in which she thereafter has to work.
26. Section 48(2) provides that, "it is for the employer to show the ground on which any act, or deliberate failure to act, was done". Thus, if the Claimant is able to show that there has been a detriment, it will be for the Respondent to show that it was not, "on the ground of" the protected disclosure; that the detriment, "in no sense whatever" was on the ground of the protected disclosure, see Fecit & others v NHS Manchester [2011] IRLR 111. The main point of that case was the liability of the employer for actions by employees in victimising other employees who had made a protected disclosure. However, Judge Serota QC indicated that the EAT found favour with the argument that the approach to the burden of proof in discrimination cases, as set out in the guidance from the Court of Appeal in Igen v Wong [2005] IRLR 258 should be adopted in the context of victimisation in whistle blowing cases. He said, referring to Igen v Wong:

*"Peter Gibson LJ held that the appropriate test required the employer to prove that the treatment [discrimination] was in "no sense whatsoever" on the grounds of the Claimant's race or sex as the case may be. The same would apply to detriments suffered on the ground that the Claimant had been (whistle-blowing) and thus done a protected act. As we have noted, Peter Gibson LJ held that this test did not differ from Lord Nichol's formula in Nagravan: a "significant" influence was an influence which was more than trivial."*

27. He goes on to say:

*"Accordingly, in our opinion once less favourable treatment amounting to a detriment has been shown to have occurred following a protected act the employer's liability under section 48(2) is to show the ground on which any act or deliberate failure to act was done and that the protected act played no more than a trivial part in the application of the detriment."*

### Interim Issues

28. A situation arose during the hearing, after we had heard the evidence of the Claimant and her witnesses, in which Mr Ludlow queried whether Mr Davies should be allowed to cross-examine the Respondent's witnesses on certain matters. These were matters that had been referred to in the evidence of the Claimant's two witnesses, Mr Sawfoot and Mr Lees and on which he

had not cross-examined the Claimant, as they were not matters, he said, which appeared in the list of issues.

29. At the outset of cross-examination of the Claimant, with the assent of Mr Davies and the approval of the Tribunal, Mr Ludlow indicated that he did not intend to cross-examine the Claimant on matters in her witness statement that did not pertain to the list of issues, but he made it clear that the Respondent should not be taken to admit such matters. Mr Davies insists that he should be permitted to cross-examine the Respondent's witnesses on two of these matters.
30. In resolving this matter we have had regard to the overriding objective, which is to deal with cases justly, including, so far as practicable: ensuring the parties are on equal footing; dealing with the case in ways which are proportionate to the complexity and important to the issues; ensuring that it is dealt with expeditiously and fairly, and with a view to saving expense.
31. Rule 14.3 of the Tribunal's rules of procedure provides that the Tribunal shall conduct a hearing in such manner as it considers appropriate for the clarification of the issues and generally for the just handling of the proceedings.
32. In exercising our discretion, we have had regard to the succinct directive from Kwik Save Stores v Swain [1997] ICR 49; that in exercising our discretion we should take into account all relevant factors in balancing one against the other, to reach a conclusion which is objectively justified on the grounds of reason and justice.
33. In this matter, there was a Case Management Discussion on the 26 July held by Employment Judge Cole and at paragraph 6 his Order, he provided with regard to a list of issues that it must be provided within 56 days of that hearing. If it was incapable of agreement, it was anticipated that there would be a further case management discussion.
34. The purpose of a list of issues is to identify questions of facts and law which the Tribunal would have to answer in order to decide the outcome of the case. It informs the disclosure that is to be made, the appropriate content of witness statements and the evidence that should be heard.
35. At a Pre Hearing Review on the 8 December 2010 before Employment Judge Postle, it appears that two lists of issues were produced, one from each party. He deals with that at paragraph 2 of his Order and says:

*"It is now agreed by consent that the list of issues which each party has submitted are the agreed list of issues, with the exception of paragraphs 19, 28 and 33 of the Respondent's list of issues which have now been deleted. They are the only issues the Tribunal will determine at the Full Merits Hearing.*

36. That left us in an odd situation, in that we had two lists of issues. At the outset of the hearing I identified with the parties representatives that this was unsatisfactory and the representatives therefore, during our first day,

which we had taken as a reading day, agreed amendments to the Respondent's list of issues so that could be taken as the agreed list of issues.

37. Ms Sawfoot says that she made a number of disclosures, some relating to the treatment her daughter received at the hands of kindergarten staff employed the Respondent. Her case is that as a result of these disclosures, which she says are protected disclosures, she was subjected to detriment and as a consequence of that, she resigned. Her claims are for compensation in relation to the detriment and for constructive unfair dismissal.
38. The controversial matters at hand related firstly, to an allegation that in April 2009 a third party, Rachel Hardy, had witnessed Ms Sawfoot's daughter inappropriately handled by Miss Letts, that Ms Hardy had reported her concerns and nothing was done. Secondly, whether the daughter had been "assaulted" by Miss Letts when she knelt on reins that were around the child's neck, reported to the grandparent, Mr Sawfoot, but not at the time, to Ms Sawfoot.
39. It was suggested to us that these matters were not referred to in the ET1, actually they are. Paragraph 8 of the statement of claim reads:

*"I also referred to a previous assault on my daughter by Anna and a little later I have been informed subsequent to that that my daughter was also manhandled on another occasion and independent complaint about this was ignored."*

40. Further and better particulars were given about that which read:

*"The independent complaint was made by Rachel Hardy around the second or third week after Easter."*

41. However, it is not Ms Sawfoot's case that the Rachel Hardy incident was a matter that she knew about before her resignation. She does not rely on it as a protected disclosure. Accordingly, it is not referred to in the agreed list of issues nor as it happens, is it set out in the Claimant's own original list of issues. It seemed to us that it is right that the matter doesn't appear in the list of issues; it is not a matter that was disclosed to the Respondent by the Claimant, she does not rely on it as a Public Interest Disclosure nor does she rely on it as part of her case of constructive dismissal.
42. The reins allegations relayed to Mr Sawfoot is slightly different. That was referred to in the Claimant's grievance letter of the 20 May 2009. In that grievance letter she said:

*"A few weeks ago she complained to my parents. She said that when she had refused to come in from playtime Anna had knelt on her crochet play horse reins when they were around her throat and she felt she could not breathe."*



43. That allegation is therefore relevant, insofar as it is referred to in a disclosure letter which the Claimant does indeed rely on, as identified in the list of issues.
44. What is relevant in this case is what was in the parties minds at the relevant time, particularly what protected disclosures Ms Sawfoot had made to the Respondents and what the Respondents did or did not do to Miss Sawfoot and what was the reason for what it did or did not do? Was the reason that she had made a protected disclosure? Following on from that, whether the action or inaction of the Respondent amounted to a breach of the implied term of mutual trust and confidence and was that the reason for the Claimant's resignation?
45. Events of which the Claimant were unaware at the relevant time are not relevant to these legal questions. The Rachel Hardy incident was not a question of fact that we anticipated that we would need to resolve in order to determine the outcome of this case, it was not a fact that we anticipated would appear in our findings of fact and we therefore decided that Mr Davies should not cross-examine the Respondent's witnesses on that.
46. Further to that, we made clear that Miss Letts was not on trial. This case was not about whether she treated Ms Sawfoot's daughter inappropriately, but whether Ms Sawfoot made complaint about such treatment as a Public Interest Disclosure and whether the Respondents subjected her to detriment as a result. The actual conduct of Ms Letts did not appear in the list of issues and rightly so; we therefore ruled that she should not be cross-examined about the incidents.
47. We had time constraints in this case. It was listed for seven days and it was not the parties fault that due to lack of judicial resources, we only had six days to do it in, but the original time estimate of seven days should have included sufficient time for deliberation by the Tribunal, reviewing the evidence, providing the parties with an ex tempore judgment and dealing with remedy if appropriate. It was clear that the seven day time estimate was never going to be enough for all of that, we would be hard pressed to finish all the evidence in the allocated time and avoid going part heard, which would have been a disaster for everyone. For personal reasons to which I alluded to the representatives, lengthening the sitting day significantly was not an option.
48. We were concerned that some of the evidence that was adduced by the Claimant's witnesses did not appear to go to the issues as identified in the agreed list. We explained that the parties had to understand that this is an Employment Tribunal; we were not concerned with passing judgment on the Respondent as a school. We had a sense that perhaps the Tribunal was being used as a vehicle for venting a wholly different grievance for some of the parents of children at the school about the way the school was run. We made it clear, that was not our concern.
49. We emphasised to Mr Davies that he should ensure that his cross-examination of the Respondent's witnesses related to the agreed issues

and that we would be alert to that and that I would interrupt if I did not think that the questions so relate.

### Credibility

50. Generally speaking, we found Ms Sawfoot to be an honest witness, in that she did not lie to us. She did however, in our judgment, have a tendency to exaggerate and put her own, "spin" on events. She would also sometimes make statements as if of fact but which were no more than speculation about something that she could not know to be so; Mr Ludlow gave examples of that in his closing submissions: referring to the incident of 11 March, (see below) at which she was not present, she referred to Miss Letts being out of control, to feeling aggressive and to grabbing her daughters arms and dragging her, "rather like riot police".
51. We found Mr Sawfoot an honest and reliable witness; of course he had his daughter's best interests at heart and could not be said to be neutral, but his evidence was consistent and stood up to cross examination.
52. Mr Leeds was clearly partisan, with an axe to grind and appeared to feel barely suppressed anger toward the Respondent's witnesses. Nevertheless, we do not think he lied to us, his evidence was honest.
53. Mr Jones, Mrs Hales and Miss Tolhurst in one important respect, gave us cause to doubt them. That was the assertion by each of them that they had not known Ms Sawfoot was going to make a complaint about the way her daughter had been treated, when they decided to call her to an investigatory meeting in respect of her own conduct. On the documentary evidence, it was in our view very obvious to these of the Respondent's that was what Ms Sawfoot was about to do; for example the e mail of Mr Nowell to Miss Tolhurst of 22 May referred to Ms Sawfoot having said she was going to make a formal complaint.
54. There were a number of significant date errors in the Respondent's documents that suggested to us that on occasion, people had retrospectively created documents and back dated them to suggest that they were contemporaneous. For example, the date changes and grammar used by Miss Letts in her note in the incident book regarding the events of 11 May and her note of her subsequent telephone conversation with Ms Sawfoot.
55. Miss Letts asserted that the first set of minutes in the bundle relating the meeting between her, Mrs Brown and Ms Sawfoot were notes that she had prepared in advance and had spoken to them during the meeting; that is not consistent with the language used in the document, clearly written in the past tense and ending with, "the meeting was brought to an abrupt close".
56. Miss Letts says that she was not "spoken to" about the events of 11 May 2009, Miss Tolhurst said that she was and this is supported by a

contemporaneous document, an e mail from Miss Tolhurst to Miss Armour of 9 December 2009; nothing turns on this, but it is an example of the unreliability of Miss Letts evidence.

57. Miss Armour too had a problem with dates in what she claimed were contemporary documents: she referred to a note she said she had prepared of incidents on 11 and 12 May, she claimed in evidence to have made the notes on the evening of 12 May, but the document incorrectly dates the incidents as 12 and 13 May.
58. Mrs Brown got herself into a complete muddle over the 2 sets of minutes of the meeting on 13 May, claiming to have prepared as post meeting minutes, those that Miss Letts had described as her notes prepared in advance. She also said that she and Miss Tolhurst would have been prepared to consider any amendment proposed by Ms Sawfoot to the written agreement regarding AA that had been drawn up after their meeting on 3 June 2009, this is inconsistent with the language of a letter written by Miss Letts to Ms Sawfoot on 5 June, which stated that a unanimous decision had been reached that there would be no negotiation or amendment.
59. In cross examination, Miss Tolhurst clearly sought to give the impression that she had called Dr Jones to discuss a number of insignificant matters on 21 May, that he happened to ask how things were at the school, she mentioned the incident of 19 May and he then asked her to invite people to write a note for him. In her witness statement, Miss Tolhurst had portrayed the instigation of this conversation in a very different way; she wrote of calling Dr Jones because things were escalating and needing the support of the trustees.
60. Ms Hales, when asked in cross examination why she had made reference to Ms Sawfoot's complaint during the meeting on 28 May, (which had implications as to whether in any way the meeting was motivated by the complaint relating to the treatment of AA), responded that she had been referring to the complaint by Mrs Sawfoot about her colleagues, not about AA. It is clear from both Mr Sawfoot's minutes and the Respondent's own minutes, that in the context of the comment, she was referring to the complaint about the treatment of AA.

### **Facts**

61. The Respondent is a Steiner School; a school in which teaching practices are in accordance with a particular philosophy, the details of which do not matter.
62. The school in Norwich is relatively new; it opened in 2005. It consists of Kindergarten, infant and junior departments.
63. Ms Sawfoot's employment as a teacher with the Respondent commenced in August 2007. She was only the second teacher to be appointed to the school and there were about 18 pupils, (not counting those in Kindergarten)

taught by 2 teachers. By the time of her resignation, there were 30 non kindergarten pupils taught by 3 teachers and there were 2 Kindergarten classes with a teacher in each, though we were never told the number of pupils in Kindergarten.

64. Ms Sawfoot is a single parent, her daughter, who we will refer to as AA, was enrolled into the school's kindergarten. Ms Sawfoot's hours in accordance with her contract of employment were from 8 a.m. to 5 p.m. for 5 days a week. However, flexibility was recognised in her contract as follows:

*"However, it is recognised that some of this time may be non-contact time with children, and you may wish to work away from the school premises. Your non-contact times are thus flexible."*

65. The management structure of the Respondent was intended to have been that it was run by a collegiate of teachers, reporting to trustees. However, as a new school with few teachers and few pupils, the collegiate had yet to be established. In the interim, the school was effectively run by the administrator, Miss Tolhurst, who reported to the trustees.
66. A "Personnel Team" consisted of Miss Tolhurst and volunteers, Miss Armour (also employed as Kindergarten assistant) and Mrs Hales. That team reported to the trustee designated as responsible for such matters, Dr Jones.
67. Ms Sawfoot was the, "Designated Teacher", in other words, any child protection issues should be referred to her. She was highly regarded in her role as a teacher.
68. Ms Sawfoot's daughter had a reputation as a bright but difficult child who expressed challenging behaviour. As a parent, Ms Sawfoot was regarded by her colleagues as un-cooperative and defensive when presented with AA's challenging behaviour. As an intelligent and articulate person, she was someone of whom some of the Respondent's staff were nervous, when it came to raising matters relating to AA.
69. Ms Sawfoot alleges that in February 2009, during a discussion between Miss Tolhurst and Ms Sawfoot about a complaint that had been made by a parent, (that her child had been assaulted by another child) Miss Tolhurst suggested that they should put social services onto the complaining parent, in order to discredit the parent. Miss Tolhurst denies that. Our finding is that we do not believe that Miss Tolhurst would have made such an extreme suggestion, but that some reference to Social Services was made which Ms Sawfoot has misinterpreted or misunderstood.
70. On 2 March 2009 Anne Swain, a Special Educational Needs specialist (with the Steiner movement) visited the Kindergarten to observe other children, (not AA). During this visit, Ms Swain described AA as, "very unpleasant" and set out some observations illustrating that she was a challenging child.

71. At the end of the academic year in question, AA would be scheduled to move out of Kindergarten and into Class 1. The transition from Kindergarten to Class 1 is not automatic; the Class 1 teacher has to agree that each child making the transition is ready to do so and that the teacher is happy to accept each child into the class.
72. At the beginning of the summer term, a new teacher, for Class 1, Mr Nowell began employment with the Respondent.
73. Between January and April 2009, Ms Sawfoot had not been advised at any time that AA had behaved inappropriately.
74. At a personnel team meeting on 22 April 2009, concerns were expressed and noted with regard to Ms Sawfoot, in particular:
  - 74.1. There were limitations on her attending evening or late afternoon meetings.
  - 74.2. She was reluctant to work for more than two afternoons a week, causing problems in terms of communication.
  - 74.3. The foregoing had implications for development of the collegiate structure, in terms of the timing of team meeting in the following year.
  - 74.4. The cost implications in other staff covering her hours.
  - 74.5. In the respondents words, "How to take this from being too personal to a professional resolution?"
75. We have seen from the notes of a mentoring session that Ms Sawfoot had with Mrs Hales on 29 April 2009, that all was not well in the school; references were made to lack of communication and a feeling that people were working against each other and not with each other. Similar concerns had been expressed in an earlier mentoring session on 11 March 2009.
76. There was anxiety amongst staff at the school about how to handle Ms Sawfoot in respect of the Respondent's concerns about AA. Miss Letts sent an e mail to Miss Tolhurst on 4 May 2009, (an IEP is an Individual Education Plan) :

*"I have thought a lot about the meeting with Jo about AA, and I am worried that just the suggestion of an IEP may end up being less helpful than more. So I wondered whether it might be better to have a meeting with Jo, where we talk about concerns and ways of supporting AA in anticipation of class 1, and then both parent and teacher sign an agreement on a few specific things to be worked on... I feel Jo may be more willing to co-operate with this and it also feels like less strain on me/KGN.*

77. There were concerns about whether it would be appropriate to move AA up to Class 1. Thus on 6 May 2009, Miss Tolhurst sent an e mail to Mrs Hales and Miss Armour with regard to the planned admission process and how that would be applied to AA. It is clear that problems were anticipated in tackling this issue with Ms Sawfoot. On the process, Miss Tolhurst wrote this, (A "sun child" is a child in kindergarten ready for the transition to class 1):

*"We came to discuss the process of recognition as a "risk assessment". So the teacher (i.e. Jeremy) has a meeting with a parent to discuss their sun child. If no issues have been raised about learning difficulties or behaviour by the kindergarten staff (or in previous early years reports), then its quite a straightforward process and the class teacher may need only a very brief meeting or maybe not even at all (unless the parent request it).*

*If however, there are any questions raised by KGN staff over the child's behaviour or concerns about their learning – then at the meeting of class 1 teachers and parent, the KGN staff would be invited, and as a group there should be a discussion about specific types of worrying behaviour, or about learning/ practical difficulties."*

78. The Class 1 teacher, Mr Nowell, had concerns about AA and wanted a report from Ms Swain, (referred to above) but Miss Tolhurst commented:

*"We also agree that it might look like a real set-up job if Anne Swain came in and did a report on AA now – whereas if we tackle Jo first via the admission process – we can always say that we'll call Anne in at a later stage for specialist advice/support or to do a report."*

79. The weekend before 11 May 2009, AA visited her paternal grand parents; Ms Sawfoot warned the kindergarten staff that such visits were often associated with difficult behaviour afterwards.
80. We note that on 11 May the Respondent drafted a letter that was to be sent to all employees in order to invite them each to individual meetings to discuss a review of their contractual terms.
81. On 11 May 2009 an incident occurred with AA, which is best relayed as described by Miss Letts in an entry she made in the Kindergarten Incident Book; the context is that there had been some disruptive behaviour by AA:

*"I asked her to come out of the room with me. I took her hand and she fell to the floor and refused to come. I told her she could use her legs or I would take her. She still wouldn't move and was shouting at me and getting v cross. When I tried to lift her, she bit me three times and was hitting and punching me. I felt she needed some time out to remember how to behave in KGN and remember her polite manners, so told her she needed to come to Maple for a while (I had a whole class in the KGN, and supply assistant) so needed AA to be cared for elsewhere until she calmed down. I asked her again that she use her legs or I would take her. She still refused so I asked Margaret to help*

*me. We took her in together – she cried and screamed and tried to bite the whole way. She became v distressed and agitated.”*

82. After this AA is described as calming down once given some cushions and a drawing book in the corridor.
83. Having regard to the reference in this note in the past tense to, “Mother was informed on the day of this incident” we find that this note was not written contemporaneously on 11 May 2009. However, we find that it was written before 13 May 2009, as an entry for 13 May appears on the right of the page, sequentially.
84. The note in the incident book from which we have just quoted records that Ms Sawfoot was informed of the incident that day, though by whom is not recorded. Miss Tolhurst says that she informed Ms Sawfoot of the incident, that she sought her out in the staff room. Ms Sawfoot says that she just happened to be in the office and Miss Tolhurst told her of the incident, playing it down, telling her that AA had been upset but that she was fine now. She says Miss Tolhurst had made no mention of AA having been lifted, nor of AA biting Miss Letts. Miss Tolhurst says she reported that AA had bitten Miss Letts and suggested that it was time she had a meeting with the kindergarten staff. We find that Miss Tolhurst did go looking for Ms Sawfoot and found her in the staff room; Ms Sawfoot would not have known whether Miss Tolhurst had gone looking for her; this is an example of Ms Sawfoot putting a negative spin on facts. As to what was said, it is interesting that Miss Armour said in an email that evening to Miss Tolhurst:
- “Anna has bite marks up her arm from this morning which is concerning – as employers should we be thinking about visual documentation? I know Anna wouldn’t want to take any official action but if we were thinking of her just as an employee and not as Anna we may need to cover ourselves. And it would be good evidence of A’s behaviour.”*
85. Which indicates that the Respondent’s staff see the issue at this stage as one of AA’s bad behaviour, rather than misconduct by Miss Letts. Therefore the Respondents staff would play the account to the parent down, not wishing to upset her by relaying to her just how naughty the child had been. We therefore accept that Miss Tolhurst played down the incident and did not mention biting or lifting of the child.
86. Miss Letts telephoned Ms Sawfoot that evening, she says to find out how AA was and to arrange a meeting. She says that the detail of the incident was briefly discussed. Ms Sawfoot says Miss Letts just asked how AA was, she agrees that it was just a short conversation, that a full description of the incident was not given, but she says that no meeting was arranged.
87. The entry in the Incident Book quoted above includes reference to this conversation as an, “NB”

*“Anna phoned Jo on the evening of, (the date of 12/04 is deleted) 11/05/09 to ask how AA was and to arrange a meeting ASAP where*

*Chestnut KGN staff could talk with Jo about difficulties with AA. Jo said AA seemed happy that evening and we agreed to meet at 1.30 on the coming Wednesday."*

88. We find that this was a note which was added later and not contemporaneously, we are led to this conclusion by: the fact that the text of the note appears to have been squeezed in before entry the subsequent entry dated 13 May; that the date had been changed, (12/04 having been crossed out and 11/05/09 written in afterwards), and the use of the expression that they had agree to meet, "the coming Wednesday".
89. Miss Letts refers to some hand written notes as evidence of what was discussed in this telephone conversation, she claims that they were contemporaneous notes. Once again there is a date change from, "11<sup>th</sup>" to "12<sup>th</sup>" which indicates to us that this is likely to be a note made after the event and not contemporaneous. It is a note by Miss Letts of conversations that she had held with Ms Sawfoot, but not a contemporaneous note of one conversation on the evening of 11 May 2009.
90. The next morning, 12 May 2009, AA described to her mother what had happened the previous day. She described being scared, being dragged out of the room and spoke of Miss Letts losing her temper.
91. Ms Sawfoot says that first thing that day at school, she complained to Miss Letts "about the unlawful physical restraint" of AA in response to which, she says, Miss Letts suggested a meeting.
92. Miss Letts says that the matter was not discussed at school and that they did not arrange a meeting that morning, they had already done so the previous night on the telephone.
93. We prefer Ms Sawfoot's evidence that the meeting was arranged on the morning of the 12<sup>th</sup> after Ms Sawfoot had said she was unhappy with the physical restraint of her daughter. We also accept her evidence that she did not know that her daughter had bitten Miss Letts; the Respondent's own notes of the subsequent meeting on 13 May, (see below) are consistent with her only finding out about biting during that meeting.
94. A meeting between Ms Sawfoot, Miss Letts and Mrs Brown to discuss AA took place on 13 May 2009. This is a meeting between parent and teachers, not between these individuals as work colleagues.
95. We were referred to 3 sets of minutes of this meeting. The first set, Miss Letts says were produced by her and were notes to which she spoke during the meeting.
96. The second set of minutes were produced later by Mrs Brown and purport to set out the comments by Ms Sawfoot. The Respondent's witnesses say that it was always the intention to produce the record of the meeting in this way; that Mrs Brown made notes during the meeting and was to write up the full minutes afterwards.



97. Mrs Brown was very confused in her evidence about these minutes, she referred to the first set of minutes as having been written by her and the second set of minutes as having been written by her together with Miss Lett's, on 22 May 2009, after Ms Sawfoot had complained about the first minutes.
98. We note that the first set of minutes are entitled, "minutes" and are written in the past tense; we find that Miss Letts wrote this document after the meeting, it was intended to be read as minutes of the meeting. It contains no reference to anything that Ms Sawfoot had to say, it is one sided and a false representation of the meeting. This set of minutes were given to Ms Sawfoot on 21 May 2009, (see below).
99. The second set of minutes were prepared by Miss Letts and Mrs Brown together after Ms Sawfoot had protested about the one sided nature of the first set. The second set left out what Ms Sawfoot saw as key comments by her; in particular her protest about she regarded as the "assault" on AA on 11 May. She therefore annotated in red a copy of those minutes, to add references to what she had read and which had, she said, been left out. She sent that amended document to the Respondent on 24 May 2009.
100. At the meeting on 13 May, Miss Letts set out concerns which the Respondent had with regard to AA's behaviour and gave a full description of the incident on 11 May; this was the first that Ms Sawfoot knew that AA had bitten Miss Letts.
101. Ms Sawfoot says that threats were made that AA might not progress to Class 1; this is denied by Miss Letts. Ms Sawfoot said in her annotations to the minutes:
- "All of the above was in response to the fact that Anna presented the alleged details of AA's behaviours as being an obstacle to the possibility of her being able to progress class 1. She said 'I have my doubts as to whether she will be able to manage class 1'".*
102. That is consistent with the fact that the Respondent's staff, including Miss Letts, were having doubts about AA's progression, for these very reasons. We find that Miss Letts did indeed make this comment.
103. Ms Sawfoot also commented that she protested in the meeting about the way AA was handled;
- "I believe that on occasions AA has been physically restrained. AA has said that staff holding her arm has hurt her and I believe that it has also injured her dignity and led to a breakdown in trust between herself and those trying to discipline her. ..."*

104. Mrs Brown confirms this in her witness statement at paragraph 4. Ms Sawfoot does not claim, in her annotations to the minutes, to have expressly said that the restraint amounted to an assault and was unlawful.
105. The Respondent has a policy on the use of physical restraint on children, which should only be used, the policy states, as a last resort. Examples are given when restraint might be used:

*Physical intervention should only be used to manage a child's behaviour if it is necessary to prevent personal injury to the child; other children or an adult; to prevent serious damage to property, or in what would be regarded as exceptional circumstances...*

*If a child is causing injury to themselves or another child;*

*If a child tries to physically attack a Teacher or Assistant;*

*If a child is causing serious damage to property;*

*If a child is engaged in behaviour that compromises good order;*

*If a child is running out of the building or grounds.*

106. This policy includes references to adopting, with a child that will not respond to calming techniques, holding the child around the waist and sitting with the child and to holding the child's hands or feet if the child is, for example, biting, hitting or kicking. The policy states that parents are to be informed the same day of any incident involving the use of restraint and such incident should be reported to the designated Trustee for child protection, (Dr Jones). There is a prescribed form to be completed for such reporting purposes.
107. Miss Armour told us that there was a Personnel Team meeting on 13 May of which there are no notes and at which, she says, the above issues were not discussed at all.
108. On 14 May Ms Sawfoot spoke to Ms Gibbons, the afternoon care supervisor. The relevance of this conversation is that Ms Sawfoot says that she spoke to Ms Gibbons of the use of inappropriate physical restraint against AA. Ms Gibbons denied this in her evidence, in her witness statement she said that:
- "At no time in the conversation with me did Jo use the term 'assaulted and/or physically restrained'. At no time did she mention child protection procedures."*
109. Ms Gibbons does however acknowledge at paragraph 4 of her statement that Ms Sawfoot had said that Miss Letts had tried to hold AA and that is why the child had bitten her.

110. Ms Gibbons reported this conversation to Miss Armour, who in turn reported it to Miss Tolhurst in an e mail on 14 May 2009. This is how the conversation was, in part, reported:

*"Jo told P that Anna has been using restraining techniques on A, and that A is being demonised by KGN staff...Jo told her that A only bit Anna as she was hurting her whilst trying to restrain her, ...I get the feeling that P thinks that Jo may be making a complaint against Anna."*

111. Later that evening Miss Tolhurst wrote to Miss Armour:

*"I have spoken at length with Anna about her physical handling of A and from what she has told me I do not think she has stepped outside our policy; however, I think that both she and Susan have been very unwise in not recording the incidents and making sure they informed Jo in a more forceful way of what they were having to deal with. I know that they did make attempts to tell her and that Jo blocked them. I suspect that this is going to end in tears... and I am very sorry to say that I think Anna might come off badly in any attack. It has all become incredibly personal now."*

112. We referred above to a letter drafted to the Respondent's staff on 11 May regarding a review of their contracts, the version of that letter intended for Ms Sawfoot was delivered to her on 17 May 2009.
113. At a staff meeting on 18 May 2009, it was announced that a risk assessment form was to be used for assessing children suitable for transition to Class 1. Ms Sawfoot says and we accept, that it was also stated that parents were to be given a copy of the form in good time before any discussion with the Class 1 teacher.
114. On 19 May 2009, Ms Sawfoot was scheduled to meet AA's Class 1 teacher for the next year, Mr Nowell, in her capacity as a parent. She says that when she went to the meeting, Mr Nowell refused to proceed with without the Kindergarten staff present. Mr Nowell says that Ms Sawfoot sought him out before the meeting was scheduled to commence, to say that she wanted to talk to him before the kindergarten staff arrived; she says that she did not know that the Kindergarten staff were due to be present.
115. From cross examination of Mr Nowell, it was clear to us that Ms Sawfoot was surprised that Kindergarten staff were to be present during this meeting and that she was cross about it. Ms Sawfoot says that she said she did not want them present because they had inappropriately physically restrained AA. She said to Mr Nowell that she was hoping to resolve the matter informally.
116. Mr Nowell referred to having a risk assessment on AA in his possession and Ms Sawfoot's reaction to that was outrage.
117. Ms Sawfoot alleges that Mr Nowell made gestures with his hand moving up his arm and commenting that there was a teacher with bite marks all the way up her arm. She says that this made her even more angry as it

suggested that the "assault" on AA had been more serious than she had thought; if AA had been held long enough for her teacher to sustain a number of bites and not just one bite mark, that indicated that she had been restrained for a significant period of time and not just momentarily. Mr Nowell denies making the gesture as described by Ms Sawfoot, with aggressive jabbing motions of the hand to the arm.

118. We find that Ms Sawfoot did refer to restraint on her daughter, Mr Nowell did make a gesture, with his hand to his arm, making reference to bite marks, probably not as aggressively as Ms Sawfoot suggests. Ms Sawfoot did become very angry, the issue for her was that Mr Nowell and the Respondent's other employees clearly viewed the bite marks as a problem with AA's behaviour, rather than identifying that the problem was that AA had bitten Miss Letts because she was being restrained; that was how Ms Sawfoot saw it.
119. To be clear, the process, that is the preparation of a risk assessment and the subsequent meeting with the parent and kindergarten staff, was a process planned and contemplated in advance of the events of 11 May 2009, as we have seen in the letter quoted above dated 6 May 2009.
120. Ms Sawfoot walked away from Mr Nowell feeling very angry. She then met Miss Letts and Mrs Brown in the corridor; they were on their way to the meeting. She angrily complained that they had not given her a copy of the risk assessment, she made reference to, "arsy new paperwork" and to their covering up their, "own arses". She agrees that she raised her voice, (but says that she did not shout). Ms Sawfoot denies waving her arms around or using the word, "bloody" as is alleged by the Respondent's witnesses. In our view, the latter disputed details do not matter, use of the word, "arsy" and raised voices to colleagues, by a teacher, in a school corridor, is just as culpable as the waving of arms and the use of the word, "bloody". Ms Sawfoot agrees that Miss Tolhurst did come along and say to them that they should not be conducting such a conversation in that place, as a result of which they went their separate ways..
121. Miss Letts reported the incident to David Jones by e mail on 21 May, her report includes the following:

*"She began by complaining about the way we had managed AA's behaviour (on Monday 11 May)...She became increasingly angry...The manner in which she spoke to us was very demoralising, quite frightening, and above all totally unprofessional...The whole event left everyone involved shaken and unnerved, and one person in tears."*

122. On the evening of 19 May Mr Nowell made a note of his conversation with Ms Sawfoot and on 22 May sent it by e mail to Miss Tolhurst.

*The only issue was that relating to her daughter being "physically restrained" by KG staff. I said that this was a serious allegation and shouldn't she have raised it through correct processes? She said she had wanted to keep it "informal" (i.e. by talking to me informally and by-*

*passing the KG risk assessment" but that now she saw she was going to have to make a formal complaint. She said there was absolutely no need to involve KG, which I raised the question of the biting episode from the previous week... a member of KG staff had repeatedly been bitten by AA. This provoked an even stronger reaction...*

*I have long been convinced that Jo finds it impossible (for whatever reasons) to take responsibility for AA's behaviour, and that her only option is to deflect/project this responsibility on to others. I have no reason to believe that this would be any different with AA in class 1, where I myself would become the focus of such projection. With little distance between myself and Jo (as class teachers) in between mother and daughter, the situation would very quickly become unmanageable. Following the meeting I could foresee no safe way of accepting AA into class 1...*

*As far as I am concerned I fear my role as class teacher may very quickly be undermined by having AA in my class. Specifically by standing up to Jo, I feel I would very possibly expose myself to allegations of increasingly serious nature as has been the case in KG.*

123. After hearing on 21 May from Mrs Tolhurst about the incident and having discussed the situation with other trustees, Dr Jones decided to implement an investigation under the Respondent's Work Place Concerns Procedure, which is a disciplinary process.
124. There was significant controversy over a series of letters from Ms Sawfoot dated 20, 21 and 22 May 2009: the Respondent seeking to argue that Ms Sawfoot wrote her letters of complaint after having received, and in response to, a letter from Dr Jones of 21 May asking her to attend a meeting at which concerns about her recent behaviour would be discussed. Ms Sawfoot argues that Dr Jones' letter was written in reaction to the Respondents having received her three letters, which amount to a complaint, disclosures, in retaliation to which the Respondents went on the offensive and took disciplinary action against her.
125. Our analysis is that the first letter written by Ms Sawfoot must have been the typed letter dated 20 May. In this letter, she complained that her child has been physically restrained and she referred to becoming aware of the existence of a risk assessment report, but it is apparent that she is not aware of its content. It is logical that this is a letter that had been prepared and typed with thought, before hand.
126. The second letter written must be that which is hand written and also dated 20 May. In this letter, Ms Sawfoot referred to not yet having the minutes from the meeting of 13 May and to Miss Tolhurst having told her that she had received them the previous night by e mail, but that she was unable to open them, (consistent with what Miss Tolhurst says on the point). The letter opened with, "I have enclosed a copy of AA's report which I managed to get hold of with difficulty - today". This is consistent with Ms Sawfoot having received the report during the course of the day and handwriting out

this second letter at the end of the day. Thus she later says, "I am sending you my letter and the report"; i.e. she is sending her earlier typed letter.

127. The evidence of Mr Sawfoot, which we accept, was that the next day, 21 May, he posted both of these letters and the risk assessment, by recorded delivery. The copy Post Office receipt he produced shows that he posted them at 9:19 in the morning. The Post Code shown on the receipt is that of Mrs Hales.
128. In her witness statement, Mrs Tohurst does not say exactly when she gave Ms Sawfoot the minutes of the 13 May meeting, but she does confirm that she got them from Miss Letts on the evening of 20 May by e mail and that she printed them out so that she could give them to Ms Sawfoot. That is consistent with Ms Sawfoot's evidence that she was handed the minutes on 21 May. That in turn is consistent with her going home and writing what we accept was her third letter, protesting about content of the minutes. She describes the minutes as, *"half truths lies exaggerations omissions and libellous implications"*. This was delivered by Mr Sawfoot, we accept, by hand during the morning of 22 May 2009 and by the time he arrived home, Dr Jones' letter of 21 May had been delivered to Ms Sawfoot by the Royal Mail.
129. We have considered Miss Tolhurst's arguments, set out in her witness statement at paragraph 29, that the sequence was hand written letter dated 20 May first, typed letter of 21 May second, typed letter of 20 May third: Her best point is by reference to that passage of the typed letter dated 20 May, in the penultimate paragraph, in which Ms Sawfoot refers to the, *"suddenly escalating unexpected nature of the undue and unwarranted pressure being exerted on me as AA's mother and as a staff member..."*. Miss Tolhurst says that this must be prompted by the letter from Dr Jones. We accept Ms Sawfoot's explanation that what she was referring to was the apparent sudden decision to involve risk assessments in the transition process of children from Kindergarten to Class 1 on 18 May and her being told that one had been carried out on her child and used against her, (as she saw it) the next day. That is the injustice she is referring to. As for the reference to the representation of AA as being grossly misleading, that is plainly a reference to what she suspects is in the risk assessment, not the minutes she had not yet seen.
130. Miss Tolhurst suggests that it is inconsistent to have used typed and handwritten letters. It is not, if typing does not come naturally. A typed letter is something one prepares carefully, a hand written letter is something one writes quickly, and that is consistent with the second letter of 20 May quickly being written after the risk assessment had been received. The hand written letter refers to enclosing, "my letter" which indicates that it is not the first letter, as Miss Tolhurst seeks to argue.
131. Our finding on this sequence of events is that all three of Ms Sawfoot's letters were written before she had sight of Dr Jones' letter of 21 May.
132. By the same token, we accept the evidence of Mrs Hales that she was away from home at the time and did not see any of the three letters until

she arrived home on 22 May. We also accept that Mrs Hales and Dr Jones did not expressly know of the content of the letters until 25 May.

133. Dr Jones and Ms Hales decided on 22 May not to open and read the letters from Ms Sawfoot, they say because Ms Hales had been Ms Sawfoot's mentor and they felt that therefore she might be in a conflict of interest situation. Although they deny that they knew that the letters contained complaints, from what had gone on so far, it must have been clear to them that is what would have been in letters, in particular that they would contain a complaint about what had happened on 11 May. For example, Mr Nowell had quoted Mrs Sawfoot saying that she was going to make a formal complaint in his e mail to Ms Tolhurst of 22 May, forwarded to Dr Jones at 21:50 on 22 May, or the e mail Miss Armour wrote to Miss Tolhurst on 14 May saying she had the feeling Miss Sawfoot would make a complaint, forwarded to Mrs Hales that day. They subsequently opened and read the letters on 25 May after Mrs Sawfoot had insisted that they do so.
134. Ms Sawfoot wrote another letter on 21 May, to the Kindergarten staff, protesting in strong terms at the content of the minutes she had just received, which she describes as an attempt to justify escalating allegations against AA and the way AA had been treated on 11 May.
135. In a meeting on 23 May 2009, Dr Jones and Mrs Hales identified 3 areas of concern, according to their note of their meeting:
  - 135.1. Ms Sawfoot's conduct toward her colleagues in the incident of 19 May;
  - 135.2. Concerns regarding her manner with colleagues generally, this was seen as a concern over her talking them down and getting over excited and also concerns regarding her attending meetings and the need to review her contract (that is really 2 points of concern, not one), and
  - 135.3. Ms Sawfoot not acknowledging that there were problems regarding AA and that she was regarded as having tried to bypass the "admissions procedure" in her approach to Mr Nowell.
136. Dr Jones and Mrs Hales decided that Mrs Hales would not longer act as Ms Sawfoot's mentor and that she would speak to Ms Sawfoot before opening her letters.
137. In a telephone conversation between Mrs Hales and Mrs Sawfoot on 25 May 2009, Ms Sawfoot insisted that Mrs Hales open and read her letters and indicated that she would not be prepared to attend any meeting to discuss her, "recent behaviour" until she had done so.
138. Dr Jones having read Mrs Sawfoot's letters, wrote to Ms Sawfoot on 26 May:

*"Because the allegations you make in your letter are so serious and involve the education and welfare of your daughter we have passed them onto Sandy as the school administrator so that they can be dealt*

*with under the separate parents concern procedure...It may be necessary to involve Ofsted and Social Services...*

*We have now had the opportunity to investigate the serious concerns about your behaviour in school that arose on this occasion during the procedure for assessing A's admission to class 1. As part of the fact finding process we need to meet with you...For the first half hour we will outline our concerns, the following half hour we will listen to your explanation leaving half an hour to explore and agree what actions may be necessary to resolve the issues...*

*This will be an informal meeting as outlined in the procedure..."*

139. Miss Tolhurst, Dr Jones and Mrs Hales had discussed the matter that day and had resolved to keep separate, Ms Sawfoot's complaints about the Kindergarten and their concerns regarding her conduct.
140. A meeting took place on 28 May 2009 between Ms Sawfoot, Dr Jones and Mrs Hales; the Claimant's father, Mr Sawfoot, attended with her. This was an investigatory meeting as part of the Respondent's disciplinary process. Ms Sawfoot complains that she was challenged about her relationship with colleagues, (but not given examples of what it was the Respondent was referring to) challenged about difficulties that she had attending all staff meetings in accordance with her contract and that she was told there would be a review of her contractual terms. Dr Jones and Mrs Hales refused to discuss with Ms Sawfoot her concerns with regard to the way AA been treated, which she said placed in context her conduct on 19 May.
141. There are 2 points in the Agreed Issues which arise from this meeting: whether Ms Sawfoot made complaint about unlawful restraint or assault on her daughter and whether the meeting was conducted in a hostile manner.
142. As to the manner in which the meeting was conducted, it was inevitable that the meeting would be uncomfortable as the Respondent's were challenging Ms Sawfoot about her conduct and emotions were running high on the part of Ms Sawfoot, as a mother. Having observed Ms Sawfoot's demeanour for ourselves and having listened to the evidence about this meeting, we find it likely that there was some hostility on her part to being challenged about her conduct. Having observed Dr Jones and Mrs Hales, we do not think they would have been hostile. The minutes of the meeting taken by Mr Sawfoot illustrate this; an outburst by Ms Sawfoot is in capitals and Mrs Hales appears to be trying to calm her down:

*"DJ This has highlighted the strength of feeling, fear and apprehensions and perceptions of your behaviour.*

*JS Prior to the specific incident?*

*DJ Yes.*

*JS Be specific.*



*DJ Possibly the staff may see you as overbearing and confrontational you don't feel that this possible?*

*JS I remember one debate on lunch boxes in a staff meeting – robust and healthy debate and I agree that I was presenting my opinion. I agreed to concede to the group.*

**BE SPECIFIC – I CAN'T THINK OF ANYTHING ELSE.**

*RH This meeting is informal in the form of damage limitation – understanding positions and finding ways forward. There should be equality of the staff being respectful and not intimidated and hurt. You know Jo that you bring so much to this place and it mostly goes unsung."*

143. During the meeting, Ms Sawfoot made repeated references to the incident on 11 May, referring to her daughter having been physically restrained by the staff in the Kindergarten, the Respondent's minutes record:

*"An impasse seemed to have been reached, with Jo wanting to talk about the incident concerning her daughter on 12 May, (sic) and about the Kindergarten meeting on 13 May..."*

144. Ms Sawfoot complains that the Respondent's minutes of this meeting are misrepresentative; however, they do not purport to be verbatim notes. Mr Sawfoot produced his own notes. It is inevitable that any two sets of minutes of the same meeting, honestly prepared, will differ. The more so when the minutes are taken from different perspectives; inevitably the two sets of minutes will to some degree reflect the perspective of the note taker and that is equally as true of the minutes of Mr Sawfoot as it is of those of Miss Armour. Neither set of minutes are dishonest or deliberately misleading.
145. The matters raised by Dr Jones and Mrs Hales in the meeting were points of genuine concern; Ms Sawfoot's conduct on 19 May and that colleagues generally felt intimidated by Ms Sawfoot. The subject of the impending contract review for all staff was also raised and Ms Sawfoot's ability to attend staff meetings in the future were discussed.
146. Dr Jones wrote to Ms Sawfoot on 1 June 2009 to summarise the meeting and provide an outcome, which was that no formal action would be taken. The letter recites that they had listened to her explanation that at the time of her outburst, she was distressed and angry following her conversation with Mr Nowell, but:
- "We stated, however, that we expect behaviour befitting any teacher when a parent who is also a teacher in school during school hours. The behaviour brought to our attention was of a serious concern and unprofessional."*
147. Dr Jones explained in his letter that they had tried to keep AA's admission to class 1 and the allegations about her, separate. He expressed disappointment that Ms Sawfoot was unable to recognise how she may be

perceived by others and about the absence of remorse on her part in respect of her conduct.

148. The Respondent appears to have correctly followed its Employer Concerns procedure in this process; the procedure expressly provides for an informal meeting to investigate matters before deciding whether a formal meeting is necessary.
149. AA had not been attending school during the intervening period. On 3 June 2009 Ms Sawfoot and her father met with Miss Letts, Miss Brown and Miss Tolhurst to draw up an agreement, which they referred to as a contract, on the basis of which AA would return to attending the Respondent's Kindergarten. Agreement was reached and Miss Letts sent Ms Sawfoot the agreement to sign. Ms Sawfoot replied with proposing some amendments and Miss Letts responded to that on 5 June by refusing to agree the proposed amendments, she wrote:
- "A unanimous decision has been reached whereby no amendments or negotiations will be made regarding the "contract of agreement between parent and staff".*
150. Mrs Sawfoot signed the agreement as drafted by Miss Letts, (on 8 June 2009). She complains that the agreement was unfair and that she was forced to sign it, because if she did not do so, the Respondent would not allow her child to return to the school. If AA did not return and was not allowed to make the transition to Class 1, she would have serious problems schooling AA in terms of trying to find her somewhere in the public sector in time for the start of the next academic year.
151. The content of the agreement is as between Ms Sawfoot as a parent and the teachers of her daughter.
152. Ms Sawfoot says that the final paragraph of the agreement was added after she had signed it, although in evidence she said that she was no longer sure that was the case. Although the final paragraph does not fit grammatically with the previous paragraph, it was probably added before the final signatures. Nothing turns on the point. However, it is the return of AA on a trial basis which is what Ms Sawfoot in particular says is unfair.
153. AA returned to attending Kindergarten on 8 June 2009.
154. Ms Sawfoot's contract of employment at item 6 under the list of duties, included reference to a requirement to attend evening steering group meetings. Ms Sawfoot met with Miss Armour and Mrs Hales on 10 June 2009 to discuss her Terms and Conditions of employment. She complains of the Respondent being inflexible with regard to her hours of work. She does not rely on this allegation as a detriment in respect of her Public Interest Disclosure claim, but relies upon it as one of the factors that lead to a breach of trust and confidence on the part of the Respondent. The concern raised at this meeting was her inability to attend out of hours meetings; Ms Sawfoot said that she had been able to attend such meetings and that from the start of her employment, she had made it clear and the

Respondent had agreed and recognised that it needed to be flexible because she was a single parent.

155. Ms Sawfoot said that her colleagues had agreed that they could hold the weekly meetings in school hours, but the Respondent's point was that such meetings should not take place whilst pupils were on the premises. The Respondent had recognised that this would present difficulties for Ms Sawfoot during the investigatory meeting on 28 May referred to above. During the meeting on 10 June, Ms Sawfoot agreed that she would make herself available for out of hours meetings.
156. Ms Sawfoot had been given a draft revised contract during the meeting on 10 June. She subsequently signed the contract and returned it to Mrs Hales on 16 June (saying in her covering letter that there might be the odd occasion when as a single parent when she would not be able to attend after school hours meetings). The copy contract Ms Sawfoot signed contains in the heading a reference to amendments being in blue, (our copy was black and white) and to, "areas to reflect on are in bold type"; it was clearly a draft and not a final version for signature. Miss Armour wrote back on 17 June to point out that what Ms Sawfoot had signed was a draft and to explain that the final form of the new contract was still the subject of discussion and negotiation with other staff, on the point of attending meetings Miss Armour says:

*"We acknowledge you (sic) comments about meetings, but that the position regarding teachers meeting and events had been clarified recently and that there is nothing to say on the matter."*

157. Ms Sawfoot alleges that at a school open day on 13 June 2009, Miss Letts threatened not to allow AA to progress to Class 1. Miss Letts says that Mrs Sawfoot raised the subject and that in her response, she tried to make clear that it was not her decision; we accept that Miss Letts' version of this conversation is the more plausible and accept her account of what was said, Ms Sawfoot in our view, put an alternative spin on what was said
158. By a second letter dated 16 June 2009 Mrs Sawfoot wrote to Mrs Hales to complain that no action been taken regarding her complaint about AA having been physically restrained. An step she had taken in her capacity as a parent.
159. By a third letter of that date, Ms Sawfoot raised a grievance about the way that she, (as an employee) had been treated since she had complained about way AA had been treated:

*"Since my complaint, it is very obvious that the employer employee relationship has fundamentally changed and the school now seems more concerned about my position within the school. I feel this changed attitude towards me as an employee has only come about as a direct result of my complaint."*

160. On 17 June 2009 Miss Tolhurst rang the Local Authority Designated Officer, (LADO). We were referred to a note of that conversation taken by the person she spoke to, this records Miss Tolhurst informing her that the child

had to be restrained after an episode of biting and aggression from the child. This is a misrepresentation of the incident. This is apparent from Miss Letts' version of events as quoted above; which describes the biting taking place after the restraint by Miss Letts. The note also records the following:

*"ST was also concerned at the apparent high level of anger by the child's mother towards the school, and concerned re any repercussions of this in respect of that person's professional role. ST said that the respect level of her class was not as high as it should be and that she had been doing some shouting in the classroom."*

161. Miss Armour wrote to Ms Sawfoot to acknowledge receipt of her letters and to inform her that her complaint relating to AA had been referred to the school administration. With regard to the grievance, Miss Armour explained that Ms Sawfoot was required to complete a form before they would deal with it.
162. On 18 June Miss Tolhurst wrote to Ms Sawfoot to respond to her letter regarding the handling of her complaint about AA. In this letter, Miss Tolhurst refers to the "resurrection" of her concern. Ms Sawfoot says that she had never withdrawn her complaint in the first place, it had not been dealt with. We can see Ms Sawfoot's point, it is clear from Ms Sawfoot's typed letter to Mrs Hales of 20 May that she was not satisfied after meeting with Miss Letts and Mrs Brown on 13<sup>th</sup> May and that she therefore wants the matter dealt with.
163. In the letter of 18 June, Miss Tolhurst informed Mrs Sawfoot that she had referred the matter to Social Services. She also informed Ms Sawfoot that if she wanted AA to progress, she must meet with Mr Nowell, who will then speak to other teachers, before a decision is made.
164. By letter misdated 19 July, (it should have been dated and was sent on 19 June) Miss Tolhurst informed Mrs Sawfoot that there was going to be a meeting to decide whether AA should progress to Class 1 on 22 June and the decision will be made in her absence if she does not attend.
165. Mrs Sawfoot requested and obtained access to the Respondent's file for AA and saw reference to other instances of her daughter misbehaving on 12 and 13 May 2009 recorded, but which had not been reported to her.
166. Miss Tolhurst also wrote to Social Services on 19 June, the letter included Miss Letts account of the incident on 11 May, copied from the incident book as quoted above.
167. On 23 June Mrs Sawfoot withdrew her daughter from the school and resigned her employment. Her letter of resignation gave no reason, it simply read:

*"I herewith tender my one term and 13 working days notice and resignation with immediate effect. Please advise exact date in the Autumn term to which my paid employment continues. I assume 13 days before the end of the Autumn term."*

168. Ms Sawfoot explains and we accept, that she did not give her reasons for resignation because she was concerned that had she done so, the Respondent may not have provided her with positive references.

169. Miss Tolhurst, Dr Jones and Ms Sawfoot, (accompanied by her father) met on 24 June to discuss the arrangements for Mrs Sawfoot to serve out notice, the notes of that meeting record the following:

*"Jo was reminded that having made complaints and raised a grievance against the school, as long as she was under contract to us we expected her to maintain a high professional standard, to avoid negative remarks and that professional misconduct could lead to dismissal. She said she misunderstood."*

170. Ms Sawfoot argues that she was threatened with summary dismissal and refers us to her father's note of this comment, as follows:

*"DJ – bearing in mind you have raised a formal grievance I remind you that you are under contract and in relation to communication to the mothers there can be no negative feedback. If there is any professional misconduct you can be summarily dismissed."*

171. Shortly afterwards, on 24 June, Ms Sawfoot wrote to confirm that she agreed that the period of notice that she would serve would be 13 weeks:

*"This letter is to signify acceptance of the notice period as contractually interpreted by the school. Mr Jones indicated that this may be 13 weeks....For the benefit of the children, it has been agreed that if this date is beyond the start of the Autumn term, the term period will be paid in lieu of notice."*

172. Miss Tolhurst replied to say that her last day of work would be the last day of the summer holidays, 6 September 2009. Ms Sawfoot says that she was intimidated into accepting what was in fact a shorter notice period of 10 weeks.

173. Social Services wrote to the Respondent on 26 June to advise that matters relating to AA appear to have been dealt with appropriately, the letter comments:

*"My observation from the papers that I have seen is that you have investigated the complaint. You adhered to the school's positive behaviour policy, including use of physical restraint... I did suggest in our telephone call that you give clear feedback to the parent about the outcome of your investigation i.e. that it was a legitimate restraint situation. I also advise that you are clear with the parent about your concerns regarding her support needs and also the need to challenge her if her behaviour as a class teacher was causing colleagues concerns."*

174. The respondent copied that letter to Ms Sawfoot, by way of justifying that they regarded the matter now as, "fully investigated". From this letter, Ms Sawfoot will have seen that the Respondent had raised concerns with Social Services about her behaviour, as a class teacher.

175. On 4 July 2009 Mr Leeds was informed by a teacher called Charlie that the school better off without Ms Sawfoot. It is surprising that the person who is alleged to have made this comment is incorrectly named in the list of issues, but we do not think Mr Leeds was lying to us and this is a comment that would be consistent with Respondent's underlying attitude to Ms Sawfoot by this stage.
176. On 6 July 2009 Miss Armour wrote to Ms Sawfoot to inform her that the Respondent regarded the grievance as closed as she had not completed and returned the appropriate form.
177. Feeling ran high amongst parents following Ms Sawfoot's resignation, concerns were expressed by parents as to why she had resigned. On 6 July 2009 one such parent, Dr Victor Bense, wrote to express those concerns. On 7 July a number of parents protesting outside the school behaved in a manner that was intimidating to some of the Respondent's staff, (including Mr Nowell). In response to this, Mrs Hales wrote to the parents of children at the school to say that Ms Sawfoot had not been bullied and harassed and, in effect, if they continue to have concerns, that are at liberty take their children elsewhere.
178. Miss Tolhurst is alleged to have said to a parent, Mr Longhurst, on 22 July 2009 that Ms Sawfoot had done something, "big and terrible". Miss Tolhurst denies this. No supporting evidence was produced to us and there was no indication as to where this information had come from, what the basis was for this assertion. We therefore make no finding that such a comment was made.
179. Mr Nowell wrote to the parents on 22 July 2009. He is alleged to have made, "professionally defamatory implications" which Ms Sawfoot relies on as a detriment. He wrote this letter because of the expressed discontent on the part of some of the parents, which he had experienced at the school gates and in an e mail campaign that was being conducted; he was expressing his sadness at the same.
180. Ms Sawfoot made an allegation that a Mrs Ainsworth had told a Ms Duffield that Mrs Sawfoot had done, "a big thing". Both gave evidence to refute that allegation and we accept their evidence.

### Conclusions

181. We approach our conclusions by answering each of the questions posed of us in the list of issues, identified by the same numbering.

#### A. WHISTLE BLOWING

12 May 2009:

1. *Did the Claimant make a complaint to Ms Letts that AA had been unlawfully physically restrained/assaulted?*

We found that the Claimant said that she was unhappy about the physical restraint of AA, she did not use the actual words recited.

2. *If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject?*

The statutory test is that the discloser must reasonably believe that the disclosure tended to show a failure to comply with a legal obligation. Ms Sawfoot reasonably believed that the obligation was the contractual obligation on Anna Letts to follow the Respondent's policy on physical restraint of children and on the Respondent's part to ensure that such policies are complied with.

3. *In the alternative does the complaint satisfy Section 43B(1)(d) in that the disclosure of information tended to show that the health or safety of any individual has been, is being or is likely to be endangered?*

Yes, the physical restraint of AA in circumstances that were not necessary had the potential to result in injury to AA, either physically or psychologically.

4. *Did the Claimant make the disclosure in good faith in accordance with Section 43C of the Employment Rights Act 1996?*

Yes, the Claimant's only motives in raising the matter was concern for the wellbeing of her daughter and her concern that members of staff employed by the Respondent treat children appropriately. Ms Sawfoot's disclosure was made with honest motives and was not made in bad faith; she had no ulterior motive such as a grudge or feelings of ill will toward Miss Letts, the Respondent or the Respondent's employees.

5. *Is the Claimant permitted to rely on Section 43B of the Employment Rights Act 1996 on the basis that the Claimant admits that she made this complaint as a parent and not a worker?*

The starting point is the legislation; section 43A defines the protected disclosure as a qualifying disclosure made by a worker in accordance with any of sections 43C to 43H. The key words in this context are, "made by a worker". Ms Sawfoot may have been a mother, but she was also a worker. Therefore, she meets the circumstances set out at section 43A, she is a worker and she has made the qualifying disclosure.

It seems to us that an analogy could be drawn with a local authority worker who complains to his employer, in his capacity as a resident of the local authority, that his refuse is not being collected. If, as a consequence of that complaint, he were at work and subjected to unpleasant treatment by his employer, then he ought to be protected by the public interest disclosure provisions in the ERA. That seems to

us the purpose of the legislation and we believe that the purpose of the legislation is served correctly by applying the protection of those provisions in the ERA to a teacher who is also a parent of a child at the employer school who makes a complaint, as a parent, about the way a child has been treated.

13 May 2009:

6. *Did the Claimant make a complaint to Ms Letts and Susan Brown that AA had been unlawfully physically restrained/assaulted?*

As under point 1, she expressed that she was unhappy that her child had been physically restrained but she did not use the words "unlawfully physically restrained/assaulted."

7. *If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?*

Yes, for the same reasons as set out at point 2 above, the contractual obligation being on the part of Ms Letts to observe the Respondent's policy on physical restraint.

8. *In the alternative does the complaint satisfy Section 43B(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?*

Yes, for the same reasons as set out at point 3 above.

9. *Did the Claimant make the complaint in good faith in accordance with Section 43C of the Employment Rights Act 1996?*

Yes, for the same reasons as set out at point 4 above.

10. *Is the Claimant permitted to rely on Section 43B of the Employment Rights Act 1996 on the basis that the Claimant admits that she made this complaint as a parent and not a worker?*

Yes, for the same reasons as set out at point 5 above.

14 May 2009:

11. *Did the Claimant make a complaint to Ms Priscilla Gibbons that AA had been unlawfully physically restrained/assaulted?*

She did not make a complaint to Ms Gibbons but she did make a disclosure and the disclosure she made is that as was reported in a subsequent email quoted in our findings of fact set out above, rather than using the actual word quoted here in the list of issues. She complained of restraining techniques being used on her child and of her child being hurt. She made those comments in such a way as to



give rise to the impression that she may be about to make a complaint against Ms Letts.

12. *If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?*

Yes, for the reasons set out at point 2 above.

13. *In the alternative does the complaint satisfy Section 43B(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?*

Yes, for the reasons set out at point 3 above.

14. *Did the Claimant make the complaint in good faith in accordance with Section 43C of the Employment Rights Act 1996?*

Yes, for the reasons set out at point 4 above.

19 May 2009:

15. *Did the Claimant make a complaint to Mr Nowell that AA had been unlawfully physically restrained/assaulted?*

Yes, Mr Nowell accepted as such at paragraph 14 of his witness statement.

16. *If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?*

Yes, for the reasons set out at point 2 above.

17. *In the alternative does the complaint satisfy Section 43B(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?*

Yes, for the reasons set out at point 3 above.

18. *Did the Claimant make the complaint made in good faith in accordance with Section 43C of the Employment Rights Act 1996?*

Yes, for the reasons set out at point 4 above.

20 May 2009:

19. *Did the Claimant make a complaint to Rachel Hales that AA had been unlawfully physically restrained/assaulted?*

Yes, her letter opens with, "I am making a serious complaint regarding the treatment of my child in kindergarten. On more than

one occasion she has been physically restrained." Once again, she has made a complaint about the physical restraint of her daughter, she did not use the precise expression, "unlawfully physically restrained/assaulted".

20. *If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?*

Yes, for the reasons set out at point 2 above.

21. *In the alternative does the complaint satisfy Section 43B(1)(d) in that the health and safety of any individual has been, is being or is likely to be endangered?*

Yes, for the reasons set out at point 3 above.

22. *Did the Claimant make the complaint made in good faith in accordance with Section 43C of the Employment Rights Act 1996?*

Yes, for the reasons set out at point 4 above.

21 May 2009:

23. *Did the Claimant make a complaint to Rachel Hales regarding the misrepresentation and/or falsification of minutes of staff?*

Yes, in her letter to Rachel Hales of 21 May she said, "as minutes these are a work of half truths, lies, exaggerations, omissions and liverless implications."

24. *If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?*

There is an obligation on a teacher to act in good faith in dealing with parents and allegations of this nature; if that is not expressed in the contract of employment it must certainly must be implied. To give a false impression in minutes of a meeting discussing such matters must be a breach of the obligation of good faith. It is also in our view, a breach of the implied term that employer and employee will conduct themselves towards each other so as to maintain mutual trust and confidence; by this disclosure Ms Sawfoot suggests to her employer that other employees are misrepresenting what has occurred in a meeting with a parent, if true that must undermine trust and confidence between the employer and the employee reported. There is also an obligation in every contract of employment for an employee to act in good faith and the reported facts if true, would suggest that the reported employees are in breach of that obligation. Therefore, the disclosure does tend to show a failure to comply with a legal obligation.

25. *In the alternative does the complaint satisfy Section 43(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?*

Yes, as the minutes seem to gloss over the threat to the health and safety of the child, as expressed by the parent in the meeting.

26. *Did the Claimant make the complaint made in good faith in accordance with Section 43C of the Employment Rights Act 1996?*

Yes, for the reasons set out at point 4 above.

28 May 2009:

27. *Did the Claimant make a complaint at the meeting of 28 May 2010 complaining that AA had been unlawfully physically restrained/assaulted?*

Yes, from the Respondent's minutes of this meeting it is clear that Ms Sawfoot wanted to discuss the incidents of 11 May because the Respondent recorded that they had to repeatedly remind her that the purpose of the meeting was to discuss her behaviour. Once again it is not that the Claimant specifically uses the words "unlawfully physically restrained/assaulted" but it is clear that she was complaining about the way that her daughter has been handled.

28. *If so, does the complaint satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?*

Yes, for the reasons set out at point 2 above.

29. *In the alternative does the complaint satisfy Section 43B(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?*

Yes, for the reasons set out at point 3 above.

30. *Did the Claimant make the complaint made in good faith in accordance with Section 43C of the Employment Rights Act 1996?*

Yes, for the reasons set out at point 4 above.

16 June 2009:

31. *Did the Claimant's grievance of 16 June 2010 satisfy Section 43B(1)(b) in that the disclosure of information tended to show that a person has failed or is failing or is likely to fail to comply with any legal obligation to which he is subject?*

Yes, the grievance of 16 June complains firstly about the way that her daughter had been restrained and then secondly, she complains

of the Respondent's change in attitude toward her as a direct result of her complaint. In other words, she was complaining of the breach of the Respondent's obligations not to subject her to a detriment in accordance with the ERA, a breach of a legal obligation.

32. *In the alternative does the complaint satisfy Section 43B(1)(d) in that the health or safety of any individual has been, is being or is likely to be endangered?*

Yes, insofar as the grievance refers to the restraint, for the reasons set out at point 3 above.

33. *Did the Claimant make the complaint made in good faith in accordance with Section 43C of the Employment Rights Act 1996?*

Yes, for the reasons set out at point 4 above.

Section 47B of the Employment Rights Act 1996

34. *Alleged threat not to accept AA into Class 1 on 13 May 2009:*

- (a) *Did the Respondent threaten not to accept AA into class 1 on 13 May 2009?*

The use of the word "threaten" is not appropriate, what would be more appropriate is to say that the Respondent warned the Claimant that AA might not be accepted into class 1 and the first occasion on which they did this was 13 May, as Ms Sawfoot says in her version of the minutes, in reporting Ms Letts' comment, "I have my doubts as to whether she will be able to manage in class 1".

- (b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

No, this was not done because Ms Sawfoot had made a protected disclosure, but because there were genuine concerns with regard to AA's behaviour as evidenced by documents referred to in our findings of fact, such as the comments of Ann Swain on 2 March 2009 or in the email between Ms Letts and Ms Tolhurst of 4 May 2009 and between Ms Tolhurst and Mrs Hales on 6 May 2009. From these it is clear that there were concerns about AA before the incident of 11 May 2009.

- (c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable.

35. *Alleged threat not to accept AA into Class 1 on 13 June 2009:*

(a) *Did the Respondent threaten not to accept AA into class 1 on 13 June 2009?*

Once again, we would say this was not a threat, but in any event Ms Letts simply reminded Ms Sawfoot on this occasion that it was not her decision. In fact, Ms Sawfoot offered no evidence as to what was said in this conversation.

(b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

Not applicable.

(c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable.

36. *Alleged disciplinary action on 21 May 2009:*

(a) *Did the Respondent decide to instigate a disciplinary procedure on 21 May 2009?*

Yes, on our findings of fact.

(b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

No, the process was instigated because of the way Ms Sawfoot had behaved in the school corridor on 19 May.

(c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable.

37. *Alleged manner of the meeting of 28 May 2009*

(a) *Was the meeting on 28 May 2009 held in a hostile manner?*

No, we have found in our Facts that it was not.

(b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

Not applicable

(c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable

38. *Contract of Agreement between Claimant and Respondent (containing unfair terms)*

- (a) *Did the Respondent force the Claimant to sign the Contract of Agreement?*

The Claimant was forced to sign the contract of agreement in that she had no alternative, she had to do so if her child was to return to the school.

- (b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

No, Ms Sawfoot was required to sign the agreement because the Respondent had concerns about the child's behaviour. The Respondent's witnesses satisfied us that this was the reason that this step was taken.

- (c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable

- (d) *Did the Respondent make post agreement changes to the Contract of Agreement?*

No, we have found that they did not in our findings of fact.

- (e) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

Not applicable

- (f) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable

39. *Claimant's grievance – 16 June 2009:*

- (a) *Did the Respondent fail to investigate and/or hear the Claimant's grievance?*

Yes.

- (b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

Yes: what it is that Ms Sawfoot grieved about was perfectly plain from her letter of 16 June. In their reply of 17 June, written by Ms Armour,

"for the personnel team" and therefore, we assume, with the agreement of the personnel team, it is clear that the Respondent was being difficult and obstructive with Ms Sawfoot. To require the Claimant to fill in a form before her grievance would be dealt with was absurd and entirely at variance with good industrial relations practice. We are satisfied that this difficult and obstructive line taken by the Respondent is because they have come to regard Ms Sawfoot as an irritant, because of the complaint which had made about the way that her child has been treated.

- (c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Yes; not to investigate a grievance and not to act on a grievance promptly and appropriately, is a detriment; it would place a worker in a situation whereby they felt they were at a disadvantage continuing in their employment thereafter.

40. *Alleged threat to dismiss the Claimant:*

- (a) *Did the Respondent threaten to dismiss the Claimant during her notice period if she discussed the reasons for her resignation?*

No, what both sets of minutes reveal is more or less the same; that the Claimant was expected to conduct herself professionally during the notice period. It is perfectly proper and appropriate for such a warning to be given. It is clearly not a threat to dismiss.

- (b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

Not applicable

- (c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable

41. *Alleged reduction of the Claimant's notice period:*

- (a) *Did the Respondent intimidate the Claimant into accepting a 10 week notice period?*

No, the Claimant agreed to the ten week notice period so that her employment ended immediately prior to the commencement of the new term, for the benefit of the children. She says as such in her letter of 24 June. What she also says is that she agreed to accept the Respondent's offer of pay in lieu of notice for the balance of her notice period.

- (b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

Not applicable.

- (c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable.

42. *Alleged misrepresentation by the Respondent to Social Services:*

- (a) *Did the Respondent misrepresent the alleged assault of AA to Social Services on 18 June 2009?*

Yes: the Respondent stated to social services that the child was physically restrained because of the biting and that is not correct, on Anna Letts' own account of what happened. The child bit Anna Letts because she was being restrained.

- (b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

This was the most difficult question to deal with. Our finding is that Ms Sawfoot had made a public interest disclosure and on the facts, we could conclude that she was subjected to a detriment on the grounds of that disclosure, the detriment being that her allegations as a worker have not been properly investigated and have been misrepresented to another authority. The burden of proof therefore shifts to the Respondent to satisfy us that the disclosure played no part in the misrepresentation of those events. We draw inferences from the fact that in informing social services, the Respondents made allegations against Ms Sawfoot that had never been raised before nor discussed with her in any way, in particular mentioning in the telephone conversation on 17 June concerns regarding the levels of anger, repercussions of this in Ms Sawfoot's professional role and the reference to respect levels of her class not being as high as it should be, and that she had been shouting in the classroom. We were surprised that Ms Sawfoot had not sought to rely on this as a detriment in addition to the misrepresentation of the nature of the incident on 11 May. The Respondent has not satisfied us that the disclosure played no part in the misrepresentation of the incident and therefore we find that the misrepresentation was made because Ms Sawfoot had made a protected disclosure.

- (c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Yes: misrepresenting the nature of the incident to an outside authority, seeking to give the impression that the matter had been



properly investigated and reported whereas in fact it had not, raising concerns about the professionalism and performance of a teacher without having addressed those issues to the teacher in question are all matters that would be seen by the Claimant as placing her at a disadvantage once she became aware of them, as she did in due course.

43. *Alleged comment by Rachel Hales of the Respondent:*

(a) *Did Rachel Hales of the Respondent inform James Leeds (parent) and Victor Bense (parent) at the summer fete that the School was "better off without Jo"?*

Yes: we found as such in our findings of fact.

(b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

Yes: the comment was made because of the complaints that Ms Sawfoot had made about the way her child had been treated and had raised a grievance about the way she had been treated thereafter, which as we have explained above, were protected disclosures.

(c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Yes: having such derogatory comments made about one by a personnel advisor to one's employer is clearly a detriment, something that would place the employee at a disadvantage.

44. *Letter to parents dated 7 July 2009:*

(a) *Was the letter of 7 July 2009 sent to parents on the ground that the Claimant had made a protected disclosure?*

No, we found that the letter was written in response to the way that parents were reacting to Ms Sawfoot's resignation, both at the school in person and by way of the letter from Ms Bence.

(b) *Does the letter from the Respondent dated 7 July 2009 amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable.

45. *Alleged comment by the Administrator of the "big and terrible" event and comment made by Mr Nowell to parents dated 22 July 2009:*

(a) *Did the Administrator say to a parent that the Claimant had done something "big and terrible"?*

No: we have found not in our findings of fact.

- (b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

Not applicable

- (c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable.

- (d) *Did Mr Nowell make "professionally defamatory implications" against the Claimant within his letter dated 22 July 2009?*

The letter of Mr Nowell does not, in our view, contain anything that could be read as being implicitly defamatory of the Claimant.

- (e) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

Although the question is not applicable as we did not find the letter implicitly defamatory, we would add that we do not think that the letter was sent because Ms Sawfoot had made disclosures, but because of what Mr Nowell had seen of the behaviour of other parents outside the school and the e mail campaign by some of the parents.

- (f) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

Not applicable.

46. *Alleged Constructive Dismissal:*

- (a) *Was the Claimant constructively dismissed?*

For the reasons we set out below, we find that the Claimant was constructively dismissed.

- (b) *If so, was this done on the ground that the Claimant had made a protected disclosure?*

Again, for reasons set out below, we find that in respect of two of the three matters in respect of which we find the Respondent in breach of the implied term of mutual trust and confidence, the reason behind their action or inaction, is the protected disclosures made by the Claimant.

- (c) *Does this amount to a detriment as a result of having made a protected disclosure contrary to Section 47B of the Employment Rights Act 1996?*

No: s47B specifically excludes dismissal as a detriment, within the meaning of Part X of the ERA, which as defined at s95(1) (c) includes constructive dismissal.

CONSTRUCTIVE DISMISSAL – Section 95(1) of the Employment Rights Act 1996

47. *Did the Respondent commit a breach of the implied term of mutual trust and confidence in respect of the following?*
- (a) *Did the Respondent instigate a disciplinary process?*
- Yes, but we found that it was justified in doing so, because of the way that she had behaved toward her colleagues in a school corridor.
- (b) *Did the Respondent act in a hostile manner towards the Claimant in the meeting of 28 May 2009?*
- No, we found that it had not.
- (c) *Did the Respondent misrepresent the minutes of the meeting of 28 May 2009?*
- No, we found that they did not, the differences in the minutes prepared by the Respondent and Mr Sawfoot are no more than the inevitable differences that will arise when two people take each take minutes of the same reason, particular when each approaches the meeting from a different perspective.
- (d) *Did the Respondent falsely criticise the Claimant and accuse her of aggressive behaviour?*
- No, the behaviour of the Claimant addressed by the Respondent was in substance, that which had occurred.
- (e) *Did the Respondent force the Claimant to sign the Contract of Agreement in respect of AA?*
- Yes, but it was not an unreasonable action for the Respondent to have taken in the circumstances.
- (f) *Did the Respondent amend the contract of Agreement in respect of AA after it had been signed by both the Claimant and Respondent?*
- No, we found that it did not.
- (g) *Did the Respondent require the Claimant to work unfair contractual hours?*

No; the Claimant had in fact agreed to the Respondent's new terms by signing the draft contract, but in any event these matters were still under discussion.

- (h) *Did the Respondent reject the Claimant's grievance without holding a grievance meeting?*

The Respondent did in effect reject the Claimant's grievance, by Ms Armour's letter of 6 July in which they stated they regarded the matter as closed because the grievance has not been set out on the appropriate form. This was after Ms Sawfoot had resigned and was not therefore a cause of her resignation. However, what is significant is that the Respondent did not act on the grievance, they batted it away, telling the Claimant to fill in a form.

- (i) *Did the Respondent fail to properly report the allegations made by the Claimant regarding AA treatment by the Respondent?*

We never heard any satisfactory evidence from which we could conclude whether the matter of what had occurred on 11 May should have been reported either to Social Services or to Ofsted. Whichever would have been appropriate, it seemed to us that the matter should have been reported at a much earlier stage, when it was first raised. However, that in itself was not a concern that featured largely in the mind of Ms Sawfoot at the time she resigned.

- (j) *Did the Respondent misreport the allegations made by the Claimant regarding AA's treatment by the Respondent?*

Yes, we have found that it did, (but she did not know that at the time of her resignation).

- (k) *Did the Respondent threaten not to accept AA into Class 1?*

The Respondent warned the Claimant that AA might not be accepted into class 1 and it was justified in doing so at the time because their were genuine concerns about her behaviour.

- (l) *Did the Respondent threaten the Claimant on 24 June 2010 by stating that if she discussed the reasons for her resignation it would fire her for professional misconduct?*

No, and in any event this was post-resignation and could not give rise to a finding of constructive dismissal.

- (m) *Did the Respondent compel the Claimant to accept a shorter notice period than her contractual notice period?*

No, again this is in any event a post-resignation matter, it could not give rise to constructive dismissal.

- (n) *Did the Respondent seek to persuade the Claimant to dishonestly characterise her resignation as for "personal reasons"?*

We were not presented with any evidence as to who was alleged to have done this, when or how. In any event, if it was suggested that her resignation should be so portrayed, we find that the use of that expression would have been acceptable in the circumstances. Further, this is a matter that arose post-resignation and cannot give rise to constructive dismissal.

- (o) *Did the Respondent misrepresent the alleged assault of AA to Social Services?*

This appears to be a repeat of (j) above, the answer is yes, for the reasons stated above.

- (p) *Did the Respondent inform a parent of the School that the School was better off without the Claimant?*

Yes, the remark was made to Mr Leeds on 4 July 2009. However, this was a post-resignation allegation which would have no bearing on the finding of constructive dismissal.

- (q) *Did the Respondent subject the Claimant to a hostile working environment?*

No, there was no evidence of such and we have made no finding to that effect.

48. *If the Tribunal finds that the Respondent acted in any of the ways described in (a) to (q) above, does such conduct, whether considered collectively or individually, amount to a breach of the implied term of mutual trust and confidence?*

What, in the end, we have is the following:

48.1 That the Respondent did not act on Ms Sawfoot's grievance and further we have found that this lack of action was because she had made a protected disclosure.

48.2 That the Respondent did not deal with Ms Sawfoot's complaint about her child as it should have done. A complaint as a parent has no bearing on the employment issues, but as a teacher and the designated child protection officer, Ms Sawfoot was justifiably concerned that such matters were properly dealt with. No action was taken against Ms Letts and from her own account of the incident taken from the incident book, her actions were inappropriate in terms of the Respondent's own physical restraint policy and furthermore, the Respondent sought to portray the incident as occurring because the child had bitten Ms Letts whereas from Ms Letts' own account, we can see that the child bit her because she was being restrained.

48.3 Lastly, the last straw as referred to by Ms Sawfoot is the response to her letter to Mrs Hales of 16 June making

reference to resurrecting her original concerns regarding her child. One asks oneself why the Respondents would have regarded the matter as closed? The Respondents had failed to recognise that there had been a child protection incident and failed to deal with it appropriately. This was a matter for concern to the Claimant, not just as a parent, but as the child protection officer. Mrs Hales wrote in those terms because she and her colleagues had become irritated by Ms Sawfoot's complaints and protestations, because she had made the protected disclosures.

These three matters together are sufficient in our judgment to render the Respondent in breach of the implied term of mutual trust and confidence and to place the Claimant in a position whereby she could not reasonably be expected to continue in the Respondent's employment.

49. *If so, did the Claimant resign in response to the fundamental breach of contract?*

We find that the Claimant did indeed resign for these reasons, which are precisely why the relationship between employer and employee broke down. The letter from Mrs Hales of 16 June was the last straw to Ms Sawfoot and was the effective cause of decision to resign.

Section 103A of the Employment Rights Act 1996:

50. *Was the reason or the principal reason for the Claimant's dismissal because the Claimant made a protected disclosure in accordance with Section 103A of the Employment Rights Act 1996?*

Two of the three reasons set out above for Ms Sawfoot's resignation and why the same amounts to constructive dismissal, are because of protected disclosures: the failure to act on her grievance and referring to her reiteration of her concerns as a, "resurrection". These together in our judgment, amount to the principal reason for her resignation.

If we were wrong about that, in any event, though this is not set out in the List of Issues, we should say that the actions of the Respondent, viewed in the round, having regard to all the circumstances of the case, including their size and administrative resources, could not be described as the actions of a reasonable employer and the constructive dismissal could not therefore be described as a fair dismissal, the respondent fails to pass the test of fairness set out at s98(4).

**C. WRONGFUL DISMISSAL**

51. *Was the Claimant paid 10 weeks notice?*

Yes.

52. *If so, was the Claimant entitled to 13 weeks notice as opposed to 10 weeks notice?*

No, Ms Sawfoot agreed to accept ten weeks notice, subject to pay in lieu of notice in respect of the balance of that period outstanding. We did not hear evidence on whether she was in fact paid for those remaining 3 weeks and if it is argued that she was not, it can be dealt with at the remedy hearing.

182. In summary:

- 182.1. We have found that the Claimant did suffer detriment as a consequence of having made public interest disclosures, in the form of:
- 182.1.1. The failure to investigate her grievance;
  - 182.1.2. Misrepresentations to Social Services, and
  - 182.1.3. Comments made to Mr Leeds that the school was better off without her.
- 182.2. We find that the Claimant was constructively dismissed, the conduct of the Respondent likely to cause a break down in mutual trust and confidence being:
- 182.2.1. Failure to act on her grievance;
  - 182.2.2. Not dealing with her complaint about her child as it should have done, and
  - 182.2.3. The description of her "resurrection" of her complaint about her child.
- 182.3. The claim for wrongful dismissal fails.

Further directions

183. I make the following Orders for the preparation of this matter for a Remedy hearing:
- 183.1. This matter is to be listed for a remedy hearing with a time estimate of 2 days.
  - 183.2. By the date 14 days from the date these reasons are dispatched to the parties, they are to confirm to the Employment Tribunal any dates which they or their representatives will be unable to attend a remedy hearing. Thereafter, the matter will be listed for a remedy

hearing and any request for a postponement is unlikely to be granted save in the most extenuating circumstances.

- 183.3. By the date no later than 28 days from the date of dispatch of these reasons to the parties, they are to disclose to each other by photocopy any documents either may have in their possession relevant to the issue of remedy.
- 183.4. By the date no later than 35 days from the date these reasons are dispatched to the parties, the Claimant's representative is to prepare and copy to the Respondent's representative a properly paginated and indexed bundle of documents containing all documents either party may wish to refer to, assembled in chronological order.
- 183.5. By the date 42 days from the date these reasons are dispatched to the parties, they are to exchange written witness statements setting out all evidence their witnesses may intend to rely upon and put before the Tribunal on the issue of remedy.

*Maen*

\_\_\_\_\_  
11 July 2011  
Employment Judge Warren

RESERVED JUDGMENT & REASONS SENT TO  
THE PARTIES ON

.....13 July 2011.....

.....*K. Price*.....  
FOR THE SECRETARY OF EMPLOYMENT  
TRIBUNALS